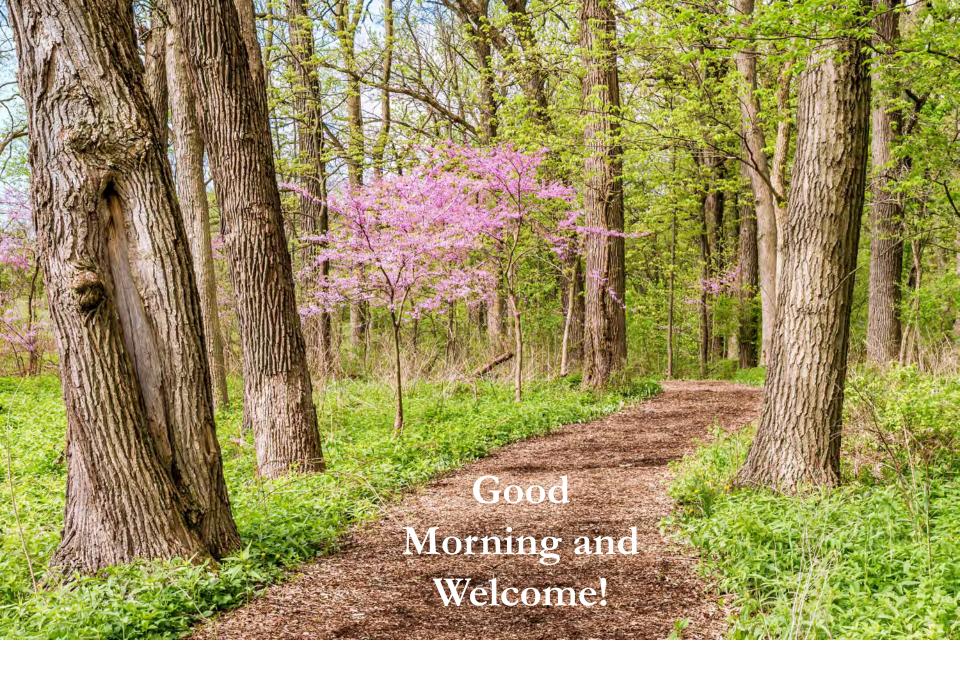


Welcome!

Good Seminars for Good Lawyers

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Adoption & Termination of Parental Rights For Judges:

Let's Get You





Tennessee Judicial Conference March 20, 2024, Strawberry Plains, Tennessee Dawn Coppock, Attorney

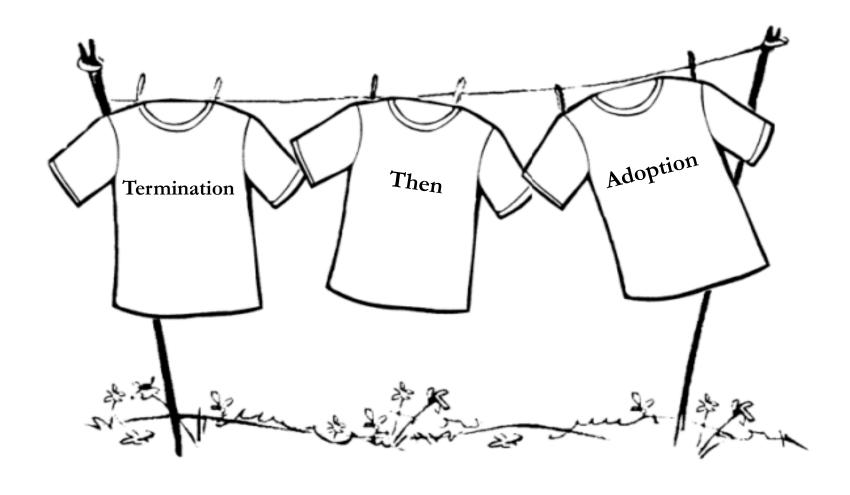
The subject is too big for 90 min.

Basic knowledge of TPR and adoption law is assumed.

If you're new, I'm sorry.

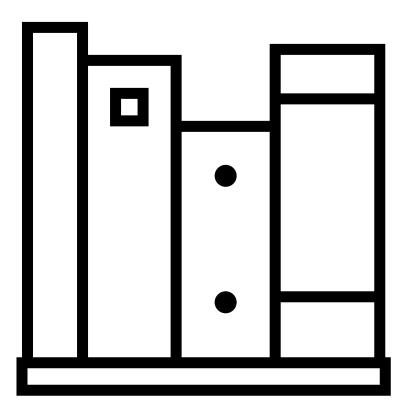


Conceptual Clothesline



Today's Topics

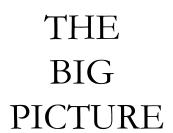
- Parties/Birth Fathers
- Adoption Finalization
- Trial Procedure
- Advance Procedure
- Grounds and Best Interest
- Orders and Appeals
- Misc. New Law
- More Resources



A Judge's Jobs

Voluntary consents-

Is it really voluntary?



Involuntary termination-

Protect birth parent's constitutional rights.

Is the birth parent unfit? aka Grounds

Is TPR in the child's best interest?

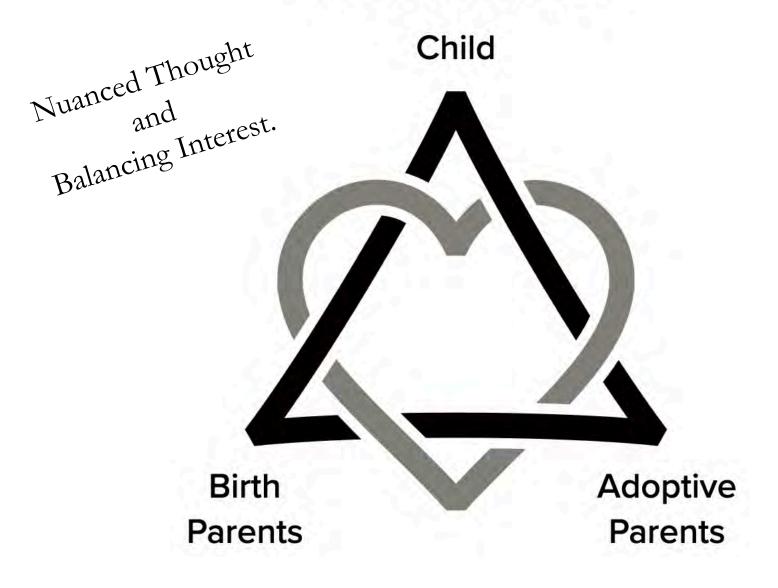
Adoption-

Is the child free for adoption?

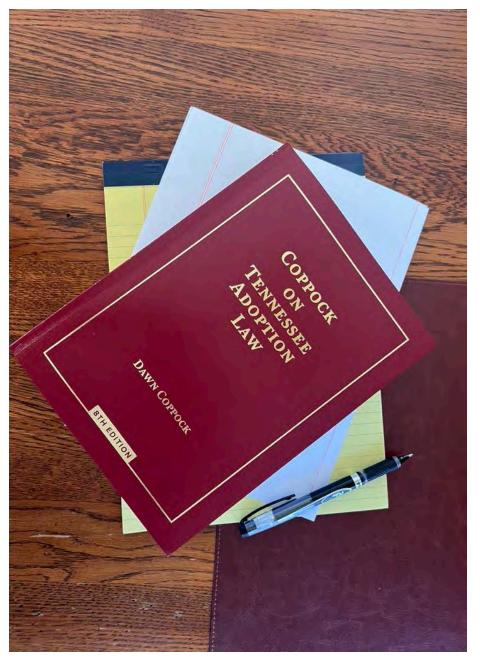
Is adoption by Petitioners in the child's best interest?

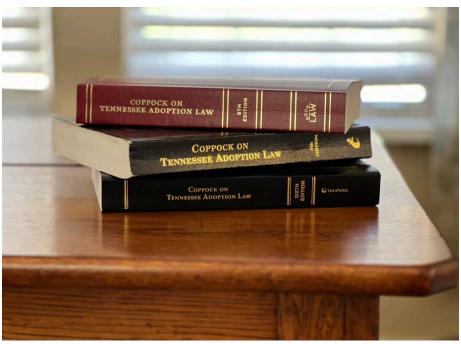
Always ensure that the child is safe and the law is followed.

The Adoption Triad



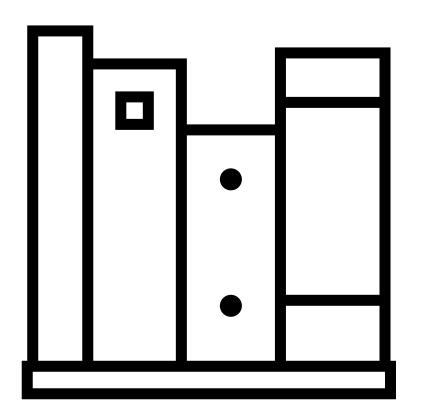








Parties/ Birth Fathers



§ Terminate Legal Parents, Putative Fathers, and Guardians

T.C.A. § 36-1-117 (a) Unless the legal parent, guardian, or any putative father of the child has surrendered parental or guardianship rights to the child, executed a parental consent, or waived the person's rights pursuant to § 36-1-111(s) or (t), or unless the person's rights have been terminated by court order, such person must be made a party to the adoption proceeding or to a separate proceeding seeking termination of those rights and those rights must be terminated prior to entry of an order of adoption.

Men who are not legal or putative fathers are not parties, and



their rights need not be addressed.

Some cases have no father at all. Termination of unknown fathers is not required anymore.

Legal Parent, Guardian, and Putative Father



Classify people (and agencies) to determine: Who is a party

How each party's rights may be terminated,

Legal parents and guardians are (usually) easy.

Putative fathers are tricky.

Putative Father ≠ Biological Father + Putative Father is Biological Father +

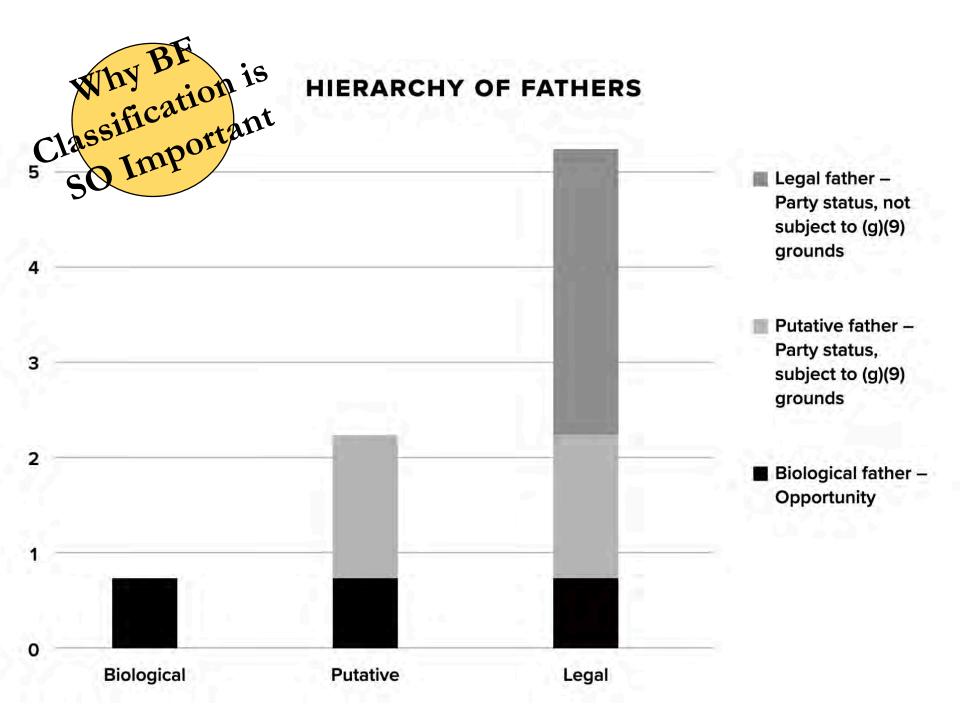
Biological Father

Putative Father

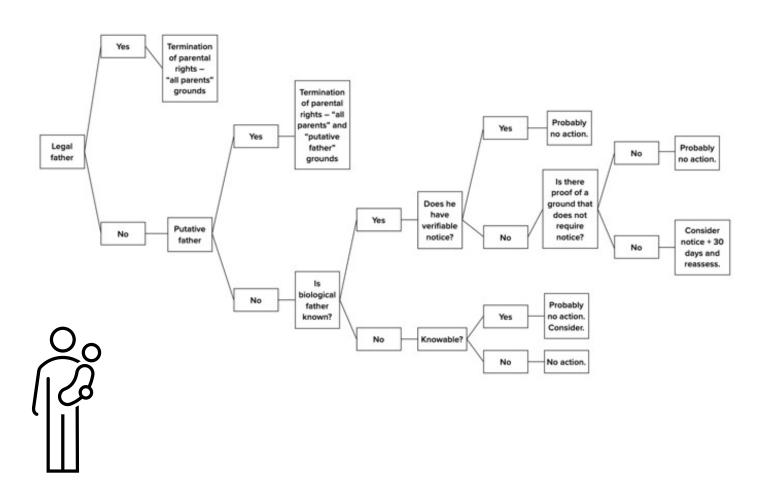
Who is a Putative Father? T.C.A. §36-1-117(c) (very abbreviated)



- (1) The biological father has **filed with the putative father registry**
- (2) The biological father has claimed he believes he is the father and has either paid financial support or has made a court filing or appearance consistent with his claim of paternity;
- (3) The biological father has openly lived with the child and has held himself out as the father;
- (4) The biological father has entered a permanency plan acknowledging paternity.

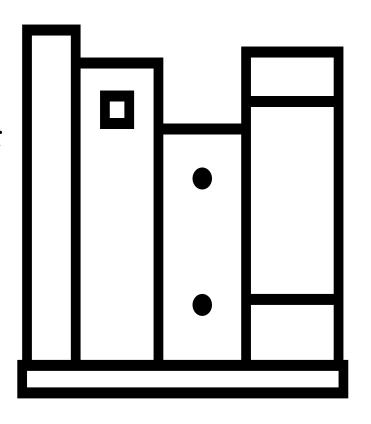


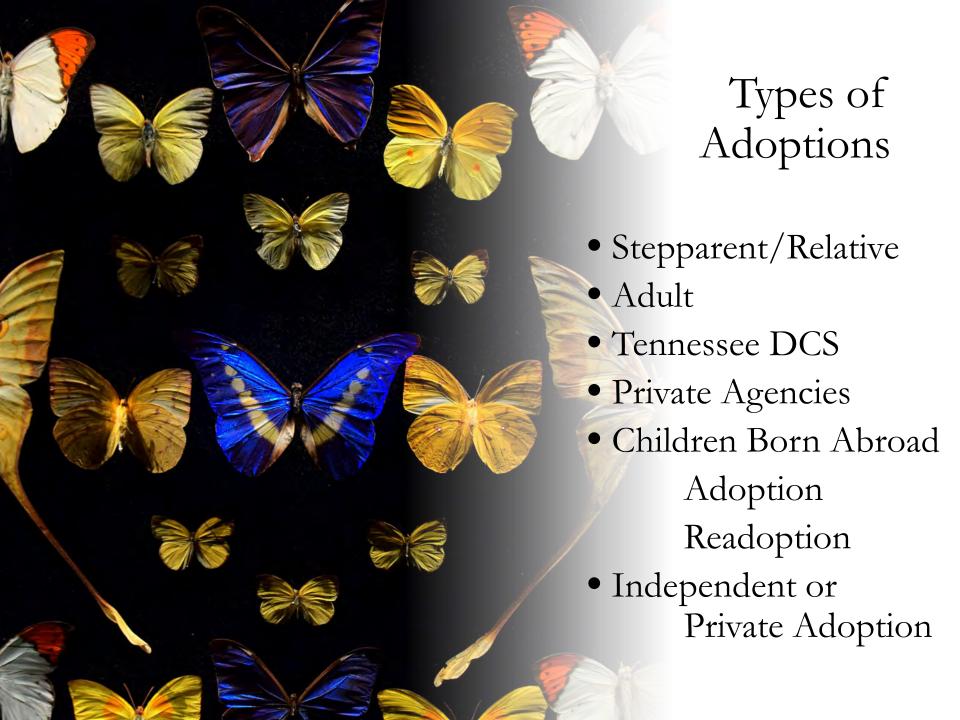
ADDRESSING FATHER'S RIGHTS WITHOUT A CONSENT



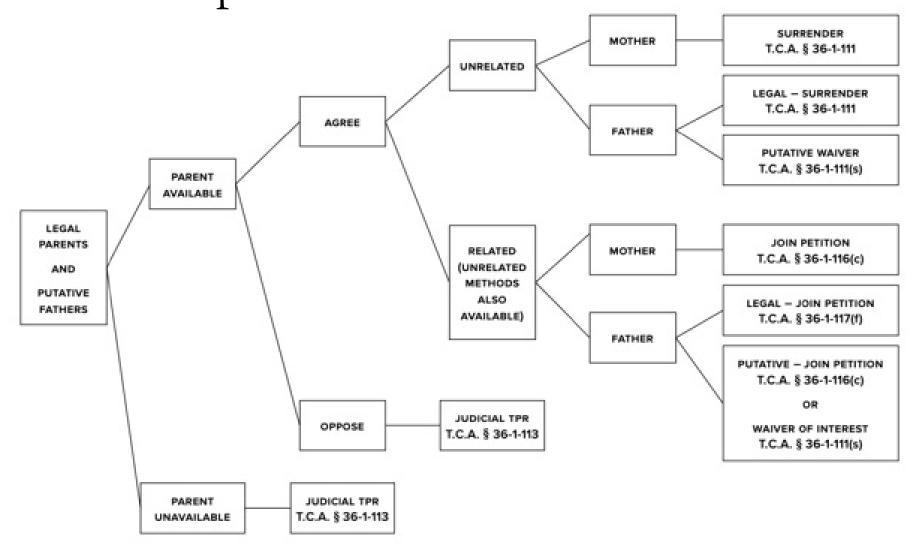
Adoption Finalizations

Different Types of Cases, Relative Consents, Checklist, Venue, Order of Reference, Child's Consent-14 and Older PFR, Home study, Packet Review, Supervision, Waiting Period and Waiver, Final Hearing





Which termination methods are right for which parents?



In a
RELATIVE
CASE
birth parents
can join to
consent.

No confirmation is necessary.



Available Child Fit PAPs*

+ Best Interest

Adoption

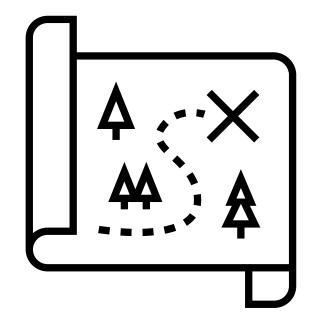
*PAP-prospective adoptive parent



Venue for adoption (not TPR) has expanded.

T.C.A. § 36-1-114 (b)

The adoption petition may be filed in any county listed in subdivisions (a)(1)-(6)



or a county that is adjacent to a county listed in subdivisions (a)(1)-(6).

What is an Order of Reference?



CONSENT TO ADOPTION BY MINOR WHO IS FOURTEEN (14) YEARS OF AGE OR OLDER TENNESSEE CODE ANNOTATED, § 36-1-117(i)

STATE OF TENNESSEE	
COUNTY OF	

Being duly sworr ling to law, affiant would state: the name of 1.lam minor child prior to any nam years of age or older), Born, 2. Lunderstand that Prospective Adoptive Mot (Name of Prospective Ad 3 Lunderstand tha at I will be Children aged 14 and become r older sign a consent n born to erstand ent(s) wi n my birth tar...., erstand that I will have the ent(s), and their (his/her) descendants. me or my descendants but only for property I acq

> r is entered. After the order of adoption is entered, I will not y from my birth family, nor will they inherit property from me after doption is entered. I may inherit from or through a parent whose

py _____, (Name of Prospective

7. I freely and voluntarily, without pressure from anyone, consent to this

ne has pressured me to agree to this adoption, and I believe that

her), and _____, (Name of Prospective er), is in my best interests. I wish for the adoption to take place.

t terminated before his or her death.

No 🗆

This the ___ day of _____, 20____

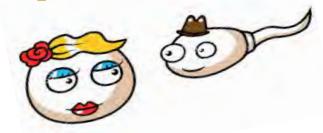
With the judge and Without petitioners or their attorney

adoption.

form

TN PFR

Required in TPR & Adoption



The putative father registry maintained by the department has been consulted within ten (10) (working) days of the filing of the petition and shall state whether there exists any claim on the registry to the paternity of the child who is the subject of the termination or adoption petition;

TPR-T.C.A. § 36-1-113(d)(3)(A)(i) Adoption 36-1-116(b)(13)



Tennessee Department of Children's Services

Request for Name and/or Address of Father with Claim of Paternity

REQUEST: (Please Print or Type)			Request Date
Requesting Party	-	2020	Address
lame and Title:		reet:	
		ty: p Code:	State:
			311111
Requesting Party		ason For Request: A	Roope Ton
elephone:	5 4 (4) 12		t ala.
ax:		•	70
mail Address:			Place of pi/th
Child's Birth Na	ame		Place f Air th
ast:	anic	City:	D. C. C.
irst:		County:	Cr. 50'S
iddle:		State:	10.
Sex of Child		@ (C. 17/2	Child's Ry th Date
] Male] Female		Month:	Day: Year:
	Fa	ther's Name	
ast:	First:	Aller 3 Ivolic	Middle:
	Mot	her's Name	1.000
ast:	First:		Middle:
6.70		's Maiden Name	
ast:	First:		Middle
ESPONSE:			Response Date
ESPONSE:			Response Date
utative Father's Name	Address		Date Registered
ate Change of Address	Staff Registra	ar	Registry Telephone Number
	July 10 July 1		inage of the second sec
Comments:			
can one copy of the document to			
ail one copy of the document to:	Putative Father	Tennes	ssee Department of Children's Services
		9 th Flo	oor, UBS Tower eaderick Street
Nash	nville, TN 37243		
-Attn: Registrar		OR Fax	c: 615-532-6495 Putative Father Registry
Company of Control of the Control of			

Check the "Forms" Webpage for the current version and disregard previous versions. This form may not be altered without prior approval.

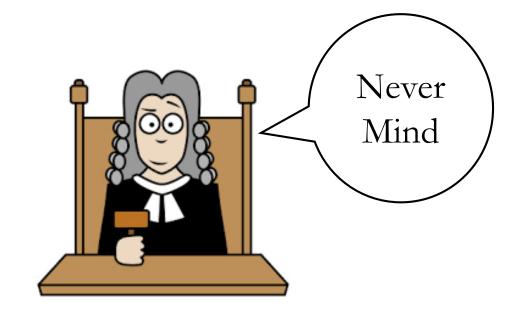
Distribution:
RDA 2982
SCS-0435, Rev. 02/16
ROA 1982

When the other state has a PFR Out of State PFR Required in Adoptions

(ii) If the child was born in another state

KEEP
CALM
JUST
GOOGLE
IT

(iii) If the petitioner knows or has reason to believe that the mother was living or present in another state at the time of the child's conception T.C.A. § 36-1-116 (b)(13)

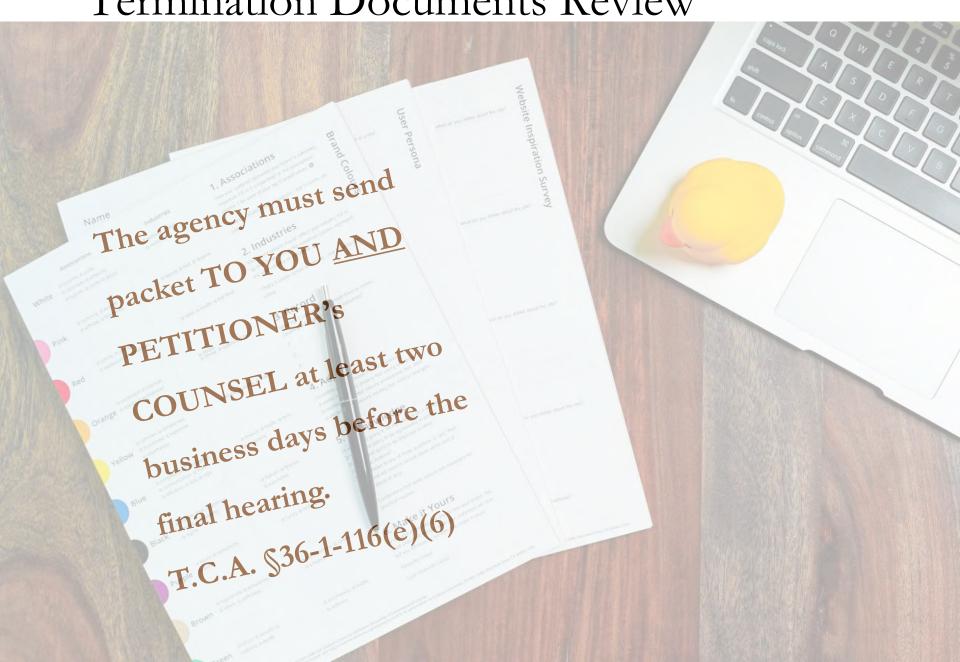


You can can waive out of state PFR if the process is unreasonably burdensome or the other state won't cooperate promptly.





Termination Documents Review



Common Agency Packet Errors

- No termination documents,
- Wrong termination form used,
- Parties not correctly identified,
- Required signatures missing,
- No or defective notice to birth parent in the underlying termination action,
- No home study or supervisory report or out of date,
- No Attorney or agency fee affidavit, or
- No Putative Father's Registry check.

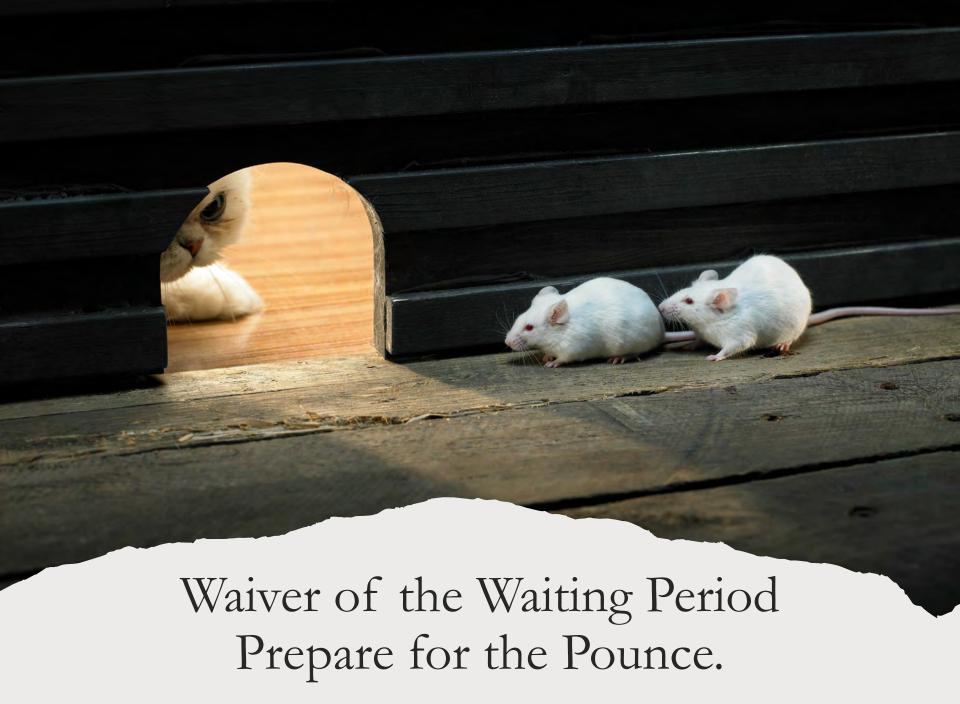






The adoption waiting period can be shortened from 6 to 3 months in the best interest of the child.

T.C.A. § 36-1-119







Adoption petitions should be decided within a year.

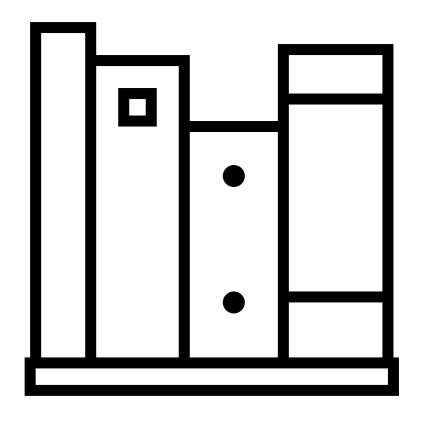
Except for good cause or if there's an appeal.

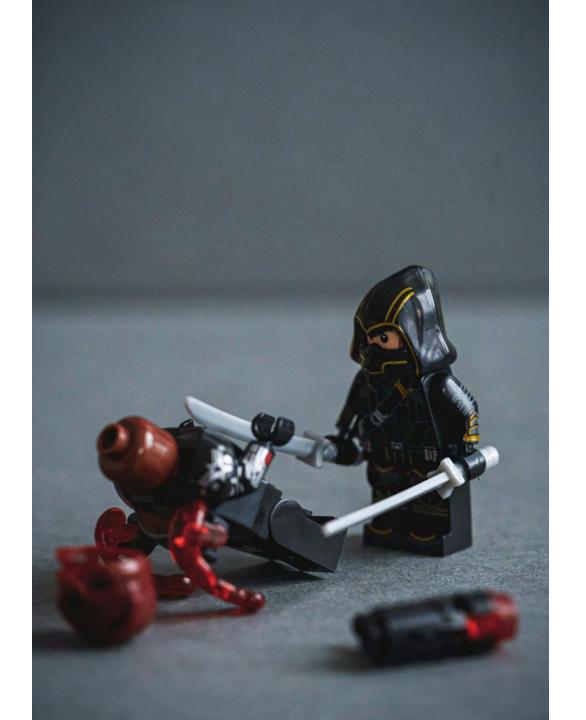
36-1-119. Final order of adoption — When entered. CON'T

- (d) If no appeal has been taken from any order of the court, the court must complete or dismiss the adoption proceeding by entering a final order within one (1) year of the filing of the petition, unless the petitioner shows good cause why such final order should not be entered.
- (e) If an appeal is taken from an order of the court, the proceeding must be completed by the court by entering a final order of adoption or a final order dismissing the proceeding within nine (9) months from the final judgment upon appeal, except for good cause shown by the petitioner.

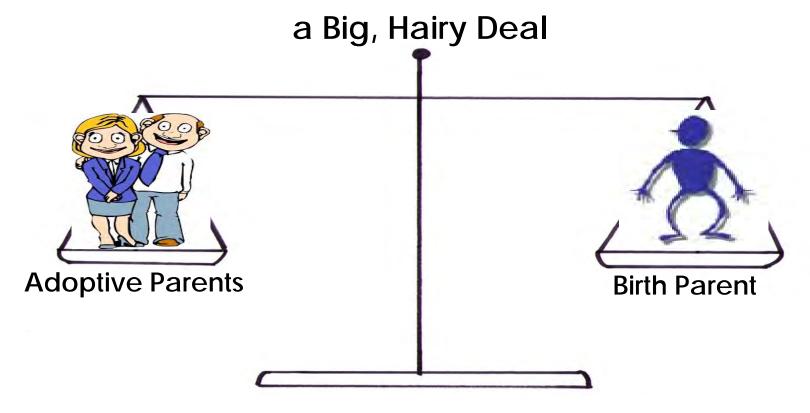
Trial Procedure

- Fairness and Procedural Balance
- Service
- Answer
- Counsel
- Court Reporter
- GAL- Appointment and Activation
- Time limit
- Continuance
- Default





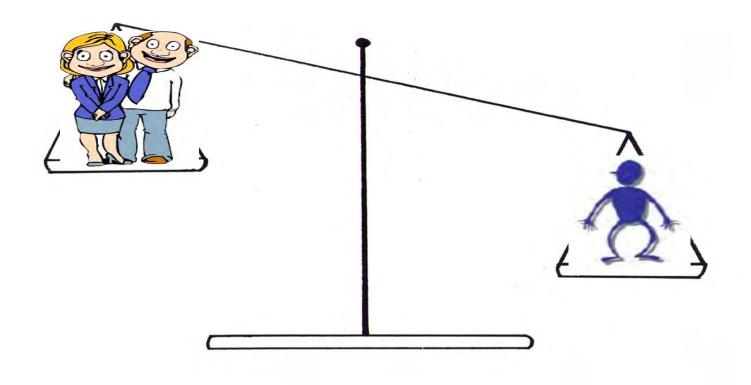
Disconnection of Parents From Children By the Government Is



Procedure in Terminations of Parental Rights

Cases is Intentionally Weighted

In Favor of Birth Parents.



- ☐ Burden on petitioners (mostly)
- ☐ Clear and convincing evidence required (mostly)
- ☐ Free counsel for indigent parents at all stages
- ☐ Procedural & discovery rules may be impacted.
- ☐ Parents receive a comprehensive review on appeal.

Prospective adoptive parents are often unprepared for the

"unfairness."



WE **PERSONAL SERVICE**

Publication Notice and Default Judgments are technically exacting & never preferred.

Permission to publish is necessary and granted upon a diligent inquiry, documented by a detailed sworn statement.

No business.



Give all required notices.

Count your days correctly.

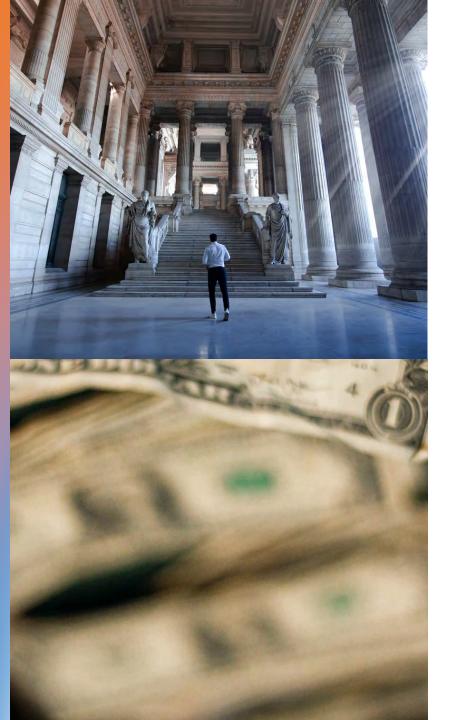
No funny business.



5 days written notice to respondent of application for default judgment, regardless of whether the party has appeared.

8 days if notice is mailed. See T.R.C.P. 55 & chart on p. 74

In re: Joel B., 2014 Tenn. App. LEXIS 496 (Tenn. Ct. App. Aug. 18, 2014)



Attorneys for the Indigent

- The Court is to advise unrepresented parents of their right to counsel; free if indigent. T.S.C.R. 13 Sec. 1(d)(2)(B).
- The court can tax an administrative fee, \$50-200, for appointing counsel.
- And can require the parent to pay what they can afford toward legal fees.



Respondent isn't talking to their appointed attorney and the attorney wants out...



Failure to communicate MAY operate as a waiver of the right to counsel IF the attorney tried diligently to reach the Respondent and that proof is in evidence.

PROOF OF ATTEMPTED CONTACT IS REQUIRED BEFORE A MOTION TO WITHDRAW IS GRANTED.

In re Tavarius M., No. M2020-00071-COA-R3-PT (Tenn. Ct. App. Dec. 18, 2020); In re A.P., No. M2017-00289-COA-R3-PT (Tenn. Ct. App. Mar. 29, 2019); In re Jamie B., No. M2016-01589-COA-R3-PT.





Translators

- At a voluntary consent,
- During the pendency of the case
 and
- At trial



When English language proficiency is questionable, inquire about the need for an interpreter.

If they need one, don't proceed without one.

It's not my day to watch her.

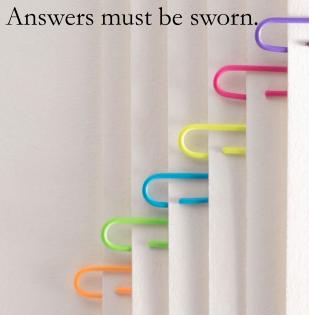


Once Respondent is served, it is sufficient to send hearing notices and such to Respondent's last known address.

Respondent is responsible for notifying the court of a new address.

It is not the court's or DCS's job to "Coax the current address from Mother." *In re Kaylene J.* (Tenn. Ct. App. May 26, 2021).

Parent, who don't want their rights terminated must File an Answer & say so.



An answer is step #1 to contest.

Delay may indicate low interest or motivation.

That goes to best interest.

Failure to plead lack of willfulness could result in waiver of this affirmative defense.

Appoint a Guardian ad Litem for the child in all **contested** cases. T.S.C.R. 13 § 1(d)(2)(D)



Contested = answer filed

Also, when a parent shows up at a hearing and voices displeasure even when no pleading is filed.

See Abigail J.J. (Tenn. Ct. App. March 15, 2021).

GAL's diligence and fair payment for their time are both problems.

Related?



Collect GAL Fee In Advance

In private cases figure out how the GAL will be paid when they are appointed.

Retainers can be paid into court.

T.C.A. § 36-1-146 limits GAL fees if any party is indigent.



Communicate Judicial Expectations to the GALs.

TENNICSSEE CODE ANNOTATED OFFICIAL EDITION TITIE

T.C.A. § 36-1-113 (k)

The court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interest of the child. The court shall provide a ruling on the petition within thirty (30) days of the conclusion of the hearing and shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the ruling. If an order has not been entered within thirty (30) days from the court's ruling, then the petitioner or respondent has grounds to request that the court of appeals grant an order expediting entry of the order. (Pub Ch 393 - SB 919 - 4/19/23)

Speed



T.C.A. § 36-1-124-

TPR at trial and on appeal is to be heard expeditiously and ahead of other cases.



Use a T- planning calendar

Include time to:

Use interrogatories

Use requests for admission

Order hospital records

Get a certified copies

Subpoena a witness

Take a Doctor's deposition

Decide motions

Consider local rules.

Suggest client deadlines to get information to their attorneys.





In a TPR a court reporter is required.

Respondent wants a continuance...



In re Ashanti P., (Tenn. Ct. App. Nov. 29, 2021) perm. app. denied (Tenn. Dec. 28, 2021).

Burden of proving decision on continuance was an abuse of discretion is on the movant.

T.C.A. § 36-1-113 (k) "The court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child."

Continuance Factors to Consider

"Decisions regarding the grant or denial of a continuance are fact-specific and "should be viewed in the context of all the circumstances existing" at the time of the request. Nagarajan v. Terry, 151 S.W.3d 166, 172 (Tenn. Ct. App. 2003). The circumstances include:

- "(1) the length of time the proceeding has been pending,
- (2) the reason for the continuance,
- (3) the diligence of the party seeking the continuance, and
- (4) the prejudice to the requesting party if the continuance is not granted." Ashanti P.

When Respondent doesn't show up...

In re Mattie L., 618 S.W.3d 335 (Tenn. Feb. 5, 2021)
In re Amora S., No. E2021-00338-COA-R3-PT (Tenn. Ct. App. Oct. 8, 2021.)

The missing witness rule applies to bench trials (as well as jury trials).

It creates a permissive inference that the missing party's testimony would be against their own interests.

Adverse party must ask for the inference.

In re Alfonzo E., No. M2016-00867-COA-R3-PT (Tenn. Ct. App. Oct. 26, 2016), perm. app. denied (Tenn. Jan. 24, 2017).



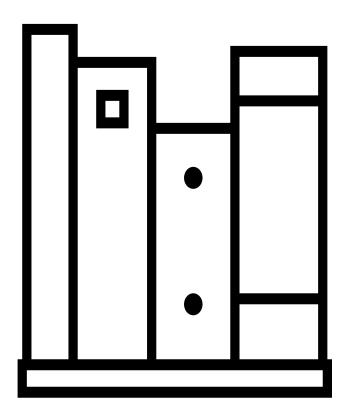
$TCA \int 36-1-117(n)$

The court may enter a **default judgment** against any party to the adoption or termination proceeding upon a **finding that** service of process has been validly made against that party in accordance with the Tennessee Rules of Civil or Juvenile Procedure and the statutes concerning substituted service; however, in termination proceedings, proof must be presented as to legal grounds and best interest pursuant to T.C.A. § 36-1-113.

Default Judgements require proof of grounds and best interest, + findings and conclusions.

Advanced Trial Procedure

Agreements and PACAs
Defensive Parentage Actions
Intervention
Matters Removed From Juv. Ct.





You can't terminate parental rights by an agreed order and unless it is a RELATIVE case, the birth parent cannot join the petition to consent.



Enforceable Post Adoption Contact Agreements (PACA)

- In Tennessee, Post Adoption Contact Agreements occur by **contract**, not **court order**.
- Moral agreements are still allowed, but the agreement must expressly say it is not intended to be enforceable.
- Agreements executed after March 22, 2019 that are silent as to enforceability ARE enforceable.

PACAs

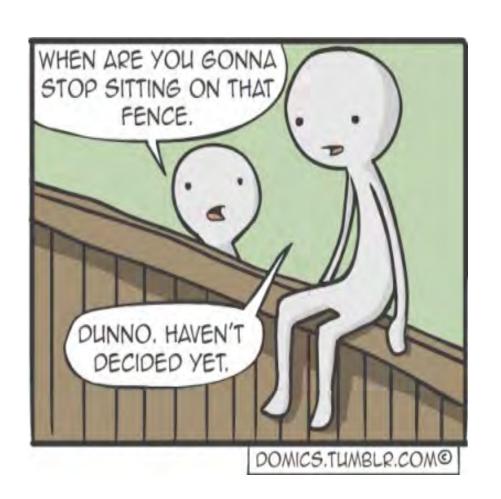
 Only birth parents, adoptive parents and children 14 or older may be parties to a PACA.

• 3rd parties can benefit from but cannot enforce PACAs.



Defensive Parentage Actions:

Contesting Men Who Are Not Legal Fathers



"Your Honor, I am contesting the termination of rights that I have never bothered to assert"

Seriously?



Putative Father
Grounds
and
Parentage
Actions



Parentage order **before** the petition to terminate is filed-He's a legal father.

Putative father grounds do not apply.

Parentage order **after** the petition to terminate is filed-For grounds, he is not a legal father.

Putative father grounds do apply.

Intervention Rules

> Intervention in an adoption. T.C.A. § 36-1-116 (f)



> Permissive intervention generally T.R.C.P. 24.02

See *Brian M.*, Tenn. Ct. App. 2015, for good discussion of intervention.

Permissive Intervention-Procedure

T.R.C.P. 24.02

Upon timely motion any person may be permitted to intervene in an action:



- (1) when a statute confers a conditional right to intervene; or
- (2) when a movant's claim or defense and the main action have a question of law or fact in common.
- (3) In exercising <u>discretion the court</u> shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Can you get there?
Motions to intervene
require the capacity to adopt.



- DCS guardianship can block adoption
 Don Juan J. H. (Tenn. Ct. App. 2011) and
 Haily A. S. (Tenn. Ct. App. 2012)
- You can't intervene just for visits.
 C.H. (Tenn. Ct. App. Jan 31, 2017), Gonzalez and Brian M.
- If you don't plan to terminate the parental rights of both parents and adopt your petition should be dismissed.

In Re Francis P., 532 S.W.3d 356, E2016-02493-COA-R3-PT (Tenn. Ct. App. June 26, 2017) perm. app. denied (Tenn. Sept. 22, 2017)



Filing a motion to intervene doesn't create party status <u>until</u> the motion is GRANTED.

In re Neveah W. 525 S.W.3d 223 (Tenn. Ct. App. 2017).



Visitation & Child Support While a TPR is Pending

A petition for adoption does not suspend prior court orders or the obligation to visit & support.

However, parties may file a motion to modify visitation or support.

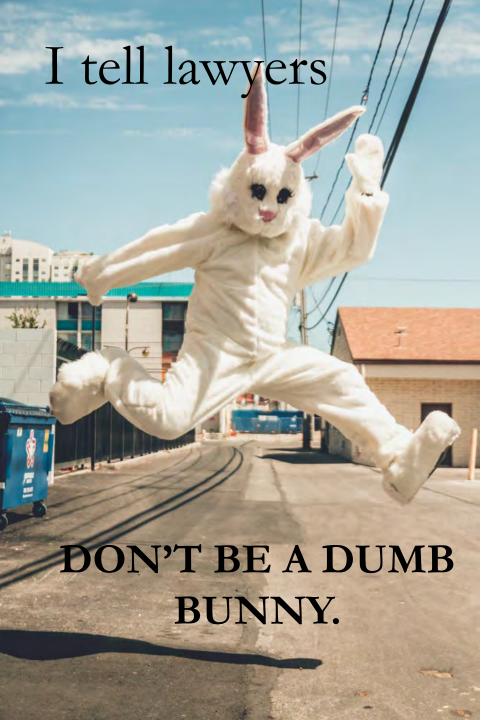
Hopping Jurisdiction

D&N jurisdiction ends at adoption petition

T.C.A. § 36-1-113(a), 36-1-116 (f) & 37-1-103(c)



- Except reviews required by state and federal law, the adoption court has exclusive jurisdiction over all matters related to the child.
- Parentage actions are transferred and must be heard 1st.
- Other matters are <u>stayed</u>, not transferred,
- Petitioner must notify the Juvenile Court where other matters are pending.



Judges should dismiss these cases if:

- o Petitioners don't have physical custody.
- o They need a home study and don't have one.
- o DCS has guardianship and won't agree to the adoption.

What if the case is a manipulation of procedure to deprive the Juvenile Court of Jurisdiction?



That DOG

Don't Hop!

36-1-116(f) is a safety valve to give you a look when DCS/ Juv. Ct. may be about to do something very bad for a child.

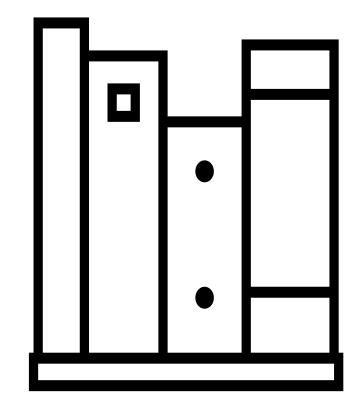
Adoption Courts must discern is it an emergency or misuse?

The Ultimate Issues for Decision

Grounds

Grounds = Unfitness
Grounds Checklist
New Abandonment Math
Post-Petition Abandonment
Mechanics of Willfulness
Misc. Grounds Topics

Best Interest
Newish Factors
Findings







Why Are There SO MANY Grounds?

All happy families resemble one another,

each unhappy family is unhappy in its own way.

-Leo Tolstoy



Abandonment, the workhorse ground

Abandonment as defined in § 36-1-102; T.C.A. §36-1-113(g)(1) & § 36-1-102(1)(A)(i)

Willful failure to visit – 4 mo. before filing petition T.C.A. §36-1-113(g)(1) & T.C.A. §36-1-102(1)(A) (i)

Willful failure to support – 4 mo. before filing petition T.C.A. §36-1-113(g)(1) & T.C.A. §36-1-102(1)(A)(i)

Child removed from home/found dependent & neglected – Placed with state or private agency-lack of efforts & concern T.C.A. §36-1-113(g)(1) & T.C.A. §36-1-102(1)(A)(ii)

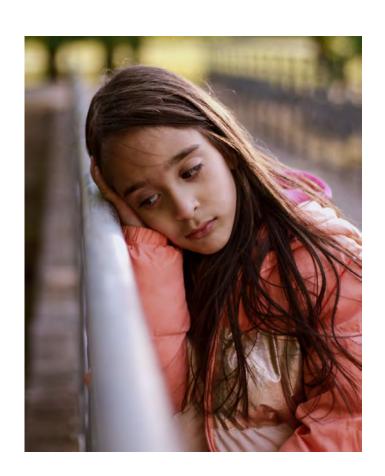
Willful failure to visit or support for 4 months prior to birth T.C.A. §36-1-113(g)(1) & T.C.A. §36-1-102(1)(A)(iii)

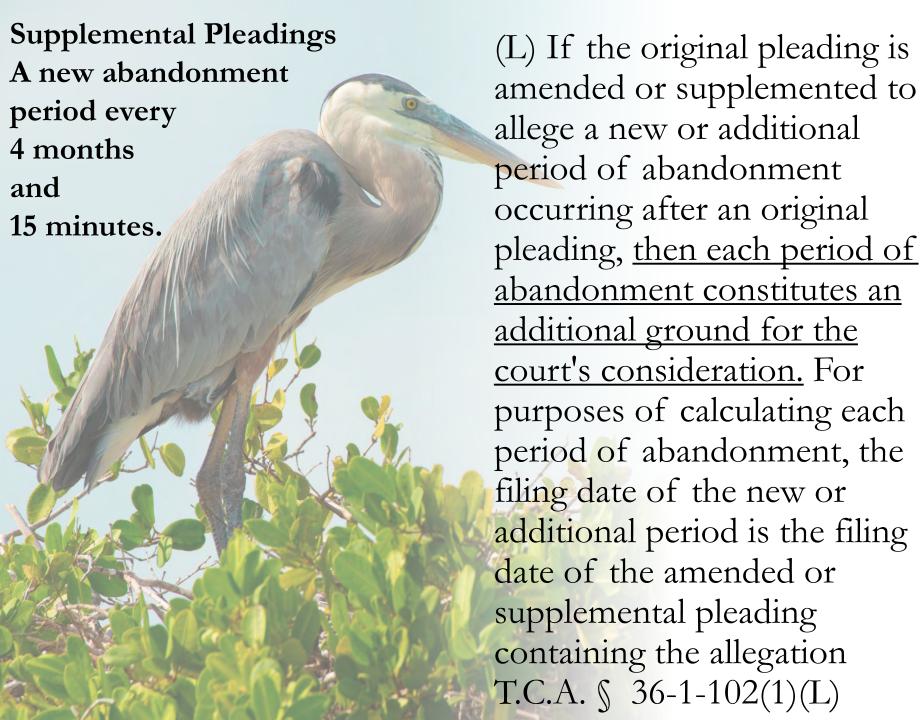
Wanton disregard – Incarceration during all or part of the 4 months preceding action; engaged in conduct that exhibits wanton disregard for child's welfare. T.C.A. §36-1-113(g)(1) & T.C.A. §36-1-102(1)(A)(iv)

Incarcerated and no visits for 4 mo. before jail T.C.A. §36-1-113(g)(1) & T.C.A. §36-1-102(1)(A)(iv)

Incarcerated and no support for 4 mo. before jail T.C.A. §36-1-113(g)(1) & T.C.A. §36-1-102(1)(A)(iv)

Mother dropped off newborn (72 hours or less old) T.C.A. §36-1-113(g)(1) & T.C.A. §36-1-102(1)(A) (v)





Amended OR Supplemental Pleadings T.R.C.P. 15



Amend - claim or circumstance existed at filing but wasn't pled. T.R.C.P. 15.01

Learned of a mental health problem, drug exposure, or criminal conviction – Amend.

Supplement -claim or circumstance that <u>occurred after filing</u>. T.R.C.P. 15.04

Parent not paying child support post-petition, or picked up a new conviction – Supplement.

Absence of Willfulness Defense to Abandonment

It really is waived if not plead unless it is tried by consent.

See: In re L.F., (Tenn. Ct. App. Aug. 26, 2021).

In re Stephen H., (Tenn. Ct. App. Dec. 22, 2022).

In re Ashlynn H., (Tenn. Ct. App. May 28, 2021).

In re Ni'Kaiya R. (Tenn. Ct. App. Dec. 15, 2021).



Both the burden of proof and the standard of proof shift in absence of willfulness analysis.

First the <u>burden of proof is on Petitioner</u> for absence of visits or support during the "determinative period".

Petitioner's standard of proof is clear and convincing evidence.

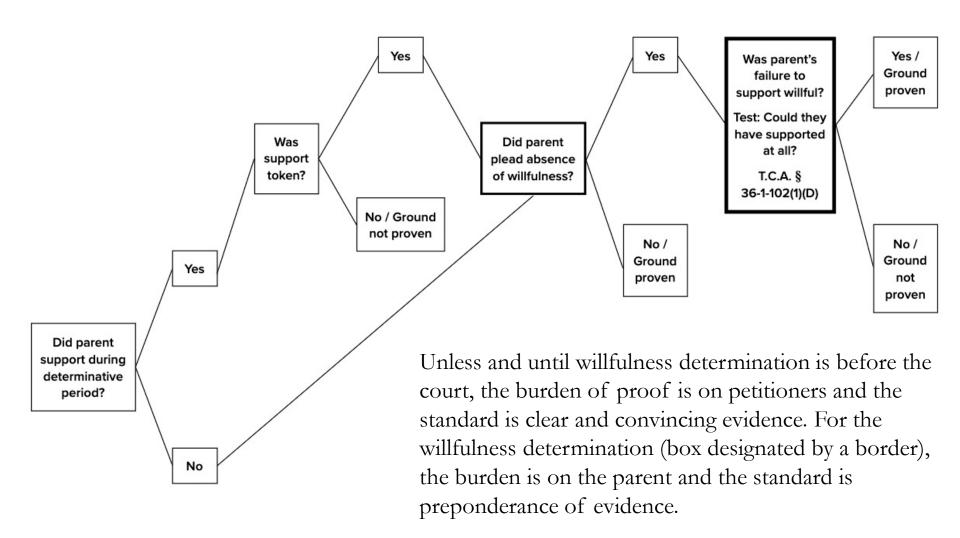
Burden of <u>proof is on Respondent</u> to prove **failure to visit or support was not willful**.

Respondent's burden is a preponderance of evidence.

Example of case decided under present law. *In re Matthew K.*, E2020-00773-COA-R3-PT (Tenn. Ct. App. 2021).

General Abandonment Decision Tree

Failure to support as the example



That 4 months thing has changed. 4 months = Abandonment?

For children under 4 the Abandonment period is now 3 months.

For children age 4 and older it is still 4 months.

§ T.C.A. 36-1-102(1)(A)







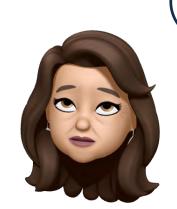






The child is under 4 when?? When the petition is filed...?

Probably.



Abandonment needed another moving part!?!

The statute does not presently say when the child needs to be under 4.

There is a pending proposal to add "when the petition is filed."

Under Used,

Mental Incompetence

Unable to care for the child due to mental condition and unlikely to become able in the near future. T.C.A. § 36-1- 113(g)(8)

Ability and Willingness

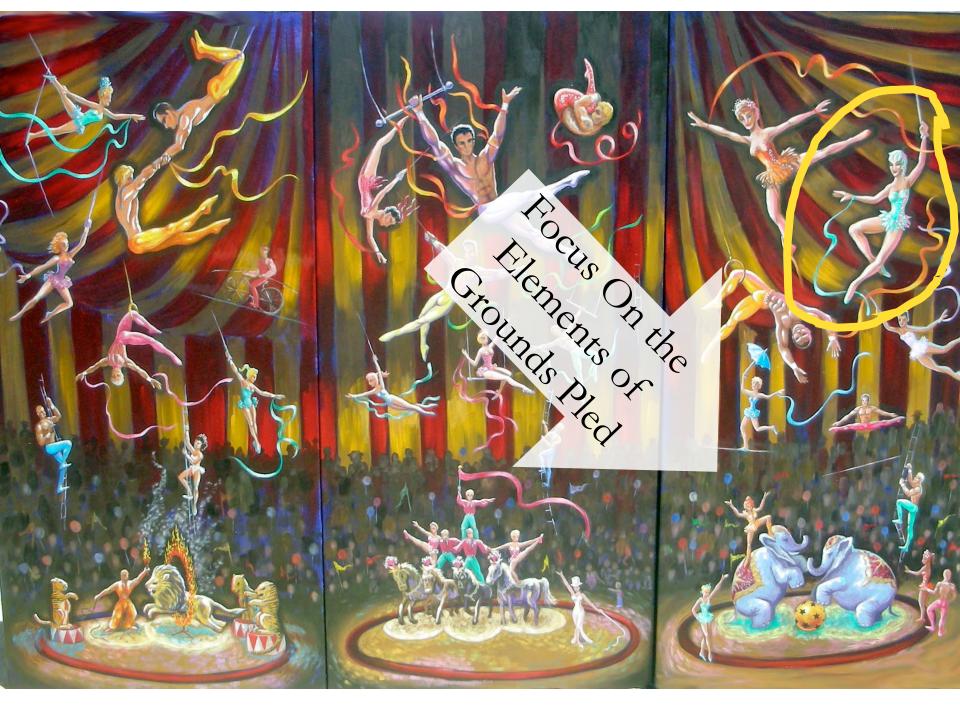
T.C.A. § 36-1-113(g)(14)

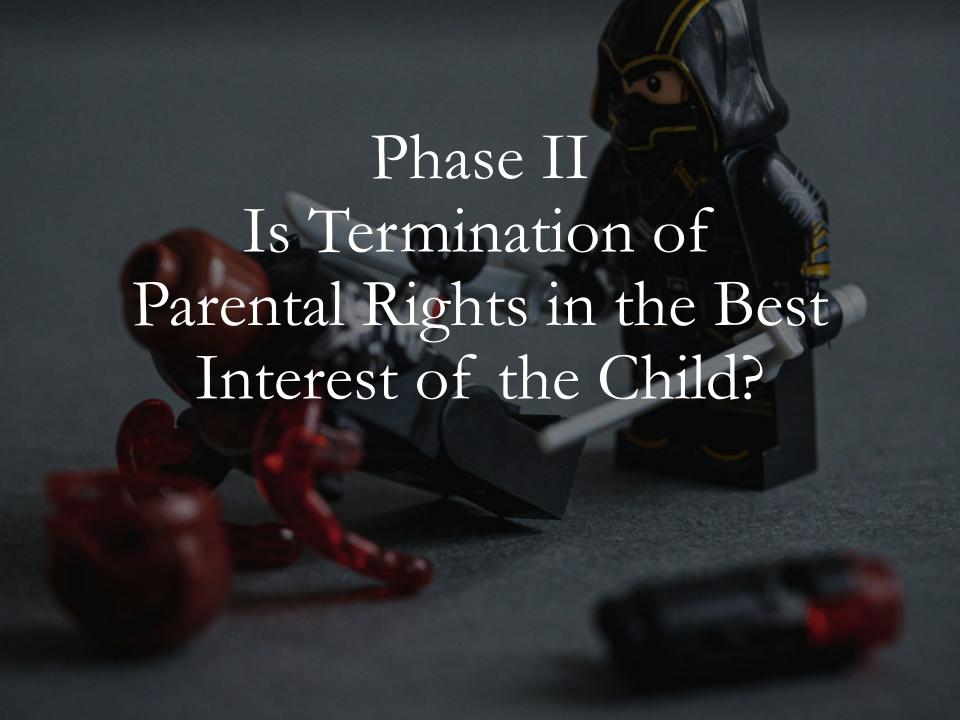
A legal parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.

The Almost Always Ground

Handy little quote

"It is generally without dispute that a home where drugs are being abused is not safe for a child." *In re Daylan D.*, M2020-01647-COA-R3-PT (Tenn. Ct. App. Nov. 9, 2021).





A Presumption

"Prompt and permanent placement in a safe environment" is in the best interest of the child.

T.C.A..§ 36-1-113 (i)(2)

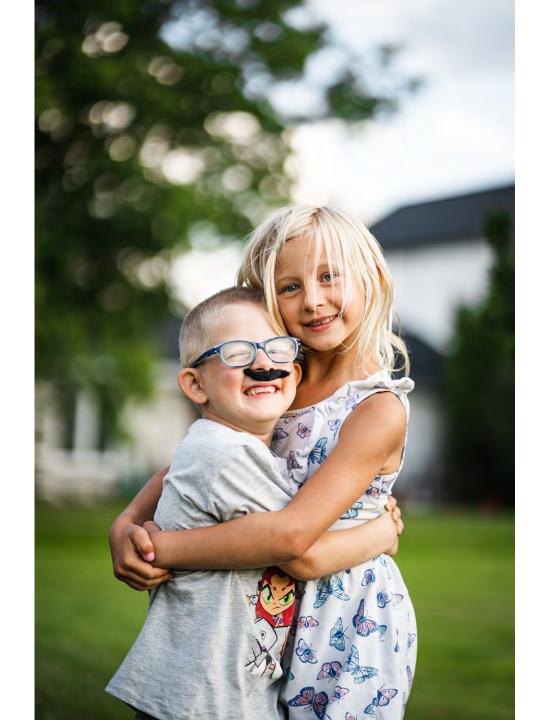




"Prompt and Permanent"

GOOD START!

What else do the factors say?



Safety

Safety is always fundamental.



Also consider whether the child **feels** safe with the parent.

- (G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or posttraumatic symptoms;
- (F) Whether the <u>child is fearful</u> of living in the parent's home;

The Child's Existing Relationship with Parent

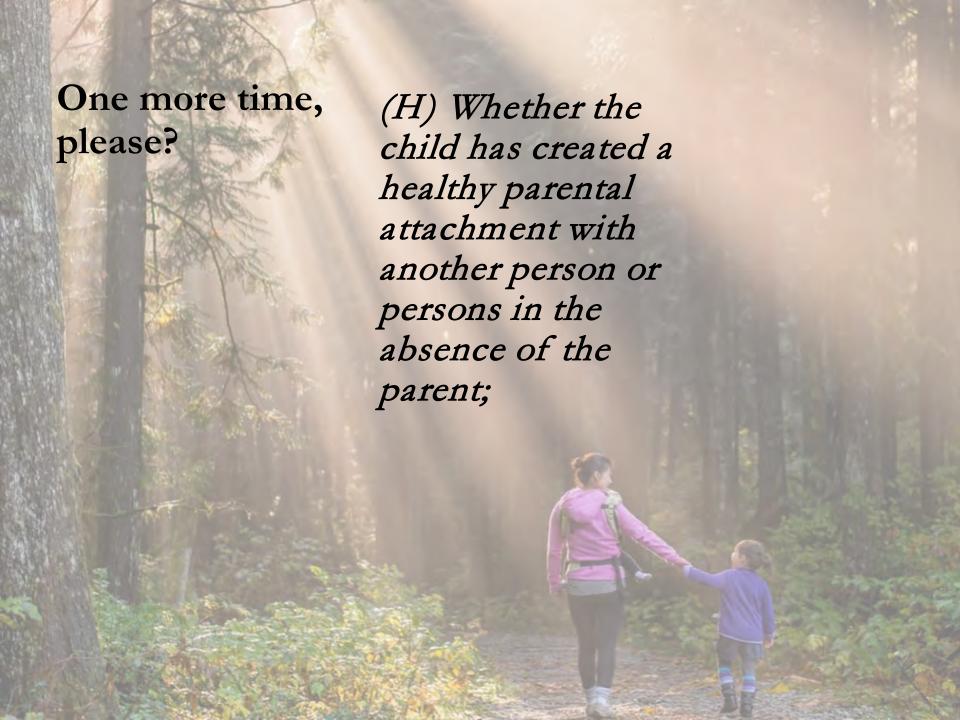


- (D) Whether the parent and child have a <u>secure and healthy</u> <u>parental attachment</u>, and if not, whether there is a reasonable expectation that the parent can create such attachment;
- (E) Whether the parent has maintained <u>regular visitation</u> or other contact with the child and <u>used the visitation or other contact to cultivate a positive relationship with the child;</u>

Existing attachment to others and stability



- (A) The effect a termination of parental rights will have on the child's critical need for <u>stability and continuity of placement throughout the child's minority</u>;
- (B) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition; (H) Whether the child has created a healthy parental attachment with
- (H) W hether the child has created a healthy parental attachment with another person or persons in the absence of the parent;
- (I) Whether the child has <u>emotionally significant relationships with</u> <u>persons other than parents and caregivers, including biological or foster siblings,</u> and the likely impact of various available outcomes on these relationships and the <u>child's access to information about the child's heritage</u>;



Meeting the Child's Basic and Specific Needs

- (P) Whether the parent has <u>demonstrated an understanding of the basic</u> and <u>specific needs</u> required for the child to thrive;
- (C) Whether the parent has <u>demonstrated continuity and stability in</u> meeting the child's basic material, educational, housing, and safety needs;
- (Q) Whether the parent has demonstrated the <u>ability and commitment to</u> <u>creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;</u>

Parental Capacity



(T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.



Efforts, Adjustment

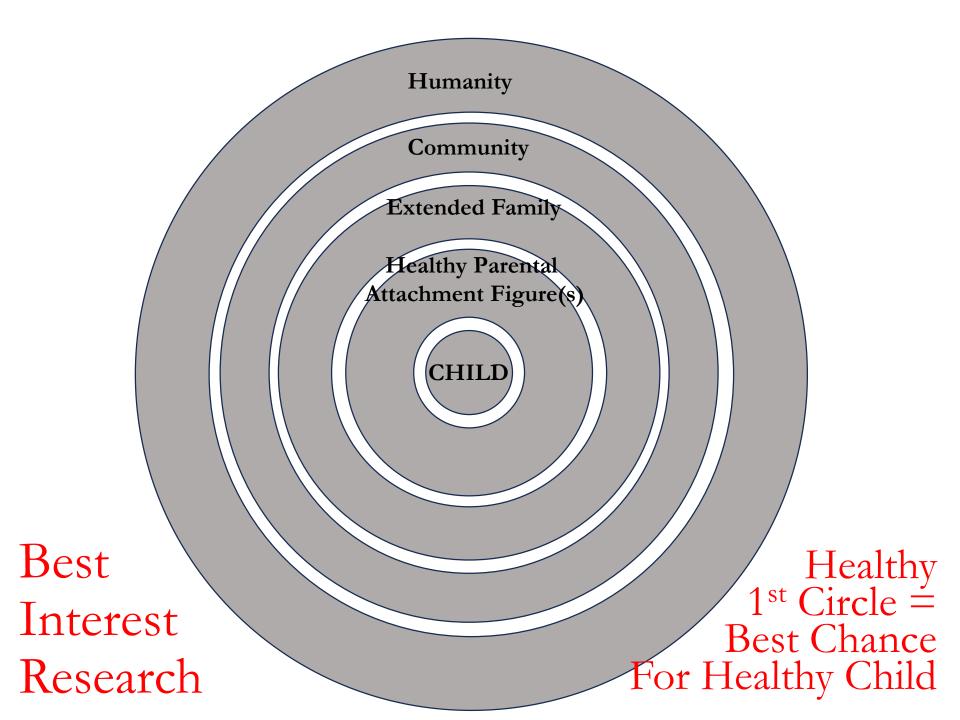


- (J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;
- (K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;
- (L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;
- (O) Whether the parent has ever provided safe and stable care for the child or any other child;

Urgency



(M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;



WHAT HAPPENED TO YOU?

CONVERSATIONS ON TRAUMA, RESILIENCE, AND HEALING

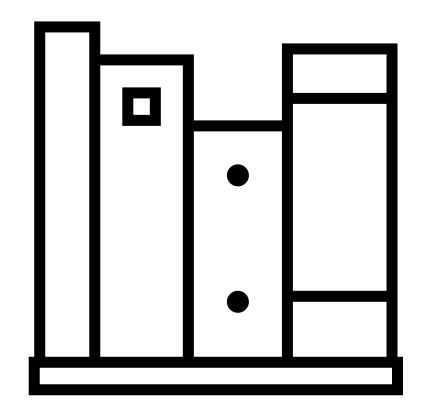


BRUCE D. PERRY, MD, PhD
OPRAH WINFREY

Get this on Audible and listen on the way home.

Orders and Appeals

Who drafts?
Organization
Template in Materials
Deadlines



Let's Get You AFFIRMED

Most common reason for reversal:

Failure to provide sufficient findings and conclusions or insufficient evidence for appellate review.

Key Documents in Evidence

- ✓ Persistence of Conditions And Suitable home Both need:
 - D&N allegation or finding AND
 - The removal order.
- ✓ Substantial noncompliance with perm plan needs -perm plan(s).
- ✓ Conviction grounds need -the conviction.
- ✓ Where age of child is an issue
 - child's birth certificate or other evidence of the child's age.



Findings of Fact &

Conclusions of Law

Standards

are exacting

S

Findings on each ground alleged

and

Findings on best interest

See T.C.A. § 36-1-113 (k)



IN THE	COURT FOR		_ COUNTY, TENNESSEE
IN RE:)	
THE ADOPTION OF A MACHILD WHOSE NAME IS	ale/female)))	
DOB:)	NO
BY:)	
	AND)	
PETITIONERS,	-/)	
vs.)	
RESPONDENT.)	

Findings of Fact and Conclusions of Law **TEMPLATE**

This cause came to be heard before the Honorable,
Chancellor/Judge of the County Chancery/Circuit Court, on the day
of 20, upon the Petition of to terminate the parental
rights of, Petitioners,, were present and
represented by Respondent,, was present and
represented by The child's Guardian ad Litem,,
was also present.

Good orders

include your original thought process,

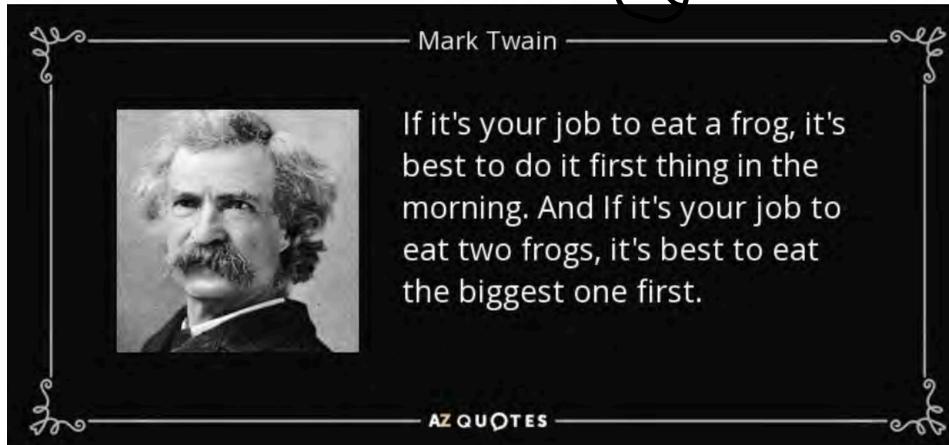
address all the elements of each ground

match the evidence,

match any verbal ruling, and

are issued promptly after the trial.





You won't care more or remember more later.



After appeal is perfected Trial court can't act without leave of appellate court.

In Re Neveah, 525 S.W.3d 223 (Tenn. Ct. App. 2017)

"I couldn't find my client so I <u>had to file</u> a notice of appeal."





In re Bentley D. TENN. SUP. CT. 11/22/2017

Bentley D. Page 8 "We emphasize that no appeal should be taken in a termination of parental rights proceeding without specific authorization from the client."

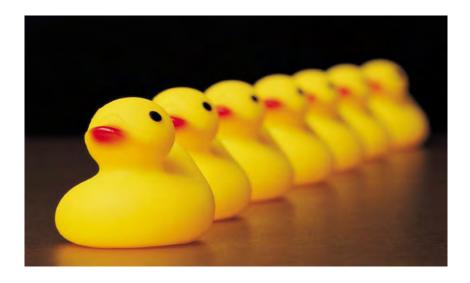


Appellate practice

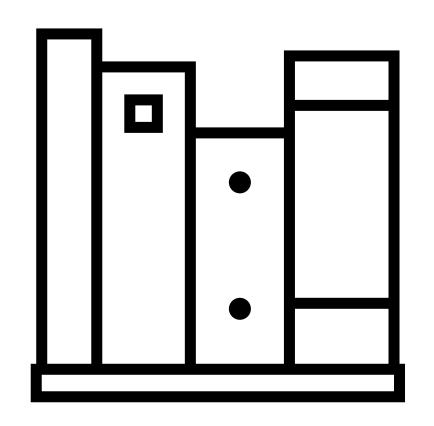
Appeals

IN RE CARRINGTON H., 2016 Tenn. LEXIS 49 (Tenn. May 28, 2015).

Court of Appeals must review all grounds and best interest regardless of whether the issue is raised on appeal.



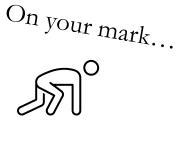
Misc. Issues
Surrenders
Records
ICWA



Previously a surrender could not be executed until a child was 4 days old.

Now a surrender may be completed 48 hours after birth of a child or upon discharge of the mother from the hospital, whichever occurs first. T.C.A. § 36-1-111(d)(3)









A judge may reduce the revocation period from 3 days to 24 hours where the mother is represented by Tennessee counsel.

T.C.A. § 36-1-112(g)



Surrenders may take place on a virtual platform in the judge's discretion. T.C.A. § 36-1-111(b) (1) Heavens to Betsy!

Another section still says:

The execution of the surrender or parental consent shall occur in private in the chambers of the court or in another private area... T.C.A. § 36-1-111(j)(3)(C)

It is now legal to take a surrender by video from a still woman reeling from delivery and on pain medication while she is sitting in the hospital parking lot.



Legal, but an extra bad idea.



Allowable birth mom living expenses increased from 4 ^{1/2} months to 12 months. It's a big deal.

Was: 90 days prebirth and 45 days after birth.

Now is: the duration of the pregnancy and 90 days after birth.

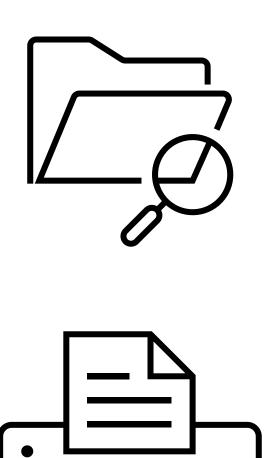
T.C.A. $\S 36-1-109(a)(1)(B)(i)$



2022 adoption records contact veto system abolished.

2023 new **Request for Redaction** established for birth parents of babies but not older children.

T.C.A. § 36-1-127(e)(3) No identifying info may be released if the biological parent has executed a request for redaction of identifying info form and submits the form to DCS before the adopted person is 6 months old.



ICWA off the Chopping Block

Haaland v. Brackeen is the lawsuit brought by Texas (and previously Indiana and Louisiana) and several individual plaintiffs, who allege ICWA

is unconstitutional.

It isn't.

For a fascinating legal story, well told listen to the series about this case from **This Land** podcast.



Dysfunction at DCS. There is a lot. Just Google it.

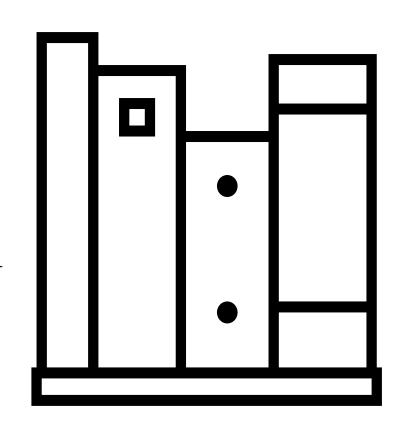




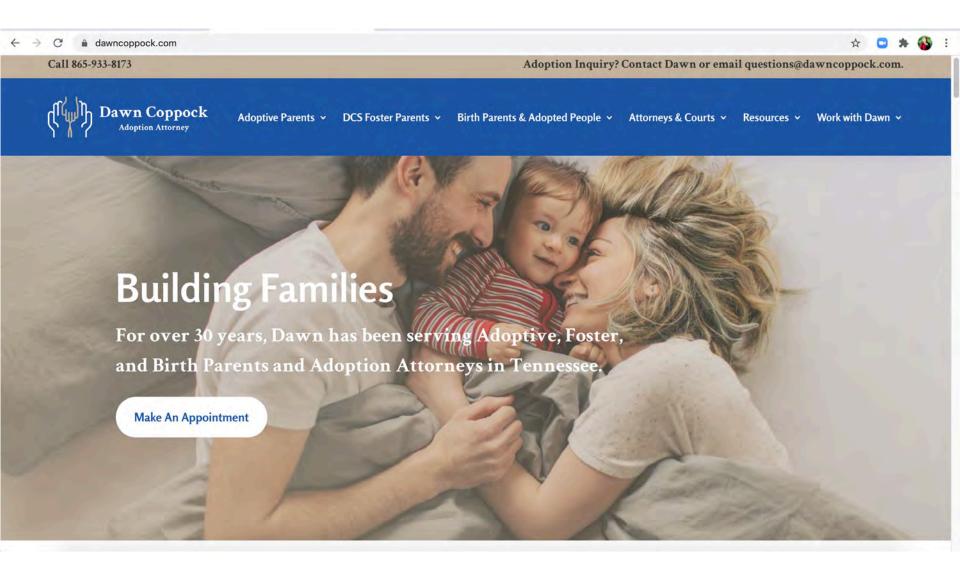
More things will change in July.

Resources to stay up-to-date

TBA Journal
TBA Adoption Section
DawnCoppock.com
Blog
Your Colleagues



There's this Website with a Blog





Good Seminars for Good Lawyers





Good Seminars for Good Lawyers

