

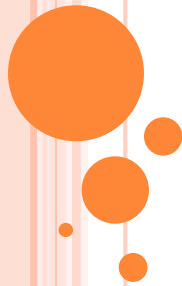
## JUVENILE COURT LAW UPDATE - 2022

**Hosted by:**

Tennessee Administrative Office of the Courts

**Presented by:**

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### JUVENILE COURT UPDATES JUVENILE COURT JUDICIAL CONFERENCE

- Missing Witness Rule and Unclean Hands
- Trial by Ambush vs Due Process in TPRs
- Repentance as a defense
- Appealing from a Magistrate to Circuit
- How do I exclude / admit that child's statement
- Summary Judgment in a TPR???
- Obtaining mental health records of parent
- Interlocutory appeal of juvenile court decision
- Defending a Persistence of Conditions Claim with technicalities



## JUVENILE COURT UPDATES JUVENILE COURT JUDICIAL CONFERENCE

- How to Recuse a Magistrate
- Is *Green v. Green* still good law?
- The Number One Reason to look for reversal
- If the child is not in Tennessee, we can't hear it
- Remand does not equal new fees
- Rule 60 analysis must include fraud
- Changing last name must include best interest
- Child support must have more than documents



## JUVENILE COURT UPDATES JANUARY 1, 2021 – AUGUST 20, 2022

- 184 cases involving juvenile court were appealed to the Court of Appeals
- 27 cases involving juvenile court were appealed to the Supreme Court
  - Only two cases involving juvenile court matters were accepted
- 160 Termination of Parental Rights Cases
- Most common ground for reversal: failure to provide sufficient analysis for appeal
  - Between 1974 – present, 286 cases reversed for failure to follow Rule 52.01
- Most common mistake by appellant: failure to timely file appeal



## TENNESSEE SUPREME COURT CASES

### JUVENILE JUSTICE CASE LAW UPDATE: *IN RE: MATTIE L.*, 618 S.W.3d 335 (Tenn. Feb. 5, 2021)

**Facts:** TPR filed alleging abandonment. Father was not able to attend trial due to incarceration; however, his attorney stated "I absolutely believe we can proceed without him." After six days of trial, the trial court applied the missing witness rule finding that had father been present, his testimony would have been unfavorable. Trial court also applied the unclean hands doctrine finding father could not obtain any relief because he lied in discovery.

- **Missing Witness Rule Applies in Bench Trials:** cannot be a presumption, but instead a permissive inference
- **Unclean hands doctrine:** only applies to party asking for equitable relief; also only applies to actions relevant to cause of action
  - **Parent's Attorneys:** We have to think twice before advising clients to not show up for trial
  - **GAL:** Ask the Court to make a permissive inference that the party's testimony would have been contrary to its interest

JUVENILE JUSTICE CASE LAW UPDATE:  
*IN RE MARKUS E.*, 2022 Tenn. LEXIS 92  
(March 23, 2022)

**Facts:** TPR filed for severe abuse due to 21 rib fractures in infant child with no explanation. Both parents ordered to undergo mental health evaluations under permanency plans. Mother fails to disclose her mental health evaluation during discovery and instead produces it on day 3 of a 17 day trial. Trial court excludes due to failure to disclose and finds substantial non-compliance and terminates.

**Due Process:** Supreme Court asked the parties to specifically address the due process implications of excluding the mother's mental health evaluation. Oral arguments scheduled Sept. 28.

- Parent's Attorneys: Will we be allowed to do trial by ambush?
- GAL: Must use every reasonable method prior to trial to obtain exhibits and avoid ambush



TENNESSEE COURT OF APPEALS  
CASES



JUVENILE JUSTICE CASE LAW UPDATE:

*In re Kierani C.*, 2021 Tenn. App. LEXIS 358  
(Tenn. Ct. App. Sept. 3, 2021)

**Facts:** TPR filed against putative father and father filed petition to establish parentage. After TPR was filed, putative father began to take action to establish relationship. Trial court granted TPR based upon abandonment under 36-1-113(g)(9)(A)

**Court of Appeals reverses on abandonment by putative father. COA finds putative father may repent his failure to pay prior to the filing of the TPR by making payments now**

- **Parent's Attorneys:** Advise putative father to begin making payments immediately
- **GAL:** Determine whether respondent is putative father and whether payments were consistent and reasonable

JUVENILE JUSTICE CASE LAW UPDATE:

*In re Kendall R.*, 2022 Tenn. App. LEXIS 79  
(Tenn. Ct. App. March 2, 2022)

**Facts:** Grandparents file D/N in juvenile court. Matter is appealed to Circuit Court where it is finalized. Subsequently, grandparents file new material change petition before Juvenile Court magistrate. Magistrate's Order is entered October 4, 2019 and father files Notice of Appeal to Circuit Court on November 26, 2019. The matter is retried in Circuit where it is appealed to COA.

**Rule:** COA vacates Circuit Court's Order and dismisses for lack of jurisdiction. Per TCA 37-1-107, Magistrate's Order became final ten days after its entry. Per TCA 37-1-159, it must be appealed within 10 days after that date.

- **Parent's Attorneys:** If you miss the ten day window, you can still appeal a magistrate's order to Circuit Court within ten more days
- **GAL:** You must calculate when the Magistrate entered the final order and then add 20 days. If the appeal is not filed within that time, the appellate court does not have jurisdiction

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Analesia Q.*, 2022 Tenn. App. LEXIS  
 182 (Tenn. Ct. App. May 10, 2022)

**Facts:** DCS files TPR against father alleging abandonment and severe abuse. Severe abuse is based upon disclosures of child to foster mother. Trial court terminates on all grounds and father appeals

**Ruling upheld. Decision to admit child's testimony is discretionary. Rule requires circumstances of disclosure to indicate trustworthiness. Circumstances may include child's other behaviors. Here, the child was removed from another foster home due to touching another child. The child was also "touchy feely"**

- **Parent's Attorneys:** In this case, the child made disclosures only to the foster parents and did not make any disclosures during the forensic interview. Without more, this may not have come in
- **GAL:** In order to enter a child's statements, you must have more than just the statements. You must show the circumstances indicate trustworthiness

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Rhyder C.*, 2022 Tenn. App. LEXIS 280  
 (Tenn. Ct. App. July 21, 2022)

**Facts:** Child enters custody due to testing positive for drugs at birth. Severe abuse finding entered against mom and drug abuse finding entered against dad. During TPR proceedings, mom is served with Requests for Admission to which she admits all 55 requests. Petitioners subsequently filed Motion for Summary Judgment based upon affidavits and RFAs. Mother's counsel did not dispute any of the Statement of Uncontested Facts, nor did counsel submit discovery or take depositions

**Summary Judgment is proper in a TPR proceeding and does not violate due process.**

- **Parent's Attorneys:** You must properly analyze any Requests for Admission ASAP trying to deny any dispositive admissions. You must look at deposing the petitioners to determine questions of fact
- **GAL:** Utilize Requests for Admission pursuant to Rule 36. If they are not answered within 30 days, they are automatically admitted and you may file a Motion for Summary Judgment

**JUVENILE JUSTICE CASE LAW UPDATE:**  
*In re Lucas H.*, 634 S.W.3d 1 (Tenn. Ct. App.  
 May 26, 2021)

**Facts:** GAL in D/N files motion to compel mother to release mental health records. Juvenile Court enters order compelling mother to release records claiming privilege is waived under 37-1-411 (waiver of privilege in abuse cases). Mother files TRAP 9 request with juvenile court which denies, but allows time to file TRAP 10. Mother files TRAP 10 with COA which states improper appeal. Mother then files Petition for Writ of Certiorari with Circuit Court which upholds juvenile court. Mother then appeals to COA who reverses.

**Rule #1: GALs are not entitled to mental health records of parents if the d/n is filed by a private party and not DCS**

**Rule #2: Writs of Certiorari are proper method for seeking interlocutory appeal in d/n proceeding**

- Parent's Attorneys: Clients' mental health records are privileged pursuant to 24-1-207 (psychiatrist) and 63-11-213 (psychologist) if the petition is not filed by DCS
- GAL: If the Petition is filed by DCS and based upon a report pursuant to 37-1-113, GAL is entitled to mental health records

**JUVENILE JUSTICE CASE LAW UPDATE:**  
*In re Khalil J.*, 2022 Tenn. App. LEXIS 189  
 (Tenn. Ct. App. May 16, 2022)

**Facts:** Mother with long history with DCS gives birth to child. DCS receives referral alleging lack of supervision. Court is contacted by DCS who enters "Non-exigent Removal and Custody Order," whereupon child is removed and DCS files initial petition two days later. Three years later, the TPR is tried and juvenile court finds persistence of conditions. COA reverses.

**Rule: If the removal is based upon the court's own order and not a petition filed by DCS, the ground of persistence of conditions cannot be used in a TPR.**

- Parent's Attorneys: You must review the initial pleadings used to enter the child into custody. If removal was based upon a Court Order and not a petition, persistence is defeated
- GAL: Review the conditions which are persistent and determine whether they meet another ground such as mental incompetence or failure to manifest an ability to parent. These were upheld in this case

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Haven-Lee S.*, 2022 Tenn. App. LEXIS 60 (Tenn. Ct. App. Feb. 16, 2022)

**Facts:** D/N petition filed by maternal grandparents. Magistrate enters order granting temporary custody to grandparents and making credibility findings. Parents file Motion for Recusal which is denied. Parents file Accelerated Interlocutory Appeal to Court of Appeals per Rule 10(b). Court of Appeals dismisses finding lack of jurisdiction.

**Rule:** In d/n proceedings, appeals regarding recusal by a magistrate must be taken to the juvenile court judge pursuant to 37-1-107 and then to Circuit Court per Rule 10(b).

- Parent's Attorneys: Motions for Recusal are rare, but if there is good grounds, they must be taken up to protect your client. You only have 10 days!
- GAL: This should apply to GALs as well. If the magistrate is clearly biased, you may wish to file an appeal

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Crystal W.*, 2021 Tenn. App. LEXIS 19 (Tenn. Ct. App. Jan. 21, 2021)

**Facts:** D/N petition filed by father and DCS alleging mental health issues of mother. Juvenile Court finds d/n and mother appeals to Circuit. Circuit Court conducts de novo appeal and makes similar findings based upon the fact that mom cannot accept that she has mental health issues. Mom appeals and COA upholds

**This is the most recent case to cite *Green v. Green*, 2009 Tenn. App. LEXIS 69 (Tenn. Ct. App. Feb. 11, 2009). Even with de novo appeal, client could not erase her behaviors**

- Parent's Attorneys: This is a bad case for the Green defense. It shows that some issues may not be resolvable on appeal.
- GAL: This is a good case to cite in order to show that even on a de novo appeal, the respondent's behaviors still present a risk of harm to the children



JUVENILE JUSTICE CASE LAW UPDATE:  
*Baker v. McSherry*, 2022 Tenn. App. LEXIS  
 125 (Tenn. Ct. App. March 31, 2022)

**Facts:** Mother filed Petition to Establish Parentage, change the child's name, and adopt a parenting plan. The trial court entered a very succinct Order making 9 simple findings of fact and providing no analysis of best interest. The Court of Appeals reverses and remands for additional findings of fact and conclusions of law.

**Rule 52.01 requires the court to find the facts specially and state separately its conclusions of law**

- Parent's Attorneys: Sometimes, we try to minimize the facts so that it helps our client. We must still provide enough of an analysis for appellate purposes
- GAL: Volunteer to draft the Order or at least review the order submitted by opposing counsel. Sometimes, there will not be enough analysis for appeal and you will have to return

JUVENILE JUSTICE CASE LAW UPDATE:  
*Brooks v. Andrews*, 2021 Tenn. App. LEXIS  
 500 (Tenn. Ct. App. Dec. 27, 2021)

**Facts:** Alleged father filed a Complaint for Emergency Custody, injunctive relief, and to set child support. The trial court entered a temporary injunction requiring the mother to place the child in the father's custody. Mother filed a limited Answer stating the child was not in Tennessee, he had never been in Tennessee, and the alleged father has never obtained an order establishing paternity. The mother asked for dismissal which was denied and immediately appealed to the COA. The COA reversed.

**Under T.C.A. 36-6-219, Tennessee has emergency jurisdiction only if the child is present in Tennessee and it is an emergency.**

- Parent's Attorneys: Review the location of the child at the time the petition was filed. If the child was not in Tennessee, the case should be dismissed for lack of jurisdiction
- GAL: Determine whether there is a risk of harm to the child at issue. If so, you may have a duty to contact DCS and make a referral even if the child is outside Tennessee

### JUVENILE JUSTICE CASE LAW UPDATE:

*Nelson v. Justice*, 2022 Tenn. App. LEXIS 22  
(Tenn. Ct. App. Jan. 24, 2022)

**Facts:** Mother and father had extremely contentious parentage action which was eventually appealed to COA who found for mother and remanded to trial court in order to determine attorney's fees. Trial court entered order for \$150k in attorneys fees including fees generated post-appeal. The father appealed and COA reversed regarding the fees on post-appeal lowering judgment to \$123k.

#### **On remand, the trial court may not include post-appeal attorney fees for its fee award**

- **Parent's Attorneys:** Review the Remand Order from the Court of Appeals extremely closely and make sure that the trial court is limiting itself only to those issues which were presented by the COA
- **GAI:** This is a good analysis for the factors for attorneys fees. You may wish to rely upon this when asking for private fees.

### JUVENILE JUSTICE CASE LAW UPDATE:

*In re Hailey C.*, 2022 Tenn. App. LEXIS 45  
(Tenn. Ct. App. Feb. 3, 2022)

**Facts:** Father filed petition in Tennessee to domesticate and modify a Kentucky child-custody decree. An agreed order was then entered. Mother filed a Rule 60 Motion three months later claiming duress and fraud. Trial court denied based upon language in Agreed Order, but did not address fraud issue. Mother then filed Rule 59 Motion claiming lack of subject matter jurisdiction.

#### **Court of Appeals reversed due to trial court not addressing fraud issues.**

- **Parent's Attorneys:** You must not only rely upon jurisdictional arguments under Rule 60, but you must force the court to address the fraud issues. Otherwise the matter will be remanded.
- **GAI:** Determine the full extent of the facts and determine if fraud or duress was involved in obtaining an Agreed Order

JUVENILE JUSTICE CASE LAW UPDATE:  
*Rothbauer v. Sheltroun*, 2022 Tenn. App.  
 LEXIS 93 (Tenn. Ct. App. March 10, 2022)

**Facts:** Father petitioned court to change child's last name because the child was the last of his lineage. Mother testified that the people in the community knew the child by her last name. Trial court denied father's petition; however, trial court did not include best interest analysis. Court of Appeals reversed and remanded.

**Best interest analysis must be included in final Order pursuant to Tenn. R. Civ. P. 52.01**

- Parent's Attorneys: You must review the final order submitted by the trial court. This is the most common reason for reversal in juvenile court matters.
- GAL: If you see the court's analysis is lacking, you should file a Rule 59 Motion asking the Court to alter or amend its ruling so as to avoid a reversal and remand.

JUVENILE JUSTICE CASE LAW UPDATE:  
*In re Jaxon C.*, 2021 Tenn. App. LEXIS 435  
 (Tenn. Ct. App. Nov. 2, 2021)

**Facts:** Trial court entered child support order based only upon documentation submitted by father and did not provide parties an opportunity to present evidence. Court of Appeals reverses.

**Trial court must conduct evidentiary hearing in order to determine child support. Upon remand, the trial court was to determine the income at the time of the new hearing.**

- Parent's Attorneys: You must ask for an evidentiary hearing to determine if the documentation is at least true and accurate.
- GAL: You may wish to investigate whether the parents are falsifying their claims regarding income and question them about it.

JUVENILE JUSTICE CASE LAW UPDATE:  
*Henry v. McCormack*, 2022 Tenn. App.  
LEXIS 282 (Tenn. Ct. App. July 21, 2022)

**Facts:** Father filed petition to establish parentage and parenting plan. Although both parents were equal in factors, court determined that due to mother's withholding of child prior to court orders, father should be named primary residential parent. Court of Appeals reverses.

**If the trial court is relying upon other factors pursuant to 36-6-102(a)(15), it must state that in the order and not state that it is relying solely upon one enumerated factor.**

- Parent's Attorneys: Try to lock in the witnesses to only testify to the enumerated factors unless there is a specific history that you can use as an "other factor"
- GAL: Don't lock yourself into only the 14 factors. There is a reason why we have factor 15 which may include anything the court deems relevant

LEGISLATIVE UPDATES

**PUBLIC CHAPTER NO. 671  
HOUSE BILL NO. 1866**

**New best interest factor for child custody:  
Tenn. Code Ann. 36-6-106(a), is amended by  
adding the following for a new subdivision:**

**Whether a parent has failed to pay  
court-ordered child support for a  
period of three (3) years or more**



**PUBLIC CHAPTER NO. 711  
Senate Bill no. 2413**

**Tenn. Code Ann. 37-5-132(a), is amended by  
adding the language “, to be calculated at  
least monthly,” after the language “average”.**

**- Each DCS worker must report their  
average caseload on a monthly basis**



**PUBLIC CHAPTER NO. 767**  
**Senate Bill no. 2182**

**Tenn. Code Ann. 36-6-113(2): a new procedure for allowing a custodial parent in a d/n proceeding to file an emergency motion with the court demanding that a child be immediately returned by the non-custodial parent**

**- Must wait 48 hours before issuing order**



**PUBLIC CHAPTER NO. 777**  
**Senate Bill no. 2016**

**Amends Tenn. Code Ann. 37-2-401: grants GTLA tort limit of \$300k to entities providing foster care continuum services; jurisdiction lies with Circuit Court and not claims commission**



**PUBLIC CHAPTER NO. 785**

**Senate Bill no. 2398**

**Deletes TCA 37-2-417 and amends 37-2-401 to allow procedure for paying relative caregiver for child in extended foster care**



**PUBLIC CHAPTER NO. 849**

**House Bill No. 2575**

**Adds new language to TCA 37-1-406(e)(1) - notwithstanding (e)(1), if a report of harm was made to the Department anonymously, then the juvenile court shall not order the parents or person responsible for the care of the child or the person in charge of any place where a child may be, to allow the department entrance for the purposes of interview, examination, and investigation unless the department has presented evidence corroborating the anonymous report of harm.**



**PUBLIC CHAPTER NO. 863**

**Senate Bill No. 1779**

**Removes the five year statute of limitations for challenging a voluntary acknowledgment of paternity on the basis of fraud, duress, or mistake of fact**



**PUBLIC CHAPTER NO. 915**

**Senate Bill No. 1911**

**Requires the Department to convene a child protective investigative team when a report of severe child abuse is received (in addition to sex abuse); expands the role and procedures of a child protective team investigation to include cases involving severe child abuse.**





**PUBLIC CHAPTER NO. 918**  
**Senate Bill No. 2232**

**Requires a permanency plan to consider whether the allegations of abuse or neglect warrant supervision of any visitation between the child and the abusing or neglecting parent and whether it is in the child's best interest to have supervised visitation**



**PUBLIC CHAPTER NO. 883**  
**Senate Bill No. 2285**

**Prohibits a court presiding over an appeal to defer to a state agency regarding its interpretation of a statute. Instead, the court must interpret the statute / law de novo.**  
**(applicable to administrative law judges)**  
**(applicable to Chancery & Court of Appeals)**



**PUBLIC CHAPTER NO. 937**  
**Senate Bill No. 2070**

**Expands the definition of severe child sexual abuse for purposes of Termination of parental rights; gives other parent standing to file a TPR against offending parent; makes adoption records open after 100 years have passed**



**PUBLIC CHAPTER NO. 956**  
**Senate Bill No. 2702**

**Expands the information required to be provided in writing to foster parents to include all information available to the department regarding the child's educational status, mental health history and status, behavioral history and physical disabilities.**



**PUBLIC CHAPTER NO. 1028**  
**Senate Bill No. 2114**

**Where a paternity test has occurred by an accredited lab, the custody hearing will be expedited and must take priority over all other civil proceedings other than adoptions and terminations. This includes the Court of Appeals.**

