

Adoption And Termination Law Update

Tennessee Bar Association

February 22, 2016

**Dawn Coppock
Presenter**

Program Outline

I. Voluntary Termination

Surrender

II. Involuntary Termination

A. Notice

B. Grounds

1. Unwed fathers

2. Abandonment failure
to visit

3. Wanton disregard

4. Severe abuse-Drugs

5. Reasonable efforts

6. Rape ground

III. Procedure

A. Orders

B. Appeals

IV. Special issues

A. ICWA

B. Marriage

C. Surrogacy

D. Grandparent Visitation

E. Misrepresentation of
Parentage

New Surrender Revocation Law

- Three (3) day revocation- Formerly 10
- T. R.C.P.6.01- Do not count weekends or holidays.

Surrender Revocation Periods:

Monday Surrender	Tuesday Day 1	Wed. Day 2	Thurs. (Last) Day <u>3</u>	Fri.	Sat.	Sun
Tuesday Surrender	Wed. Day 1	Thurs. Day 2	Fri. (Last) Day <u>3</u>	Sat.	Sun.	Mon.
Wednesday Surrender	Thurs. Day 1	Fri. Day 2	Sat. X	Sun. X	Mon. (Last) Day <u>3</u>	Tues.
Thursday Surrender	Fri. Day 1	Sat. X	Sun. X	Mon. Day 2	Tues (Last) Day <u>3</u>	Wed.
Friday Surrender	Sat. X	Sun. X	Mon. Day 1	Tues. Day 2	Wed. (Last) Day <u>3</u>	Thurs.

Notice

Turner V. Turner



Who are 36-1-113 (g) (9) TPR grounds for?

“The grounds for termination in Tenn. Code Ann. 36-1-113(g)(9) cannot be used to terminate the rights of a person who is the child’s biological parent, legal parent, or putative biological father at the time the termination petition is filed.” - Bernard held 2010 and Cloey followed 2015.



Pending Legislation

Unwed Fathers

- Administration Bill –
House bill # 1531 /Senate bill # 2531



“Putative Father” 36-1-117 (c) 1-6

- 1) Timely filed with the Putative Father’s Registry
- 2) Identified as father by the child’s mother
- 3) Claimed that he believes he is the father
- 4) On child’s birth certificate
- 5) Living with the child’s mother at the time of petition or removal from mother
- 6) Entered into permanency plan acknowledging paternity.

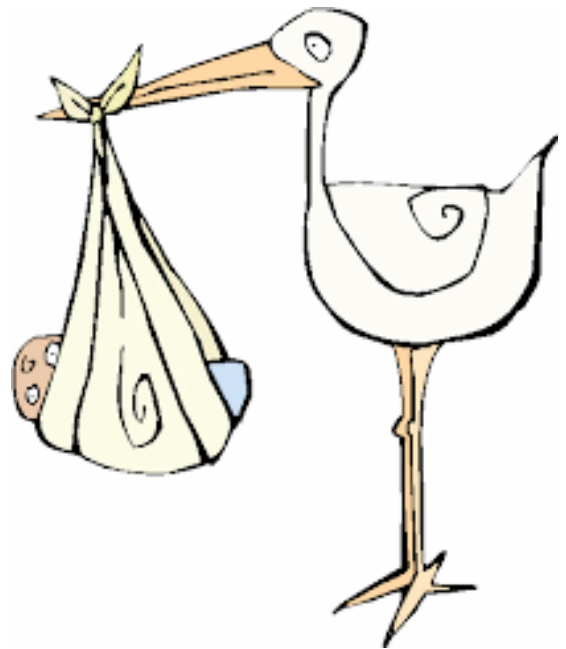
Abandonment- failure to visit

- Suspended visits as a defense.



Wanton Disregard

- Birth announcements



Severe Drug Abuse

- T.C.A. § 36-1-113(g)(4) – Termination Ground
- T.C.A. § 37-1-102(b) (21) "Severe child abuse"
- In Re. Joshua E.R. & In Re. Garvin M.



Reasonable Efforts

- In Re. Kaliyah S



Rape Ground

Respondent has been convicted of aggravated rape from which the child was conceived.

Other parent has standing to file a TPR.



Orders terminating parental rights

written findings
on each ground alleged
and
specific findings on the factors
relevant to the child's best
interest.

In Re. Angela E. (Tenn. 2010)

Also see T.C.A. § 36-2-701



Appeals

- Ineffective Assistance of Counsel

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

Requires Court of Appeals to review all grounds and best interest regardless of whether the issue was raised on appeal.

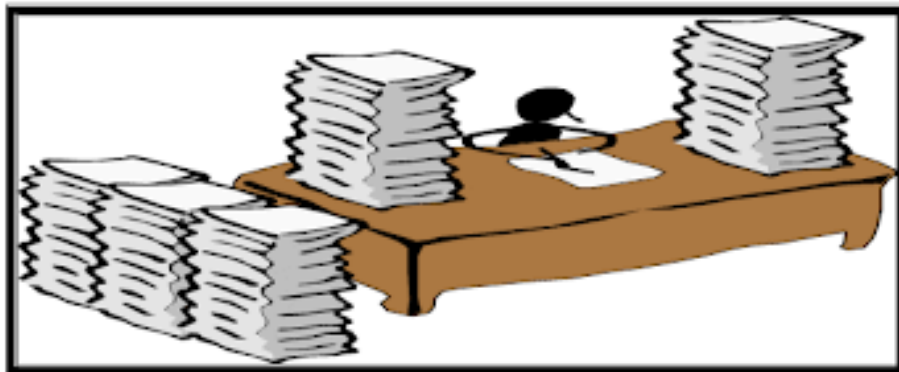
There is no ineffective assistance of
counsel in a TPR case.



Cases Appealed

Termination of Parental Rights cases account for 12 % of all cases filed in the court of appeals for the 2014-15 year.

- 1011 Total Appeals
- Eastern Section – 65
- Middle Section – 42
- Western Section – 16



ICWA

Indian Child Welfare Act

- **Adoptive Couple v. Baby Girl**
- Unwed father abandoned the child before birth and never had custody. Therefore no “removal of an Indian child” occurred.
- ICWA does not permit him to intervene and set aside an adoption where state law would not otherwise permit.
- ICWA does not require the adoption petitioners to show reasonable effort to reunify.
- ICWA placement preferences only apply when there is a competing petition for adop’



Marriage and Step Parent Adoption

OBERGEFELL v. HODGES



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Surrogacy

- Traditional surrogacy contracts are not against public policy
- But for a traditional surrogate you can't override TRP procedures by contract.



Grandparent Visitation

- Grandparent visitation survives step-parent and relative adoption T.C.A. § 36-6-306(d).
 - Modification of grandparent visits shall use the same procedures and standards as modification of other visitation.
- Lovelace v. Copley



Misrepresentation of Parentage

- common-law action for intentional misrepresentation of parentage.



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I. Voluntary Termination

**Shortened surrender revocation period is in effect.
Formerly 10 days. Now 3 days.**

Effective April 10, 2015, the revocation period for a parent after surrendering parental rights to a child in Tennessee was reduced from ten (10) days to three (3) days. The language of the changes was not entirely consistent with T.R.C.P. 6.01 on the computation of time. Ambiguity in this context is highly undesirable so the Tennessee members of the American Academy of Adoption Attorneys¹ and the General Counsel for TN Department of Children's Services² came to a consensus and offer their interpretation for uniform use by the Tennessee bench and bar pending clarification by the legislature.

The question is does T.R.C.P. 6.01 on computation of time apply to calculation of the revocation period. The consensus is that T.R.C.P. does and should apply to Pub. Chapter No. 113, amending 36-1-112(a)(1)(A), (C) and (F). Therefore, weekends and legal holidays are not counted in the three (3) day period. If the final day is on a weekend or legal holiday, the last day is the next following business day.

A chart of revocation period calculations for surrenders on all weekdays, and without holidays and the text of T.R.C.P. 6.01 are provided below. The link to the new surrender forms prepared by DCS is http://share.tn.gov/sos/rules_all/2015/0250-07-13.20150911.pdf. The forms leave a blank for the last day to revoke and no direction is given for the computation of time. If you frequently prepare or witness surrenders you are encouraged to print the chart for future reference to make it easier to complete that important blank in compliance with T.R.C.P. 6.01. By sharing collective

thinking and acting in concert we can avoid confusion that could harm parents and children.

Surrender Revocation Periods:

Monday Surrender	Tuesday Day 1	Wed. Day 2	Thurs. (Last) Day <u>3</u>	Fri.	Sat.	Sun
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¹ American Academy of Adoption Attorneys Fellows:
Dawn Coppock, Lisa Collins, Michael Jennings, Theodore Kern, Sharon Massey, Julia Tate,
Robert Tuke
and Kevin Weaver

² Douglas Dimond, General Counsel, Tennessee Department of Children's Service

T.R.C.P. 6.01. Computation.

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday as defined in [Tenn. Code Ann. § 15-1-101](#), or, when the act to be done is the filing of a paper in court, a day on which the office of the court clerk is closed or on which weather or other conditions have made the office of the court clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

II. Involuntary Termination

A. Notice - Turner V. Turner, Tenn. Sup Ct. 2015, 473 S.W.3d 257; 2015 Tenn. LEXIS 831 (October 21, 2015). Cannot make a poor attempt at personal service and then publish without efforts to find or the required affidavit of efforts to find the respondent. The resulting termination order will be void, not voidable. However, because “Exceptional Circumstances” were found, the judgment was allowed to stand. Respondent learned of the termination 2 years before a taking action and third parties, the children, would be harmed.

B. Grounds

1. **Unwed fathers-** Legislation pending to define “Putative Father” and clarify who may be sued using the unwed father grounds. HB 1521/SB 2531. See Bernard T., 319 S.W. 3d 586; 2010 Tenn. LEXIS 683 (August 26, 2010) and Cloey R., No. E2014-00924-COA-R3-PT Filed January 21, 2015 (Tenn. Ct. App. E.S). Bernard says and Cloey follows, “The grounds for termination in Tenn. Code Ann. 36-1-113(g)(9) cannot be used to terminate the rights of a person who is the child’s biological parent, legal parent, or putative biological father at the time the termination petition is filed.”
2. **Abandonment-failure to visit-** The Adoption Of Angela E. Et Al., 402 S.W.3d 636; 2013 Tenn. LEXIS 303 (March 13, 2013). A father’s rights were terminated for abandonment by failure to visit. His visitation rights had been suspended by a court. He had a pending action to restore visits but he hadn’t prosecuted it in 2 years. The Sup Ct. found that the pending action was not a defense because he allowed it to languish.
3. **Wanton disregard-** In Re. Anthony R., No. M2014-01753-COA-R3-PT, Filed June 9, 2015 (Tenn. Ct. App. M.S.). If the father doesn’t know about the child he cannot behave in a way to exhibit a wanton disregard for the child.
4. **Severe abuse-** Drugs - T.C.A. § 36-1-113(g)(4) – Termination Ground and T.C.A. § 37-1-102(b) (21) "Severe child abuse" defined.

Now routinely used against mothers for prenatal drug exposure. There are now two unreported opinions finding severe child abuse/failure to protect against a father for the mother's prenatal drug use when he knew she was using drugs, and sometimes supplied drugs to the mother. In *Re. Joshua E.R.*, No. W2011-02127-COA-R3-PT, filed May 15, 2012 (Tenn. Ct. App. W.S.) and In *Re. Garvin M.*, No. E2013-02080-COA-R3-PT, filed May 9, 2014 (Tenn. Ct. App. E.S.)

5. **Reasonable efforts** – In *Re. Kaliyah S.*, 455 S.W.3d 533; 2015 Tenn. LEXIS 14 (January 22, 2015). Proof of reasonable efforts is no longer required to establish any grounds for TPR. It is a factor as to best interest in DCS terminations.
6. **Rape**- Respondent has been convicted of aggravated rape pursuant to T.C.A. § 39-13-502 or rape pursuant to T.C.A. § 39-13-503 from which the child was conceived.

III. Procedure

A. Orders – Trial courts must make specific written findings on each ground alleged for termination of parental rights and specific findings on the factors relevant to the child's best interest. In *Re. Angela E.*, 303 S.W.3d 240; 2010 Tenn. Lexis 87. (Tenn. February 16, 2010). Also see T.C.A. § 36-1-113 (k).

B. Appeals- In *Re Carrington H.*, 2016 Tenn. LEXIS 49 (Tenn. May 28, 2015). Requires Court of Appeals to review all grounds and best interest regardless of whether the issue was raised on appeal. Holds that there is no ineffective assistance of counsel defense in a TPR case.

- Termination of Parental Rights cases account for 12 % of all cases filed in the court of appeals for the 2014-15 year.
- 1011 Total Appeals
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IV. Special issues

A. ICWA - *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552; 186 L. Ed. 2d 729; 2013 U.S. LEXIS 4916; 81 U.S.L.W. 4590; 24 Fla. L. Weekly Fed. S 422 (U.S. Sup. Ct. June 25, 2013). Unwed father abandoned the child before birth and never had custody. Therefore no “removal of an Indian child” occurred. ICWA does not permit him to intervene and set aside an adoption where state law would not otherwise permit. ICWA does not require the adoption petitioners to show reasonable effort to reunify. ICWA placement preferences only apply when there is a competing petition for adoption.

B. Marriage - *OBERGEFELL V. HODGES*, 135 S. Ct. 2584; 192 L. Ed. 2d 609; 2015 U.S. LEXIS 4250; 83 U.S.L.W. 4592; 99 Empl. Prac. Dec. (CCH) P45, 341; 115 A.F.T.R.2d (RIA) 2309; 25 Fla. L. Weekly Fed. S 472 (US Sup. Ct. June 26, 2015).

C. Surrogacy- In Re Baby Et Al. 447 S.W.3d 807; 2014 Tenn. LEXIS 642 (September 18, 2014). Traditional Surrogacy contracts are not against public policy in Tennessee, but a surrogate's parental rights cannot be terminated by court ratification of a surrogacy contract. One of the methods for termination of parental rights established in Tennessee law must be used.

D. Grand parent visitation- Grand parent visitation survives step-parent and relative adoption T.C.A. § 36-6-306(d). The child's parent's adoptive parents are grandparents within the meaning of "grand parent" in the statute. Modification of grandparent visits shall use the same procedures and standards as modification of other visitation. Lovelace v. Copley, 418 S.W 3d. 1; 2013 Tenn. LEXIS 718 (Tenn. Sept. 6, 2013).

E. Misrepresentation of Parentage- Hodge V. Craig, 382 S.W.3d 325; 2012 Tenn. LEXIS 720 (Tenn. October 1, 2012). Recognizes a common-law action for intentional misrepresentation of parentage. Former husband awarded post-divorce payments for child support, medical expenses, and insurance premiums as a retroactive modification of child support.

Prepared by Dawn Coppock
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