



Overview of Child Welfare Proceedings in Youth Court

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Methods of Advocacy

- ▶ Trial Advocacy (Youth Court)
- ▶ Appellate Advocacy
- ▶ Policy Advocacy

Youth Court Overview

Structure and Jurisdiction

- ▶ County Court, Chancery Court, Municipal
- ▶ Civil Court
- ▶ Abuse and Neglect: Youth Court has exclusive jurisdiction over abuse and neglect (43-21-151) Exception-allegation arises in course of custody action and no notice of allegation prior to Chancery Proceeding.
- ▶ Termination of Parental Rights for children in custody (93-15-115 and 93-15-117)
- ▶ Delinquency and CHINS (not our focus today)
- ▶ Appeals Directly to the Mississippi Supreme Court (Rule 37 and 43-21-651)

The Players

- ▶ Judge or Designee or Referee (43-21-113, 43-21-111)
- ▶ Prosecutor (43-21-117)
- ▶ Guardian Ad Litem –Must be appointed in every case where an abuse and/or neglect allegation results in a judicial proceeding (Rule 13 and 43-21-121 and Child Abuse and Treatment Act).
- ▶ Parent Rep Attorney or Private Counsel for Parent

Procedural Overview for Abuse and Neglect

- ▶ Report Received (Central Intake 1-800-222-8000)
- ▶ Removal
- ▶ Intake (Rule 8 and 43-21-357(1))
- ▶ Shelter Hearing
- ▶ Adjudication Hearing
- ▶ Review Hearing
- ▶ Permanency Hearing
- ▶ TPR (“the Death Penalty for Families”, *In re Smith* (1991), 77 Ohio App.3d 1,16, 601 N.E.2d 45, 54)

Taking Custody Without an Order

43-21-303(b) and Rule 12: Law enforcement or agent of the department of public welfare may take custody of child without a court order if:

- ▶ Probable Cause that the child is in immediate danger, *AND*
- ▶ Probable Cause that custody is necessary under 43-21-301 (b), *AND*
- ▶ No reasonable alternative to custody

What Does Necessary Mean

- ▶ 43-21-301(3)(b):

Endangered or Endangering

OR

To insure attendance at court

OR

Parent not able to provide for care and supervision

AND

No reasonable alternative to Custody

TAKING CUSTODY WITH AN ORDER

- ▶ 43-21-307 and Rule 11:
- ▶ Judge or Designee may authorize temporary custody no longer than 48 hours. Must follow 43-21-301.
- ▶ What's Required? Three things:
 1. Probable Cause that the child is within the jurisdiction of the youth court.
 2. Custody is deemed necessary (43-21-301 (b))
 - Child is endangered or endangering; or
 - To Insure Child's appearance at court; or
 - Parent or Guardian not able to care for
 - AND
 3. There is no reasonable alternative to custody
- ▶ Order can be verbal or written. If verbal, must be reduced to writing as quickly as possible.

Shelter Hearing

- ▶ 43-21-309 and Rule 16(b)
- ▶ Notice Requirement: Reasonable oral or written notice
- ▶ Not required to be on the record
- ▶ Burden of Proof: Probable Cause
- ▶ How the Court takes jurisdiction
- ▶ Hearsay is Admissible
- ▶ Potential Outcomes

****Determination for jurisdiction and removal are different****

Shelter Hearing

- ▶ Analysis for Jurisdiction
- ▶ Analysis for Removal
 - ▶ Identifying Relative Placements
 - ▶ Reasonable efforts
 - ▶ Fictive Kin/Resource Payment Waivers
- ▶ Client Goals
 - ▶ Proactive Steps for Reunification
 - ▶ Service Agreement/Working with CPS
 - ▶ TPR

Preparing for Adjudication

- ▶ Discovery
- ▶ Subpoenas
- ▶ Managing Client Expectations

CONFIDENTIALITY

- ▶ Rule 5: Confidentiality
 - ▶ Records of Child Protection Proceedings are Confidential
 - ▶ Court may order Disclosure in accordance with 43-21-261
 - ▶ Unauthorized disclosure punishable as a misdemeanor
- ▶ Rule 6 sets out procedure for obtaining records for another court

CONFIDENTIALITY

- ▶ 43-21-261

- ▶ (3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation which is to be considered by the youth court at a hearing, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.

- (4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

Adjudication

- ▶ Jurisdictional Issues
- ▶ BURDEN OF PROOF: Preponderance of the Evidence (43-21-561)
- ▶ CPS Recommendation
- ▶ Service Agreement Compliance
- ▶ Evidentiary Issues
- ▶ Must be on the Record

Adjudication

Do the Rules of Evidence Apply???

YES!!!! We want reliable evidence

SEE: *In the Interest of: J.T., A Minor, D.T. and M.T. v. Hinds County Youth Court*

Supreme Court of Mississippi: “[W]e find it necessary to clarify that the Rules of Evidence do apply in youth-court adjudications with full force and effect.”

“So both the rules of court and the Mississippi Code dictate that the Mississippi Rules of Evidence apply to abuse adjudications in youth court.”

TRIAL STRATEGIES

- ▶ Can we get the Petition Dismissed
- ▶ Either Way Working on Service Agreement – At the very least hopefully we get reunification at Adjudication
- ▶ Challenge Your GAL

Adjudication-Common Evidentiary Issues

- ▶ The common hearsay exceptions the state will use:
- ▶ Tender Years Doctrine 803 (25)
- ▶ Medical Diagnosis and Treatment 803(4)
- ▶ Business Records Exception 803(6)

TENDER YEARS EXCEPTION

- ▶ 803 (25) Tender Years Exception. A statement by a child of tender years describing any act of sexual contact with or by another is admissible if:
(A) the court – after a hearing outside the jury's presence – determines that the statement's time, content, and circumstances provide substantial indicia of reliability; and (B) the child either: (i) testifies; or (ii) is unavailable as a witness, and other evidence corroborates the act.

MEDICAL DIAGNOSIS AND TREATMENT

- ▶ 803 (4) Statement Made for Medical Diagnosis or Treatment. A statement that: (A) is made to any person at any time for – and is reasonably pertinent to – medical diagnosis or treatment; (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause; and (C) is supported by circumstances that substantially indicate its trustworthiness. In this paragraph, “medical” includes emotional, mental, and physical health.

BUSINESS RECORD EXCEPTION

- ▶ 803(6) Records of Regularly Conducted Activity- (6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if: (A) the record was made at or near the time by – or from information transmitted by – someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit; (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11); and (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

BUSINESS RECORD EXCEPTION

Keep in Mind That:

- ▶ The source of the material must be an informant with knowledge who is acting in the course of the regularly conducted activity. This is exemplified by the leading case of *Johnson v. Lutz*, 253 N.Y 124, 170 N.E 517 (1930), which is still the applicable law today under the rule. That case held that a police report which contained information obtained from a bystander was inadmissible; the officer qualified as one acting in the regular course of a business, but the informant did not.

DRUG TEST RESULTS

What kind of test is being used and where?

- ▶ Many tests have insert that says they are not reliable.
- ▶ If testing outside of the court, does state have witness present to authenticate?
- ▶ If testing done at court, who is reading the result and are they qualified?
- ▶ What prescription drugs is your client taking? Will any of those show a false positive?

AGAIN WE WANT RELIABLE EVIDENCE!!!!!!!!!!!!!!!!!!!!!!

MAKE YOUR RECORD!!!!

ADJUDICATION / DISPOSITION

What Are The Potential Outcomes

- ▶ Dismissed
- ▶ Adjudicated and Reunified
- ▶ Adjudicated and remain in CPS custody, but placed in home for 90 day trial home placement
- ▶ Adjudicated and remain in CPS custody in foster care

Post-Adjudication Representation

90 Day Trial Home Placement

Review Hearings

Permanency Hearings

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