



TRIAL STRATEGIES FOR A SUCCESSFUL APPEAL

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What can be appealed?

- ▶ Disposition Orders
- ▶ TPR Judgments

Post-Disposition Advocacy

- ▶ Permanency
- ▶ Review Hearings
- ▶ Motion Practice (Rule 59/60 Motions)

OBJECTIONS

- ▶ PRESERVE
- ▶ WAIVE

What Parent Defenders Should Know

- ▶ CONSTITUTIONAL IMPLICATIONS
- ▶ YOUTH COURT ACT
- ▶ UNIFORM RULES OF YOUTH COURT PRACTICE
- ▶ RELEVANT CASE LAW
- ▶ FEDERAL LAW APPLICABLE TO CHILD WELFARE
- ▶ EACH PLAYERS ROLES AND RESPONSIBILITES
- ▶ STATE'S PROSECUTION MODEL
- ▶ CLIENT'S EXPOSURE TO CRIMINAL LIABILITY
- ▶ REASONABLE EFFORTS
- ▶ APPLICABLE TIME REQUIREMENTS
- ▶ CPS POLICY
- ▶ COUNTY SPECIFIC PRACTICES
- ▶ TRAUMA OF SEPERATION

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
- ▶ 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****

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.”

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.

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

APPEALS

- ▶ Standard of Review
- ▶ The appellate standard of review is the same for both youth court proceedings and chancery court proceedings. *In re J.P.*, 151 So. 3d 204, 208 (¶19) (Miss. 2014).
- ▶ “The county court’s ‘findings of fact concerning the termination of parental rights are viewed under the manifest error/substantial credible evidence standard of review.’” *C.S.H. v. Lowndes Cnty. Dept. of Human Servs.*, 246 So. 3d 908, 913 (¶21) (Miss. Ct. App. 2018) (quoting *W.A.S. v. A.L.G.*, 949 So. 2d 31, 34 (¶7) (Miss. 2007)). On appeal, this Court is tasked with determining “whether credible proof supports the county court’s factual findings by clear and convincing evidence.” *Id.* at 913-14 (¶21). However, questions of law are subject to de novo review, “and if a chancellor misapprehends the controlling rules of law or acts pursuant to a substantially erroneous view of the law, reversal is proper.” *Chism v. Bright*, 152 So. 3d 318, 322 (¶12) (Miss. 2014).



M.A.S.

- ▶ Court of Appeals decision 9/21/21

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