



FAMILY & CHILDREN  
CASE LAW  
UPDATE



Chad King & Matthew Thompson



# In the Adoption of A.M., A Minor Affirmed 8/5/2021

## ■ FACTS

- *November 2018 Mom contacted adoption agency when she was pregnant with A.M.*
- *She did not follow through with adoption and gave birth on December 10, 2018.*
- *April 2019 Mom lost her job and was unemployed for three months.*
- *July 2019, she contacted adoption agency again, looked through adoptive parent profiles.*
- *She chose A.H. as adoptive mother. Adoption agency advised mom to get MS attorney to draw up the necessary legal documents.*
- *Mom and Amanda met and attorney drew up Surrender. Mom signed. A.H. left the meeting with the baby.*
- *July 30, 2019, attorney filed Petition for Adoption and chancellor entered an Order Granting Temporary Custody and accepted the surrender. Court set the hearing for TPR for October 2, 2019.*
- *August 26, 2019, mom filed a Withdrawal of Surrender.*



# In the Adoption of A.M., A Minor Affirmed 8/5/2021

## ■ FACTS

- *September 4, 2019, Kim, through her attorney filed a Response to Petition for Adoption and Motion for Temporary Relief to restore custody of allow visitation until trial.*
- *September 27, 2019, Court ordered GAL.*
- *October 2, 2019 at trial, Court concerned with dad not receiving notice. Attorney Davis stated he had published after attempt to find him.*
- *Mom provided dad's address and Court continued the matter to serve dad.*
- *January 30, 2020, Adoptive mom filed Motion to Strike since the Court had accepted the surrender, mom no longer had standing to challenge the adoption.*
- *January 30, 2020, Court determined case was not ready for trial because of process on dad. February 24, 2020 Court entered an order dissolving the Order Granting Temporary Custody, should not have included the Surrender, ordered custody remain with adoptive mom but allowed limited visitation with mom and baby reset for March 30, 2020.*



# In the Adoption of A.M., A Minor Affirmed 8/5/2021

## ■ FACTS

- *Dad could not be found to be served by sheriff's office*
- *March 2, 2020 Court entered its Opinion and Order on Withdrawal of Consent and Surrender. The Court found that the Surrender was signed under duress, both economical and personal in nature in that, in her perception, all avenues to provide for her child, short of adoption had been exhausted." the Surrender is WITHDRAWN, Temporary Order SET ASIDE, Petition for Adoption DISMISSED.*
- *March 11, 2020, Adoptive Mom filed Motion for New Trial*
- *March 12, 2020, Mom filed Motion for Relief of Order*
- *March 13, 2020 Mom filed Motion to Compel Production of Minor*
- *March 17, 2020 after a hearing, Court denied Motion for New Trial, denied and granted in part Motion for Relief from Order, ordered child to remain in Adoptive mom's custody due to COVID-19 restrictions.*
- *Appeal filed*



# In the Adoption of A.M., A Minor Affirmed 8/5/2021

- **QUESTIONS ON APPEAL**
- (1) Mom lacked standing to file a withdrawal of consent to voluntary surrender of parental rights and adoption after the chancellor found that the surrender had complied with applicable statutes;
- (2) the court erred when it determined that mom's loss of employment and possible eviction perhaps constituted duress despite no fault on behalf of adoptive mom or her counsel; and
- (3) the court erred when it rescinded its order six months after it accepted the surrender.

# In the Adoption of A.M., A Minor

## Affirmed 8/5/2021

### ■ STANDING

- Complicated because the court entered an order accepting the surrender and stating it complied with all applicable statutes.
- This Court has held that once parental consent is given, it is irrevocable absent sufficient legal grounds established by clear and convincing evidence. *L.T. v. J.H. (In re Adoption of P.B.H.)*, 787 So. 2d 1268, 1272 (Miss. 2001); see *Grafe v. Olds*, 556 So. 2d 690 (Miss. 1990); *C.C.I. v. Natural Parents*, 398 So. 2d 220 (Miss. 1981)
- In 2016, the Legislature passed House Bill 1240, the Mississippi Termination of Parental Rights Law, in order to reform parental rights terminations.



# In the Adoption of A.M., A Minor Affirmed 8/5/2021

- 93-17-7
  - A parent shall not be summoned in the adoption proceedings nor have the right to object thereto if the parental rights of the parent have been terminated by the procedure set forth in the Mississippi Termination of Parental Rights Law (Section 93-15-101 et seq.),
- 93-15-111 is controlling statute:
  - *The court's order accepting the parent's written voluntary release terminates all of the parent's parental rights to the child, including, but not limited to, the parental right to control or withhold consent to an adoption. If the court does not accept the parent's written voluntary release, then any interested person, or any agency, institution or person holding custody of the child, may commence involuntary termination of parental rights proceedings under Section 93-15-107.*



# In the Adoption of A.M., A Minor

## Affirmed 8/5/2021

- **Plain Language**
  - New statutory language includes a specific requirement that termination requires a court's acceptance. The question now becomes whether the Court accepted Mom's surrender.
- **The Temporary Order**
  - *Adoptive mom relies on Temporary Order accepting surrender. Adoptive mom's position is when court accepted the surrender, mom lost standing to object.*
  - *Mom relies on subsequent orders including chancellor finding that surrender did not meet all the requirements (inheritance) and she was entitled to consult with her own attorney*
- Standard or Review is whether chancellor committed manifest error.





# In the Adoption of A.M., A Minor Affirmed 8/5/2021

- **Was the temporary Order an acceptance of the surrender?**
  - Temporary Order stated the Court accepted the Surrender and it complied with all applicable statutes
  - August 21, 2019, court entered a fiat for a hearing on October 2, 2019, on the subject of termination of parental rights and adoption
  - August 26, 2019, Mom withdrew her consent
- **Holding**
  - **The chancellor had NOT accepted mom's surrender in the temporary order.**
  - we admit that the chancellor's acceptance language in the June 30, 2019 order was problematic. Nevertheless, Section 93-15-111 requires the court to accept the "parent's written voluntary release [which] terminates all of the parent's parental rights to the child, including, but not limited to, the parental right to control or withhold consent to an adoption," and the scheduled fiat hearing to terminate Kim's parental rights coupled with the court's express dissolution fails to satisfy the statutorily required acceptance



# LET'S TALK – 459s/Surrenders

- The court may accept the parent's written voluntary release if it meets the following minimum requirements:
  - *Is signed under oath and dated at least seventy-two (72) hours after the birth of the child;*
  - *States the parent's full name, the relationship of the parent to the child, and the parent's address;*
  - *States the child's full name, date of birth, time of birth if known, and place of birth as indicated on the birth certificate;*
  - *Identifies the governmental agency or home to which the child has been surrendered, if any;*
  - *States the parent's consent to adoption of the child and waiver of service of process for any future adoption proceedings;*
  - *Acknowledges that the termination of the parent's parental rights and that the subsequent adoption of the child may significantly affect, or even eliminate, the parent's right to inherit from the child under the laws of Descent and Distribution*
  - *Acknowledges that all provisions of the written voluntary release were entered into knowingly, intelligently, and voluntarily; and*
  - *Acknowledges that the parent is entitled to consult an attorney regarding the parent's parental rights.*

# Duress

## ■ Concurring

- The question is not whether the surrender was accepted. It clearly was. I would submit that the proper question is whether the trial court was allowed to withdraw acceptance of the surrender. This is different than a determination of whether the parent can meet the applicable burden of proof, by clear and convincing evidence, to withdraw the surrender in a contested proceeding.

## ■ Duress

- the duress recognized by the trial court is not duress that is legally recognized as relieving a party from their obligations. “Duress strikes at whether a party actually consented to a contract.” *Ladner v. O’Neill* 42 So. 3d 520, 525 (Miss. 2010).
- in the context of a divorce, normal stress is not sufficient to relieve one of their obligations.
- Opinion and Order on Withdrawal of Consent and Surrender, that there was no “fraud, duress, or undue influence on the part of the Petitioner or counsel for the Petitioner[.]” Simply stated, the natural mother has shown nothing that would even remotely constitute legally recognized duress that would allow withdrawal of her prior surrender.



# Temporary/Final

## ■ MRCP Rule 54(b)

- The Court's Order Granting Temporary Custody, which contained the acceptance of the surrender, did not adjudicate all claims of all parties in this dispute. It is, therefore, an interlocutory order.
- "the trial court is free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law."
- One final note regarding the withdrawal of a surrender, whether interlocutory in nature or otherwise: in *Grafe* we stated that the "revocability of the surrender of a child and consent for another to adopt a child is not to be decided upon rigid or technical rules. Such a decision must be made upon sound judicial discretion." *Grafe*, 556 So. 2d at 694 (quoting C.C.I., 398 So. 2d at 226). It further states that "we do not mean to pronounce that consent may never be withdrawn. We emphasize that such a determination must be made on a case-by-case basis in timely fashion without unnecessary delay in the proceedings, always keeping in mind that the best interest of the child is paramount."



# Kreps v. Hyland

- Rankin County Chancery Court
- Reversed and Remanded

# Kreps v. Hyland

## ■ FACTS

- Raven and Adam never married. 1 child, M.H., born 2009
- Couple separated 2014, child lived with Raven
- 2015, Raven filed for TPR, couldn't find Adam, summons published. Chancery court granted TPR Petition
- April 2019, Adam files a petition for relief from judgment and asked for visitation. Claimed Raven lied about her efforts to locate him. Raven's brother did an Affidavit that she knew how to contact Adam.
- July 29, 2019, hearing - raven stated she had an attorney, but he was not present because he had another case in the courthouse that day. She had just recently hired an attorney the week before. No attorney had entered an appearance or filed a Motion for Continuance.
- Attorney was located and appeared and stated "Raven and I had a good conversation, but she had not retained him. He advised the Court that he told her he was unavailable for her hearing, and she should contact another attorney."





# Kreps v. Hyland

## ■ FACTS

- Raven pleaded for a continuance
- Court denied continuance because she was served 3 months ago, and she could represent herself.
- Court told the parties to wait until they concluded another hearing. During this time a police officer showed up and arrested Raven for failure to appear in court for at least one “driving with a suspended license.” (Raven later admitted she had 3 outstanding warrants..)
- Adam’s attorney told the court he wanted to proceed with the hearing. The Court stated it was inclined to do so. “I’m going to proceed . . . And if Ms. Kreps comes back, I will allow her to assist or participate in her defense as a self-represented litigant in whatever capacity she desires to do so.”
- The court invoked the rule and nonparty witnesses left. His attorney stated, “since Raven is not here, I think out of an abundance of caution and for full fairness . . .it’s only fair to her.”
- Four witnesses testified before Raven returned to the courtroom. Adam was testifying when Raven returned. The Court stopped the proceeding and said they would allow her to participate from henceforward. Raven stated she wanted to call three witnesses. 2 of these witnesses knew the rule had been involved and did not leave the courtroom so the court precluded them from testifying. FOOTNOTE – unclear why the 3<sup>rd</sup> witnesses was not allowed to testify.
- Adam testified and asked for custody (he only requested visitation in his pleading)
- Adam’s attorney called Raven adverse. At the conclusion made an ore tenus motion to conform the pleadings to the evidence.
- Without objection from Rave, the court responded, “All right.”

# Kreps v. Hyland

## ■ FACTS

- The court conducted an Albright analysis and awarded Adam sole legal and physical custody granting Raven standard visitation.
- Further the court acknowledged that the child would now be moving to DeRidder, Louisiana to live with her father, 5 hours away but that was “not the court’s fault.”
- Raven was ordered to be solely responsible for traveling to and from Louisiana – WHY IS THIS PROBLEMATIC??
- Judge ordered for older sister to go get child from Madison and take her to Adam in Flowood.
- Because Raven had to return to jail immediately, she could not say goodbye to the child.





# Kreps v. Hyland

## ■ APPEAL

- Deprived of due process when the court conducted a hearing in her absence b/c of her arrest
- For nearly one hundred years, the United States Supreme Court has recognized that a parent's liberty interests in the care, upbringing, and custody of children are protected by the Due Process Clause of the Fourteenth Amendment.
- In fact, "[t]he liberty interest [in] the interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000).
- Every defendant or respondent has the right to notice in a court proceeding concerning him and to be present and to introduce evidence at the hearing. *Edwards v. James*, 453 So. 2d 684 (Miss. 1984). The parties should be afforded a full, complete hearing at which the parties have an opportunity to call witnesses in their behalf and be heard by themselves or counsel. *Fortenberry v. Fortenberry*, 338 So. 2d 806 (Miss. 1976). If a full and complete hearing is not allowed by refusing the defendant his opportunity to present evidence, then the defendant is thereby deprived of due process. *Id.*



# Kreps v. Hyland

## ■ DUE PROCESS IN CHILD CUSTODY

- Court has made clear the chancellor's benefits in hearing from both parents: "[c]ertainly, a more prudent determination . . . may be made when based upon evidence presented from both parents rather than evidence presented by only one." In *Wade v. Wade*, 967 So. 2d 682, 684 (¶8) (Miss. Ct. App. 2007)
- Court held "Where a chancellor has the opportunity to consider the argument of both parents, the facts and circumstances affecting his determination are presumably more fully developed."
- in *Singleton v. Buford*, 282 So. 3d 493, 495 (¶1)(Miss. Ct. App. 2019), where a mother lost legal and physical custody of her three-year-old son after she and her attorney failed to appear at the custody hearing. The attorney had calendared the wrong date and given that wrong date to the mother, which is why neither was present on the day of the hearing. *Id.* at (¶2). As soon as the mother's attorney realized the mistake, she sought a continuance, "but it was too late." *Id.*
- On appeal, this Court reversed the custody award and found that the chancery court abused its discretion by denying the mother's motion for a new trial or reconsideration. *Id.* at 499 (¶21). In doing so, this Court reasoned: There was no persuasive reason not to allow Singleton to present evidence and provide the court with additional information relevant to the custody determination. Allowing her to present evidence would have allowed the chancellor to make a more informed decision, thereby ensuring a higher degree of certainty that the best interest of the child is met.



# Kreps v. Hyland

## ■ RAVEN

- there was no “persuasive reason” to conduct the proceeding in Raven’s absence. She was arrested on an unrelated misdemeanor matter when she was literally at the courthouse to conduct a trial on Adam’s petition
- Before she returned, four witnesses testified fully, and not only had she missed the opportunity to hear those four witnesses’ testimony, she was prohibited from cross-examining them.
- The trial court knew she didn’t have counsel because at the beginning of the hearing, before she was arrested, Raven had asked for a continuance so that she would have more time to obtain counsel.
- when she returned, Raven discovered that she would not be allowed to present evidence, as her witnesses were precluded from testifying when the Rule was invoked in her absence.
- this cascading series of events began when the executive branch of the government decided to arrest Raven on an unrelated misdemeanor charge, when she was present at a trial being conducted by the judicial branch of government.
- This cascading series of events and consequences led to an incomplete hearing with undeveloped facts that did not serve the best interest of M.H. and undoubtedly impacted Raven’s chance to keep custody of her child
- we find that Raven’s due process rights were clearly violated when the judge allowed the hearing concerning her daughter to be conducted in her forced absence by her arrest for an unrelated misdemeanor charge while she was literally awaiting her hearing in the courthouse



# Kreps v. Hyland

## ■ UPDATE

- 11/29/2021 – Agreed Temporary Order, leaving custody with Adam, Raven with visitation, meet halfway to exchange, “temporary order to remain in effect until the court can hear and determine legal and physical custody and this Order shall not prejudice either party.
- Discovery Motions/Amended Pleadings back and forth
- 5/17/2023 – Order appointing GAL
- 5/31/2023 – Order allowing Raven’s attorney to withdraw “both attorney have completed the necessary discovery, and this matter is now in the hands of the Guardian ad Litem” “Trial on the merits June 21-22, 2023.
- 6/30/2023 – Order of Continuance – Trial now April 2, 3, 4, 2024
- 7/5/2023 – Raven’s second attorney withdraws

# Boutwell vs. Fairchild

## ■ JURISDICTION

- January 20, 2023
- Boutwell is paternal grandmother of child
- Fairchilds, maternal uncle and aunt of child
- Chancery Court vs. Youth Court jurisdiction



# Boutwell vs. Fairchild

## ■ FACTS

- Child born with “illegal drugs”
- After release from hospital, child placed with Boutwell
- May 15, 2018 disposition hearing left child with Boutwell, mom given a service agreement.
- Visitation with mom, no contact with dad
- September 12, 2018, Fairchilds filed a Petition for Termination of Parental Rights and Adoption in chancery court naming CPS as party
- Boutwell filed an Answer and Counterclaim for Adoption
- Boutwell then filed a Motion to Dismiss based on chancery court lacking subject matter jurisdiction
- June 6, 2019, Motion to Dismiss denied Boutwell’s motion
- February 20, 2020, chancery court held a TPR hearing
- October 6, 2020, terminated parental rights
- June 17, 2021, adoption trial
- September 10, 2021, Final Judgment allowing Fairchilds to adopt



# Boutwell vs. Fairchild

## ■ HOLDING

- Boutwell argues that chancery court lacked jurisdiction because the child was subject to a pending youth court action
- 93-15-105(1) – The chancery court has original exclusive jurisdiction over all termination of parental rights proceedings except that a county court, when sitting as a youth court with jurisdiction of a child in an abuse or neglect proceeding, has original exclusive jurisdiction to hear a petition for termination of parental rights against a parent of that child.
- Chancery court has original exclusive jurisdiction for all TPRs except a special exception for county court when sitting as a youth court with jurisdiction of an abused or neglected child
- Jefferson Davis County does NOT have a county court sitting as a youth court



# Boutwell vs. Fairchild

## ■ HOLDING

- Boutwell argues child was not eligible for adoption because youth court had entered a Permanency Order granting Boutwell physical and legal custody and further ordered that termination of parental rights would NOT be in the best interest of the child.
- Court found that chancery court assumed “original and exclusive jurisdiction” over the termination
- Even if Boutwell’s contention had merit, she waived it on appeal
- Permanency Order was not made part of the record, only the Disposition Order
- Acknowledged that GAL read one sentence from the Disposition Order at the adoption trial that said “this Court finds that MDCPS has documented compelling and extraordinary reasons why termination would not be in the best interest...”
- Counsel did not have the order admitted into evidence so appellate court cannot determine the complete content of the order



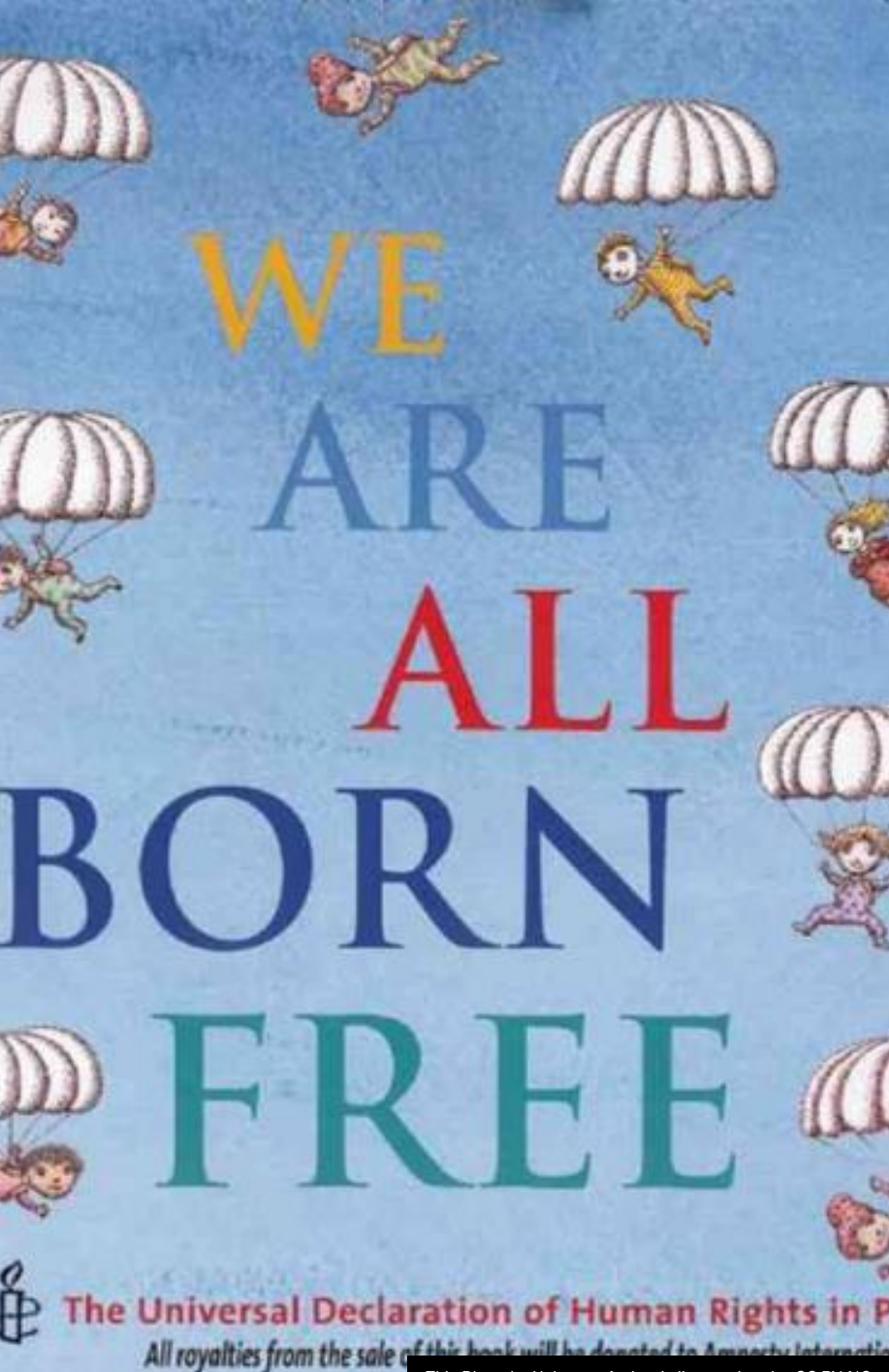


# Boutwell vs. Fairchild

## ■ HOLDING

- Boutwell argues chancellor erred when it substantially relied on hearsay testimony in the GAL's report
- Rejected as Boutwell lacks standing to appeal the chancery court's TPR decision
- Even if she had standing, there is no indication in the record that Boutwell made any hearsay objection (or any objection at all) to the testimony or evidence relied upon by the chancery court
- Issue is waived on appeal
- Even if Boutwell's contention had merit, she waived it on appeal
- Even if Boutwell's hearsay objection had been preserved, we reject it on the merits

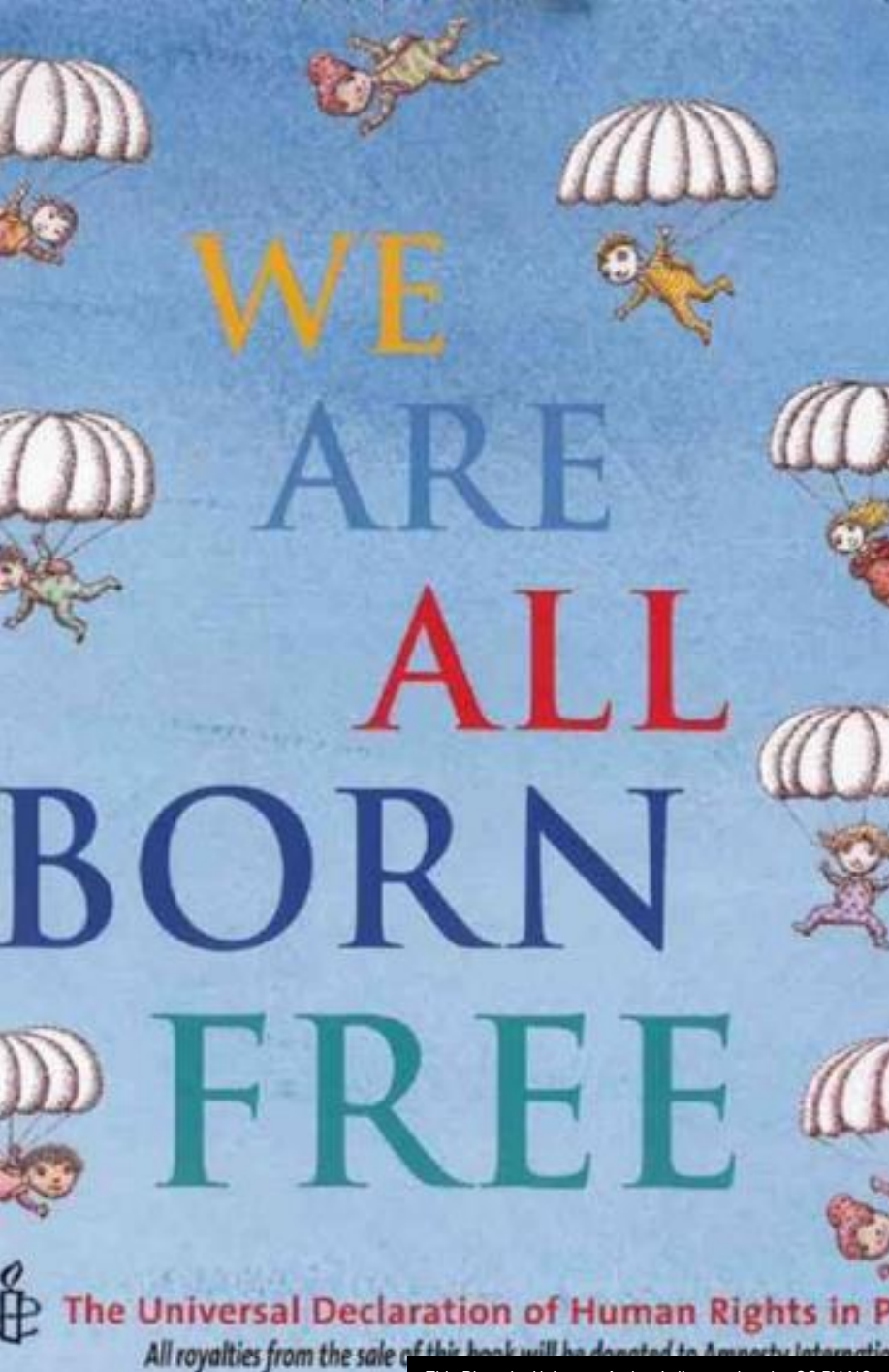




# Jane Doe v. Adams Cty.

## ■ FACTS

- 2019 Jane arrested in Natchez for possession and sale of controlled substance
- She was pregnant and homeless
- Condition of her bond, she was placed at Born Free
- July 16, 2019, gave birth to Karen at UMMC and returned to Born Free with the child
- August 19, 2019, released from Born Free for program violations and transported back to Adams County, CPS took child
- December 10, 2019, child adjudicated neglected. Service agreement with mom
- December 10, 2020, Permanency Order wherein plan changed from reunification to adoption
- October 4, 2021, TPR Petition filed, GAL appointed, trial set for December 3, 2021.
- November 30, 2021, Jane filed a Motion to Transfer for Insufficient Jurisdiction/Motion for Recusal
- Jane's Motion was denied and her rights terminated



# Jane Doe v. Adams Cty.

## ■ VENUE

- 43-21-155 sets forth venue for youth court proceedings
  - If a child is alleged to be an abused or neglected child, the proceedings shall be commenced **in the county where the child's custodian resides OR where the child is present when the report is made to the intake unit**. AFTER adjudication the youth court may transfer the case at any stage of the proceeding for disposition to the county where the child resides to a county where a youth court has previously acquired jurisdiction if that is in the best interest of the child.
- Residence is synonymous with domicile
- Elements of domicile
  - Actual residence voluntarily established in said county
  - Bona fide intention of remaining there, if not permanently, at least indefinitely
- Jane argued she did not reside in Adams County and was in a court-ordered rehab in Hinds County when child was born

# Jane Doe v. Adams Cty.

## ■ WHERE DOES JANE LIVE?

- At the time of her arrest, Jane was in Adams County and homeless
- Shew as placed in Hinds County as a condition of her bond
- The prosecutor noted that Jane's options were Adams County jail or Born Free in Hinds County
- She did not voluntarily establish a residence, she chose treatment over jail
- When child was born on birth certificate it listed Janet's county of residence as Adams County
- Since being discharged, she had continued to live in Adams County
- She entered a drug program in Adams County
- She rented an apartment in Adams County
- Jane argues she intended to remain in Hinds County
- "The intent necessary is the intent that an established residence shall be reasonably permanent. The intent must be to make a home at the moment and not in the future"
- Nothing in the record indicates that Jane took any steps to permanently or indefinitely reside in Hinds County.
- She did not change her driver's license, did not rent an apartment in Hinds County, did not secure employment in Hinds County
- No evidence to address the "When the report is taken" venue issue





# Jane Doe v. Adams Cty.

## ■ RECUSAL

- A presumption of impartiality exists that a judge, sworn to administer impartial justice, I qualified and unbiased.
- Court will look to the whole trial and pass upon questions on appeal in the light of the completed trial. Every act and movement had during the entire trial will be considered, and if we are unable to find that rulings have been prejudicial to the defendant, we will not reverse.
- Jane argued that the youth court judge should recuse from the TPR because he had been the presiding judge in the action and had already concluded that termination was proper
- Youth court judge explained “I can see where Jane’s notion is one where you have been dealing with the same judge for some period of time on the permanency hearings on that nature, and it may feel like in some way this court is bias against you. If this court was bias we have done this a year ago. We have been working with you for many years...been more than fair throughout
- No recusal

# MS Medical Cannabis Act

## YOUTH COURT

### ■ Section 43-21-301, Mississippi Code of 1972

- *A finding of probable cause under this subsection (3)(a) shall not be based solely upon a positive drug test of a newborn or parent for marijuana or solely upon the status of a parent as a cardholder under the Mississippi Medical Cannabis Act;*

### ■ Section 43-21-303, Mississippi Code of 1972

- *probable cause shall not be based solely upon a positive drug test of a newborn or parent for marijuana or solely upon the status of a parent as a cardholder under the Mississippi Medical Cannabis Act, but a finding of probable cause may be based upon an evidence-based finding of harm to the child or a parent's inability to provide for the care and supervision of the child due to the parent's use of marijuana.*

# MS Medical Cannabis Act CHANCERY COURT

- SECTION 8. Discrimination prohibited. (1) A person shall not be denied custody of or visitation rights or parenting time with a minor solely for the person's status as a cardholder.





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Fall 2023

Parent Defender  
Certification Training



Friday,  
September 22, 2023

11:00am-12:30pm

Families and  
Children Case Law

Chad King  
Matthew Thompson

