



# USING CASE LAW TO SUPPORT YOUR ARGUMENTS AT TRIAL

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# PROBLEMS WE DEAL WITH IN JUVENILE COURT



- Overly casual atmosphere
- The semi-circle of justice
- Rules of evidence not enforced
- Evidentiary burdens not enforced
- Burden shifting
- Best interest of the child override

# HOW USING CASE LAW CAN HELP

- Reminder that we are lawyers
- Reminder that THIS IS COURT
- Reminder that there are laws
- Shows that you are prepared
- Implicit threat of appeal



# TIPS FOR FINDING USEFUL CASE LAW

- Set alerts on Lexis or Westlaw
  - Dependency
  - Termination of parental rights
  - Guardianship
  - Legitimation
  - 15-11-
  - 19-7-
  - 19-8-
- Read case law when you're not on a deadline
- Shepardize every useful case
- Search outside of Title 15
- Talk do other parent attorneys



# YES, YOU CAN APPEAL A PPH ORDER

- **In the Interest of J.F., 310 Ga. App. 807 (2011)**

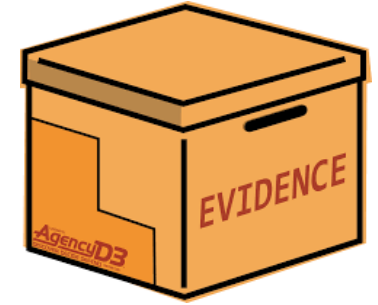
- Child tested positive for chlamydia
- Suspected perpetrator arrested, later deported
- Parents cooperative with investigation
- Court dismissed deprivation complaint

- **In the Interest of J.J., 317 Ga. App. 462 (2012)**

- Children removed for inadequate supervision and educational neglect
- No evidence of inadequate supervision
- DFCS testified mother had since enrolled children in school
- Court dismissed deprivation complaint



# EVIDENCE – IT’S ACTUALLY REQUIRED



- **In the Interest of C.H., 343 Ga. App. 1 (2017)**

- ...the juvenile court participated in an extended “discussion” between counsel for DFCS, the GAL, and the parents.
- During this discussion, no witnesses were sworn, and the juvenile court did not admit any evidence.
- Counsel for DFCS reported that she believed the children “are in imminent danger” due to the parents’ ongoing substance abuse issues...
- COA: The Juvenile Code contemplates that witnesses must be sworn and subject to cross-examination, hearsay will not be allowed (unless under a statutory exception), parties have the right to confront witnesses, and the rules of evidence regarding introduction of exhibits should be followed. Like the right to counsel, these rights are not optional.

# CASE MANAGER HEARSAY



- **In the Interest of A.A., 252 Ga. App. 167 (2001)**
  - At TPR, DFCS's principal witness was a CM assigned to case 1 week prior
  - Previous CM of 22 months had been terminated
  - New CM gave summary testimony of prior CM's files
  - Absent inadmissible summary, evidence was insufficient
  - TPR reversed
- **In the Interest of M.D.L., 285 Ga. App. 357 (2007)**
  - Father did not object at trial to new case manager's testimony
  - Father argued on appeal that new case manager's testimony at TPR hearing was all hearsay
  - TPR affirmed

# THE PETITION MUST ALLEGE DEPENDENCY



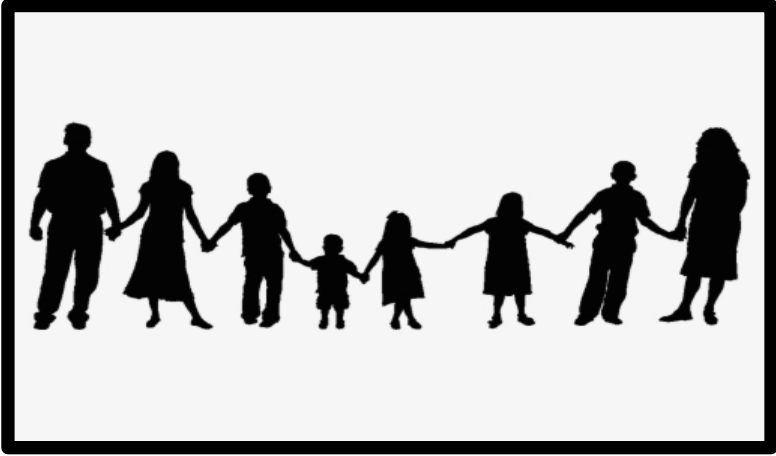
- **In the Interest of C.L.C., 299 Ga. App. 729 (2009)**
  - The juvenile court has exclusive jurisdiction over a child alleged to be deprived, but if the petition fails to make valid allegations of deprivation as defined by O.C.G.A. § 15-11-2(8), the matter is not a deprivation proceeding within the jurisdiction of the juvenile court.



# BABIES BORN TO TEENS IN FOSTER CARE ARE NOT AUTOMATICALLY DEPENDENT

- **DFCS Policy 10.21** - When a youth in foster care has a child, the child should remain in the custody of the youth unless it is determined that the parenting youth has abused or neglected the child and the child is unsafe in the custody of the parenting youth.
- **In the Interest of S.D., 316 Ga. App. 86 (2012)**
  - No evidence of abuse, neglect, or parenting inability
  - Dependency reversed
- **In the Interest of L.K., 322 Ga. App. 163 (2013)**
  - No evidence of abuse, neglect, or parenting inability
  - Dependency reversed





A BABY IS NOT DEPENDENT  
BECAUSE HIS SIBLINGS ARE  
OR WERE IN FOSTER CARE

- **In the Interest of R.S.T., 323 Ga. App. 860 (2013)**
  - Newborn taken into custody because the mother's seven other children were previously adjudicated deprived
  - No concerns reported by hospital
  - Mother had adequate housing with the father and paternal grandmother
  - Court relied on order adjudicating a sibling deprived in the past
  - Order reversed and remanded

# EVIDENCE OF PRESENT DEPENDENCY IS REQUIRED



- **In the Interest of K.D., 344 Ga. App. 423 (2018)**
  - Father pulled gun on mother outside home while children were inside
  - Dependency reversed
- **In the Interest of M.S., 352 Ga. App. 249 (2019)**
  - Dependency found based on mother’s “extensive history” with DFCS
  - Concerns about dirty home in past
  - Controverted evidence of drug use
  - History of domestic violence
  - Dependency reversed

- **In the Interest of V.G., 352 Ga. App. 404 (2019)**

- Mother contacted community agency for help with housing
- V.G. healthy, appropriately dressed, bonded to mother
- Mother had SSI income and food stamps
- Mother self-reported diagnosis of “schizophrenic bipolar”
- At time of hearing, mother’s sister willing to take in mother and child
- Dependency reversed

- **In the Interest of A.M.B., 361 Ga. App. 551 (2021)**

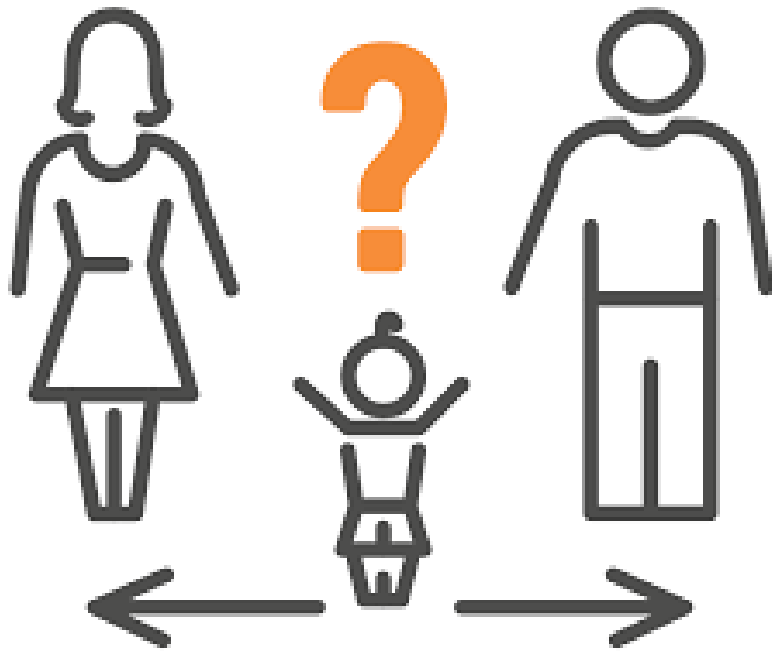
- Mother had history of housing instability
- Psychological evaluation of child raised no concerns
- At time of hearing, mother living rent-free with another family “at will”
- “..findings by the juvenile court merely establish a speculative possibility of future dependency.”
- Dependency reversed

# EVIDENCE MUST SHOW A NEXUS BETWEEN MENTAL ILLNESS AND PARENTING ABILITY



- **In the Interest of C.D.E., 248 Ga. App. 756 (2001)**
  - Psychological evaluation of father offered no conclusions regarding his parenting ability, but still recommended that he not get his children back
  - Psychologist did not testify
- **In the Interest of A.W., 249 Ga. App. 278 (2001)**
  - DFCS presented no evidence to refute that the mother's evidence that she no longer needed medication to manage her bipolar disorder
- **In the Interest of T.P., 270 Ga. App. 700 (2004)**
  - Doctor's report is not sufficient evidence of diagnosis
  - Diagnosing doctor must testify
- **In the Interest of J.C., 334 Ga. App. 526 (2015)**
  - Psychologist did not establish how his diagnostic impressions related to deprivation
  - Psychologist did not discuss how his impressions were relevant to mother's ability to parent her child
  - No link established between mother's significant issues and her ability to provide adequately for the child
- **SIDE NOTE:** Research the state's experts at [sos.ga.gov](https://sos.ga.gov) → **licensing** → **licensee search**.

# TEMPORARY GUARDIANSHIPS ARE MEANT TO BE TEMPORARY



- **Boddie v. Daniels, 288 Ga. 143 (2010)**
  - These cases are custody disputes between a parent and a non-parent
  - It is unconstitutional to deprive a parent of custody absent clear and convincing evidence that the child will suffer physical or significant long-term emotional harm if custody were returned to the parent
- Note that O.C.G.A. § 15-11-14 gives the juvenile court options if it does not terminate the guardianship

# PERMANENT GUARDIANSHIPS REQUIRE DUE PROCESS



- **In the Interest of J.C., 350 Ga. App. 34 (2019)**
  - Dependent children were placed with relatives out-of-state
  - At a status review, court *sua sponte* gave relatives permanent guardianship
  - Mother did not consent
  - COA: Notice and hearing requirements mandatory

# PERMANENT GUARDIANSHIP DOES NOT PRECLUDE ADOPTION

- **In the Interest of K.G.V., 358 Ga. App. 61 (2020)**
  - Grandmother with permanent guardianship petitioned for adoption
  - Trial court dismissed petition
  - COA: Nothing in the Adoption Code prohibits a permanent guardian from petitioning for adoption.





# ABANDONMENT IS NOT A MAGIC WORD

- **In the Interest of H.A.S., 358 Ga. App. 54 (2020)**

- Child found dependent when father incarcerated
- Father worked his case plan while in prison and wrote to child
- 9 months after child entered foster care, DFCS filed for TPR
- TPR granted based on abandonment
- COA found no conduct by father showing intent to forgo parental duties or relinquish parental claims
- Cited **In the Interest of C.S., 354 Ga. App. 137 (2020)** – “... to constitute abandonment, the conduct must actually show an intent to abandon in light of the rest of the record.”
- TPR vacated and remanded with direction





# PARENTS HAVE THE RIGHT TO MAKE AN ADOPTION PLAN FOR THEIR CHILD

- **Skipper v. Smith, 239 Ga. 854 (1977)**

- Mother of child who had been found deprived surrendered parental rights to child's maternal grandparents, who filed petition for adoption
- Juvenile court ruled surrender was without legal efficacy and proceeded to TPR
- SCOG: DFCS's temporary legal custody of child did not restrain mother from consenting to adoption of child
- SCOG: It is the duty of the Superior Court to determine whether adoption is in the best interest of the child

- **Snyder v. Carter, 276 Ga. App. 426 (2005)**

- Juvenile Court's jurisdiction over deprivation matter does not divest superior court of exclusive jurisdiction over adoption
- SIDE NOTE: DFCS does not have statutory right to intervene in the adoption.
- SIDE NOTE: Somebody please test O.C.G.A. § 15-11-265.

**GO!**  
**FIGHT!**  
**WIN!**

