

Beyond Adjudication- What Happens Next?

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1

Post Adjudication

- 90 day Home Placement
- Motion for Reconsideration/New Trial
- Appeal
- Motion Practice
- Permanency Hearings
- Permanency Review Hearings
- Termination of Parental Rights



2

90 Day Home Placement

- Working with CPS and the parents
- Drug Tests
- Walkthrough of home
- Resources to the parent
- Achievement plan



3

Motion for Reconsideration/New Trial

- Rule 59 (Alter or Amend Judgment)
 - 10 days!
 - in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of Mississippi. On a motion for a new trial in an action without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.
- Rule 60 (Relief from Judgment or Order)
 - Reasonable time, reasons 1-3 not more than six months
 1. Fraud, misrepresentation, or other misconduct of an adverse party;
 2. Accident or mistake;
 3. Newly discovered evidence which by due diligence could not have been discovered to move for a new trial under R59(b);
 4. The Judgment is void;
 5. The judgment has been satisfied, released or discharged, or a prior judgment which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
 6. Any other reason justifying relief from the judgment.

4

Appeal

- Appeals from Youth Court pursuant to MRAP
- Make your record!
- Jurisdiction
 - Jurisdiction is a question of law" *E.J.M. v. A.J.M.*, 846 So.2d 289, 292 (¶ 7) (Miss.Cl.App.2003) (citation omitted). "This Court reviews questions of law de novo." *Id.* (citations omitted).
- Sufficiency of Evidence
 - The youth court judge is the trier of fact. *In re D.K.L.*, 652 So.2d 184, 188 (Miss.1995) (citations omitted). This Court's standard of review of a youth court cases is limited. *In re A.J.M.*, 511 So.2d 576, 579 (¶ 10) (Miss.Cl.App.2005). "If the evidence ... considered is opposed to the finding of the youth court with such force that reasonable men could not have found as the youth court did by a preponderance of the evidence, this Court must reverse." *Id.* (citing *Collins v. Lowndes County Pub. Welfare Dep't*, 555 So.2d 71, 72 (Miss.1989)). "However, if there is substantial evidence in the record supporting the adjudication of the youth court, evidence of such quality and weight that, even under the 'beyond a reasonable doubt' standard, the youth court might reasonably have ruled as it did, we must affirm." *Id.* (citing *In re M.R.L.*, 488 So.2d 788, 790-91 (Miss.1986)).

5

Motion Practice

- Motion for Reunification
- Motion for Return of Child(ren)
- Motion for Visitation

6

Permanency Hearings

- Time of Hearing
 - When reasonable efforts to maintain child within the home are NOT required
 - Within thirty (30) days of such finding (Disposition)
 - When reasonable efforts to maintain child within the home ARE required
 - For any child who has been placed with CPS or any other person/agency other than the child's parent, guardian or custodian, within six (6) months after the earlier of:
 - An adjudication that the child has been adjudicated or neglected; OR
 - The date of the child's removal from the allegedly abusive or neglectful parent. The court MAY extend the period of time to conduct the hearing for an additional six (6) months UPON finding extraordinary and compelling reasons for extending the time period in the best interest of the child.
- Notice
 - Summons
 - Child, persons who have custody or control of the child, the parents/guardian, foster parents, child agency, any other person whom the court deems necessary. The clerk does NOT need to issue summons to any person who has already received sufficient notice of the time, date, place and PURPOSE of the permanency hearing.
 - Served no less than three (3) days before the hearing.

7

Permanency Hearings

- Hearing
 - Court SHALL require a written report and may require information or statements from CPS, parent, guardian for an evaluation of the family's progress and recommendations for modifying the permanency plan and concurrent plan in the best interest of the child.
 - SHALL determine whether the child should be:
 - Returned to the parent(s);
 - Placed with suitable relatives;
 - Referred for TPR;
 - Establish durable legal custody; or
 - Continue in foster care on a permanent or long-term basis

8

Permanency Hearings

- At a permanency hearing, the Court may find that TPR is NOT in the child's best interest if:
 - The child is being cared for by a relative; AND/OR
 - CPS has documented compelling reasons why TPR would not be in the child's best interest.
- Otherwise, CPS may forward a TPR package to the AG's office if:
 - The child is in the legal custody of CPS; AND
 - The Court ordered permanency plan or concurrent plan is adoption

9

Permanency Review Hearings

- At least annually after each permanency hearing for as long as the child remains in CPS custody.
- Includes cases where rights have been terminated until the child is adopted or an appropriate permanency plan is achieved.
- Summons no less than three (3) days prior to hearing, except for any personal who has already been served with process or who has already appeared in court proceedings in this cause; and who has received sufficient notice of the time, date, place and purpose of the permanency review hearing.

10

TPR

The burden of proof in order to establish a case for termination of parental rights is clear and convincing evidence. See Miss.Code Ann. § 93-15-109 (Supp 2003). However, on appeal, this Court's standard of review of a youth court judgment is limited; we may reverse only if reasonable men could not have found as the youth court did beyond a reasonable doubt. *In re S.B.*, 566 So.2d 1276, 1278 (Miss.1990) (quoting *In re M.R.L.*, 488 So.2d 788, 790-91 (Miss.1986)).

11

TPR

- Miss. Code Ann. 93-15
- Voluntary Release (93-15-111)
 - Signed under oath and dated at least seventy-two (72) hours after birth;
 - Parent's full name, relationship of the parent to the child, parent's address;
 - Child's full name, date of birth, time of birth, if known, place of birth from birth certificate;
 - Governmental agency or home to which the child has been surrendered, if any;
 - Parent's consent to adoption of the child and waiver of service to future adoption;
 - Acknowledges that TPR and adoption of the child "may" significantly affect, or even eliminate, the parent's right to inherit from the child;
 - Release entered into knowingly, intelligently and voluntarily; AND
 - Acknowledges that the parent is entitled to consult an attorney regarding parental rights;
- Court has to accept

12

TPR

93-15-119

(a)(i) That the parent has engaged in conduct constituting abandonment or desertion of the child, as defined in Section 93-15-103, or is mentally, morally, or otherwise unfit to raise the child, which shall be established by showing past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare; and

(ii) That termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome; or

(b) That a parent has committed against the other parent a sexual act that is unlawful under Section 97-3-65 or 97-3-95, or under a similar law of another state, territory, possession or Native American tribe where the offense occurred; and that the child was conceived as a result of the unlawful sexual act. A criminal conviction of the unlawful sexual act is not required to terminate the offending parent's parental rights under this paragraph (b).

(2) An allegation of desertion may be fully rebutted by proof that the parent, in accordance with the parent's means and knowledge of the mother's pregnancy or the child's birth, either:

(a) Provided financial support, including, but not limited to, the payment of consistent support to the mother during her pregnancy, contributions to the payment of the medical expenses of the pregnancy and birth, and contributions of consistent support of the child after birth; frequently and consistently visited the child after birth; and is now willing and able to assume legal and physical care of the child; or

(b) Was willing to provide financial support and to make visitations with the child, but reasonable attempts to do so were thwarted by the mother or her agents, and that the parent is now willing and able to assume legal and physical care of the child.

16

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TPR

93-15-121

Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:

(a) The parent has been medically diagnosed by a qualified mental health professional with a severe mental illness or deficiency that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, makes the parent unable or unwilling to provide an adequate permanent home for the child;

(b) The parent has been medically diagnosed by a qualified health professional with an extreme physical incapacitation that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, prevents the parent, despite reasonable accommodations, from providing minimally acceptable care for the child;

(c) The parent is suffering from habitual alcoholism or other drug addiction and has failed to successfully complete alcohol or drug treatment;

(d) The parent is unwilling to provide reasonably necessary food, clothing, shelter, or medical care for the child; reasonably necessary medical care does not include recommended or optional vaccinations against childhood or any other disease;

(e) The parent has failed to exercise reasonable visitation or communication with the child;

(f) The parent's abusive or neglectful conduct has caused, at least in part, an extreme and deep-seated antipathy by the child toward the parent, or some other substantial erosion of the relationship between the parent and the child;

(g) The parent has committed an abusive act for which reasonable efforts to maintain the children in the home would not be required under Section 43-21-603, or a series of physically, mentally, or emotionally abusive incidents, against the child or another child, whether related by consanguinity or affinity or not, making future contacts between the parents and child undesirable; or

17

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TPR

(h)(i) The parent has been convicted of any of the following offenses against any child:

1. Rape of a child under Section 97-3-65;
2. Sexual battery of a child under Section 97-3-95(c);
3. Touching a child for lustful purposes under Section 97-5-23;
4. Exploitation of a child under Sections 97-5-31 through 97-5-37;
5. Felonious abuse or battery of a child under Section 97-5-39(2);
6. Carnal knowledge of a step or adopted child or a child of a cohabitating partner under Section 97-5-41; or
7. Human trafficking of a child under Section 97-3-54.1; or

(ii) The parent has been convicted of:

1. Murder or voluntary manslaughter of another child of the parent;
2. Aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child or another child of the parent; or
3. A felony assault that results in the serious bodily injury to the child or another child of the parent.

18

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TPR-POST-JUDGMENT

93-15-131 Post-Judgment Proceedings

(1) If the court does not terminate the parent's parental rights, the custody and care of the child shall continue with the person, agency, or institution that is holding custody of the child at the time the judgment is rendered, or the court may grant custody to the parent whose rights were sought to be terminated if that is in the best interest of the child. If the Department of Child Protection Services has legal custody of the child, the court must conduct a permanency hearing and permanency review hearings as required under the Mississippi Youth Court Law and the Mississippi Uniform Rules of Youth Court Practice.

(2) If the court terminates the parent's parental rights, the court shall place the child in the custody and care of the other parent or some suitable person, agency, or institution until an adoption or some other permanent living arrangement is achieved. No notice of adoption proceedings or any other subsequent proceedings pertaining to the custody and care of the child shall be given to a parent whose rights have been terminated.

19

TPR

93-15-123

Court DISCRETION

Notwithstanding any other provision of this chapter, the court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter if the child's safety and welfare will not be compromised or endangered and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:

- (a) The Department of Child Protection Services has documented compelling and extraordinary reasons why terminating the parent's parental rights would not be in the child's best interests;
- (b) There is a likelihood that continuing reasonable efforts for achieving reunification will be successful;
- (c) Terminating the parent's parental rights would inappropriately relieve the parent of the parent's financial or support obligations to the child; or
- (d) The child is being cared for by the other parent, or a relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome.

20

King Case (no relation)

249 So.3d 377

- 1. NOTICE
- 2. SUFFICIENCY OF THE PETITION
- 3. SUFFICIENCY OF THE EVIDENCE OF ADJUDICATION

21

Notice

43-21-557 (1)-(2)

(1) At the beginning of each adjudicatory hearing, the youth court **SHALL**:

"When used in a statute, the word 'shall' is mandatory and the word 'may' is discretionary." *D.D.B. v. Jackson Cty. Youth Court*, 816 So.2d 380, 382 (Miss. 2002).

See *In re J.P.*, 151 So.3d 204, 210 (Miss. 2014) (quoting *Hopkins*, 227 So.2d at 284) ("The youth court is without jurisdiction unless the parents or guardian if available, be summoned as required by statute.") (emphasis in original) (reversing on grounds other than lack of notice to parent). In *In re N.W.*, this Court reversed the adjudication of a minor where the father lacked notice of the adjudication hearing. *In re N.W.*, 978 So.2d 649, 654 (Miss. 2008). There, the mother was present at the adjudication hearing, but this Court—Section 43-21-557—recognized reversible error where there was no evidence that the father had been noticed of the hearing. *Id.*

22

Notice

See *In Interest of M.M.*, 220 So.3d 285, 288 (Miss. Cl. App. 2017) ("Even if the mother had actual notice of the hearing via her conversations with the MDHS employee, **actual notice is insufficient to cure a jurisdictional defect in service of process.**") (emphasis added). The *In Interest of M.M.* court relied on both *Sharp* and *In re J.P.* as well as Section 43-21-507 to reverse and render the adjudications. *Id.*

Beyond the issue of notice, this Court has reversed an adjudication of neglect where the youth court **failed to instruct the child's mother and stepfather of their right to counsel.** *In Interest of I.G.*, 467 So.2d 920, 922 (Miss. 1985).

23

Petition

While a neglect petition perhaps should not be held to the same standard as a criminal indictment, the petition—given Sections 43-21-455 and 43-21-105—has to be legally sufficient to provide the minor and her parents notice of "the particular circumstances which will be inquired into at the adjudicatory proceedings." *In Interest of Dennis*, 291 So.2d at 733.

In total, the facts in the petition read: "Prevention case was open to monitor the safety issues in the home. During a visit to the home the mother told the DHS Worker that she was tired and frustrated and would not do any more drug tests."

The Kings were left to guess the connection between Elizabeth's frustration and decision not to submit to further testing and the neglect of E.K. There were no facts to "show" that E.K. was "a neglected child." Miss. Code Ann. § 43-21-455(1)(c) (Rev. 2015).

In the absence of a causal connection between the facts alleged in the petition and the petition's charge of neglect, the petition was legally insufficient to provide notice to E.K., Elizabeth or Timothy of "the particular circumstances which w[ere to] be inquired into at the adjudicatory proceedings." *In Interest of Dennis*, 291 So.2d at 733.

24

D.R. v. Miss. Dept of CPS

We concluded that to allow a party to appeal from a youth court's adjudication order prior to the required disposition hearing (and subsequent disposition order) would "effectively deny that court the power to conduct the required disposition hearing and impose [the] appropriate [disposition] until the appeal was decided." *Id. D.R. v. Miss. Dep't of Child Prot. Servs. (In re Interest of C.R.)* (Miss. App. 2019).

25

R.B. vs. Winston County

TPR
Permanency Hearing

26
