

April 2008 Case Summaries

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Cite	In the Interest of T. H. A07A2215, Adams, Judge. 08 FCDR 1130 (04/11/08),	TPR AFFIRMED
Issue	Can a TPR be sustained where the Juvenile Court made findings the mother had demonstrated her inability to care for her children even with intensive support services from DFACS, that she did not have a parental bond even though she visited, she had not obtained housing, employment or paid child support, she had failed to comply with the reunification Caseplan and she had regressed in her reunification efforts?	YES
Cite	Simmons v. Williams , A07A2218, Blackburn, Presiding Judge. 08 FCDR 1256, (04/11/08) GAL as Witness?	
Issue	When the Superior Court appoints a guardian ad litem (GAL) to represent the best interests of a child in a custody dispute, is the GAL subject to cross examination during the trial? Can the Superior Court impose restrictions or prohibitions on any party from having unrelated overnight guests of the opposite sex during periods of physical custody or visitation?	YES YES
Cite	In the Interest of M. L. A08A0880, Blackburn, Presiding Judge. 08 FCDR 1133, (04/11/08) TPR Affirmed	
Issue	Can a TPR be sustained where the Juvenile Court made findings that during the 24 plus months the children were in foster care, the mother failed to comply with a reunification caseplan, bond with the children, obtain stable housing or employment, pay child support, and visit the children?	YES
Cite	In the Interest of K. A. C. , A07A1889, Phipps, Judge., 08 FCDR 1023 (04/04/08) TPR Affirmed	
Issue	Can a TPR be sustained where the Juvenile Court made findings the mother is chronically depressed & has low overall cognitive abilities; where the mother has failed to protect the child from sexual abuse, failed to attend to the child's educational needs, failed to maintain adequate & stable housing & employment; failed to maintain regular contact or a parental bond; and where the child desires to be adopted & the foster parents are ready to adopt?	YES
Cite	In the Interest of A. A. , A08A0087, Mikell, Judge. 08 FCDR 1368 (04/25/08) TPR Affirmed	
Issue	Is a denial of relative placement resources following TPR supported where the trial court made findings the relative home evaluations were conducted, considered and rejected by DFCS; the reasons for rejection were reasonable; and testimony was presented that changing the children's placement would cause emotional harm? In the absence of a transcript, is the trial court's findings presumed to be supported by the evidence?	YES YES

Two Step TPR Analysis:

Before terminating parental rights, the juvenile court must conduct a two-step analysis:

The first step requires a finding of parental misconduct or inability, which requires clear and convincing evidence that:

- (1) the child is deprived;
- (2) lack of proper parental care or control is the cause of the deprivation;
- (3) such cause of deprivation is likely to continue; and
- (4) the continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

If these four factors are satisfied, the court must then determine whether termination of parental rights is in the child's bests interest, considering physical, mental, emotional, and moral conditions and needs, including the need for a secure and stable home.

In the Interest of A. H. , 278 Ga. App. 192 (628 SE2d 626) (2006) & OCGA § 15-11-94

Cite	In the Interest of T. H. A07A2215, Adams, Judge. 08 FCDR 1130 (04/11/08), TPR AFFIRMED
Issue	Can a TPR be sustained where the Juvenile Court made findings the mother had demonstrated her inability to care for her children even with intensive support services from DFACS, that she did not have a parental bond even though she visited, she had not obtained housing, employment or paid child support, she had failed to comply with the reunification Caseplan and she had regressed in her reunification efforts? YES
Facts	<p>Two children were removed from the mother & placed in foster care when the oldest child was severely injured (fx skull, fx eye & lacerated liver) by the mother's boyfriend. The mother complied with her caseplan & the children were returned to her custody under terms of <u>intensive services & supervision by DFCS</u>; & the children were not to have contact with the boyfriend. Within 4 months, the children were again removed from the mother & found to be deprived because the mother violated the terms under which the children were returned to her: the mother allowed contact with the boyfriend, she failed to maintain contact with DFCS & service providers, her whereabouts were sometimes unknown & liquor bottles were observed laying "all in the house with various men in & out of the house with her & the children there." The mother subsequently gave birth to a third child who was immediately removed. A TPR was filed as to all three children after the mother was unable to complete the caseplan & she was regressing in her rehabilitation efforts. Testimony at the TPR hearing included the case manager who stated the mother had failed to develop adequate parenting skills even while the children were placed with her despite the intensive services, no parental bond even though the mother visited, she had not obtained housing, employment or paid child support; the mother was in arrears in child support payments & she would "most likely" be incarcerated soon for her failure to pay; a service provider who had worked with the mother for 2 years stated the mother had regressed, she could "not exercise appropriate parental judgment to protect her children or provide for them;" the foster parent confirmed the mother called the children frequently, visited & the older child had a strong attachment. The mother testified she was only weeks away from a GED, then she would take a course for a CNA degree & she needed more time to get a job (she had not been employed in over a year).</p> <p>TPR was granted & the mother appeals, challenging sufficiency of the evidence & whether TPR is in the children's best interest.</p>
Decision & Reasoning	<p>TPR Affirmed -</p> <ol style="list-style-type: none"> 1. <i>Parental Misconduct or Inability.</i> <ol style="list-style-type: none"> a) <i>Deprivation.</i> The mother is bound by prior unappealed deprivation orders; b) <i>Lack of Proper Parental Care or Control as a Cause of Deprivation.</i> Casemanager & service provider stated the mother failed to demonstrate appropriate parenting after the children were returned to her & during the children's second period in foster care; also the mother is again bound by the prior unappealed deprivation orders; c) <i>Deprivation Likely to Continue.</i> Established by clear & convincing evidence of <u>present</u> unfitness AND evidence from the mother's <u>past conduct</u>; two children had been in foster care most of their lives & youngest child had been in foster care since birth; child support arrears; failure to comply with reunification Caseplan; d) <i>Continued Deprivation Likely to Cause Serious Harm.</i> Established by mother's failure to obtain housing, employment or ability to support her children, her request for additional time & lack of parenting skills to protect or provide for the children, mother had "regressed" since beginning of case, children's need for permanence & stability; 2. <i>Best Interest.</i> Same evidence as above may be used in considering the children's physical, mental, emotional & moral condition; and their need for a secure and stable home.

Practice Points	<p>When children are returned home, aftercare monitoring & services can provide an effective safety measure for the children & promote stability. The Court may specify the length of time the aftercare services should be provided, the number of contacts to the family when the children are returned & further in court review of the status of the family. The Court may not direct the <u>type</u> of aftercare services to be provided as that function lies with DFCS. The Court may convert a deprivation with child removal into a protective order with the child being returned home. If the Court is returning the children to the home based upon or contingent upon the services to be provided to the family or the quality/quantity of contacts with the family, then make sure these conditions are on the record & in the court order. Child & parent attorneys should continue to monitor compliance during “aftercare” to help prevent a subsequent re-entry into foster care.</p> <p>The unappealed deprivation order is almost always used to meet the first & second step in the TPR analysis on appeal. When stipulating to a deprivation petition early in a case, always consider the effect the stipulation might have on a subsequent TPR. Parent attorneys might consider announcing to the Court that the stipulation is being offered for a limited purpose <u>only</u> AND is being made upon the condition that the stipulation & the resulting deprivation order will NOT be used in any subsequent TPR action between the same parties.</p> <p>Child support should be addressed in court, ask for a waiver or abeyance for a period of time to allow the parents an opportunity work on the case plan; not addressing child support in the deprivation hearing just means it will be added into the case plan & any non-payment of child support can & will be used against the parents regardless of whether child support or child support amounts was court ordered. Even if child support is not in court order or case plan, Child Support Services may still have an enforcement case against the parent. Bring to the court’s attention any special circumstances or hardships to justify abeyance in child support or temporary reduction in child support to a minimum amount (\$5 or \$10).</p>
Other Citations	<ul style="list-style-type: none"> • <i>Because the mother did not appeal the juvenile court’s orders finding that the children were deprived, she is bound by that determination.</i> In the Interest of B. L. S. , 239 Ga. App. 771, 774 (521 SE2d 906) (1999); • <i>Moreover, the mother’s failure to appeal the deprivation order renders the juvenile court’s determination on this second factor binding as well.</i> In the Interest of A. B. , 283 Ga. App. 131, 136 (1) (a) (640 SE2d 702) (2006); • <i>although it is well settled that a juvenile court may consider the past conduct of the parent in determining whether the conditions of deprivation are likely to continue, In the Interest of L. G. , 273 Ga. App. 468, 474 (2) (c) (615 SE2d 551) (2005), it is equally true that “evidence of past unfitness, standing alone, is insufficient to terminate the rights of a parent in her natural child; clear and convincing evidence of present unfitness is required.” (Emphasis supplied.) In the Interest of A.M. , 275 Ga. App. 630, 633 (621 SE2d 567) (2005). However, in considering past deprivations compared to present achievements, juvenile courts are entitled to assign “much less weight to such ‘assertions of sudden parental fitness’ when compared to the other evidence.” In the Interest of L. G. , 273 Ga. App. at 474. And “what weight to give recent improvements is a question for the trier of fact. In considering a parent’s claims of recent improvement, the trial court, not the appellate court, determines whether a parent’s conduct warrants hope of rehabilitation.” (Punctuation and footnotes omitted.) In the Interest of A. T. H. , 248 Ga. App. 570, 573 (1) (547 SE2d 299) (2001). In the Interest of D. D. B. , 282 Ga. App. 416, 418-419 (1) (638 SE2d 843) (2006);</i> • <i>Georgia law requires a parent to financially support his or her child while the child is in foster care, even in the absence of a court order and even if unable to earn income.</i> In the Interest of A. R. A. S. , 278 Ga. App. 608, 613 (2) (c) (629 SE2d 822) (2006); • <i>Likewise, the mother’s continued failure to comply with her reunification plan supported the juvenile court’s finding that deprivation was likely to continue.</i> In the Interest of F. C. , 248 Ga. App. 675, 678 (1) (549 SE2d 125) (2001); • <i>[I]t is not automatically true that a finding that deprivation is likely to continue will support a finding that continued deprivation will harm the child.</i> In the Interest of J. T. W. , 270 Ga. App. 26, 37 (606 SE2d 59) (2004) • <i>T]he juvenile court is not obligated to return a child to a parent and wait for the child to actually be harmed before terminating the parent’s rights to the child.</i> In the Interest of B. S. , 274 Ga. App. 647, 651 (3) (618 SE2d 695) (2005). • <i>[I]t is well settled that children need permanence of home and emotional stability or they are likely to suffer serious emotional problems.</i> In the Interest of A. B. , 274 Ga. App. 230, 232 (617 SE2d 189) (2005).

	<ul style="list-style-type: none"> • <i>The same factors that show the existence of parental misconduct or inability may also support the juvenile court's finding that terminating the parent's rights would be in the child's best interest.</i> In the Interest of R. S. , 270 Ga. App. 810, 812 (608 SE2d 286) (2004); • <i>The termination of parental rights is a severe measure. However, a termination hearing seeks above all else the welfare of the child. In determining how the interest of the child is best served, the juvenile court is vested with a broad discretion which will not be controlled in the absence of manifest abuse.</i> In the Interest of M. L. P. , 236 Ga. App. 504, 510 (512 SE2d 652) (1999).
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Cite	Simmons v. Williams , A07A2218, Blackburn, Presiding Judge. 08 FCDR 1256, (04/11/08) GAL as Witness?
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Issue	When the Superior Court appoints a guardian ad litem (GAL) to represent the best interests of a child in a custody dispute, is the GAL subject to cross examination during the trial? YES Can the Superior Court impose restrictions or prohibitions on any party from having unrelated overnight guests of the opposite sex during periods of physical custody or visitation? YES
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Facts	<p>During a custody dispute, the Superior Court appointed a guardian ad litem to represent the interests of the child. The order of appointment stated:</p> <p><i>Should the issue of custody or visitation be tried, the Guardian ad Litem shall be classified as an expert on the family at issue for the limited purpose of presenting to the Court the results of his/her investigation, including a recommendation as to what is in the child[]'s best interest. In order to perform his/her functions, the Guardian ad Litem shall have the full right and authority to completely investigate all aspects of the case and to interview all parties and other persons with an interest in the custody, visitation, maintenance and/or education of the minor child[].</i></p> <p>The Court denied a party's request to call the GAL as a witness & did not allow any cross examination of the GAL regarding the findings of his investigation which were presented to the Court at the close evidence.</p> <p>The party denied cross examination of the GAL appeals. Also failure to include findings of fact in reference to child support award appealed.</p>
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Decision & Reasoning	<p>Case Reversed & Remanded.</p> <ul style="list-style-type: none"> • OCGA § 24-9-64 "[t]he right of a thorough and sifting cross-examination shall belong to every party as to the witnesses called against him." • Cross examination is "a substantial right, the preservation of which is essential to a proper administration of justice, and extends to all matters within the knowledge of the witness, the disclosure of which is material to the controversy." <i>Owens v. Shugart</i> , 61 Ga. App. 177 (1) (6 SE2d 121) (1939); <i>Cornelius v. Macon-Bibb County Hosp. Auth.</i> , 243 Ga. App. 480, 483-485 (1) (a) (533 SE2d 420) (2000); <i>Smith v. Davis</i> , 76 Ga. App. 154, 158 (2) (45 SE2d 237) (1947). • Uniform Superior Court Rules, 24.9 (7), provide that a GAL "shall be subject to examination by the parties and the court." • Uniform Superior Court Rules control in the absence of conflicting substantive law; <i>Coastal Plains Trucking Co. v. Thomas County Fed. Sav. & Loan Assn</i> , 224 Ga. App. 885, 886-887 (482 SE2d 493) (1997); • Denial of cross examination of the GAL resulted in the denial of a substantial right & thus warrants the grant of a rehearing on the issue of custody. • the violation of a Uniform Superior Court Rule can result in a reversal of the trial court's judgment). <i>Landsberg v. Powell</i> , 278 Ga. App. 13, 14-15 (627 SE2d 922) (2006). • It is within the discretion of the trial court, to prohibit any party from having unrelated overnight guests of the opposite sex during periods of physical custody or visitation. • OCGA § 19-6-15 requires child support court orders to specify the amount of child support to be paid, written finding of the gross income of the father & the mother & the presence or absence of special circumstances; failure to include these requisite findings constitutes reversible error.
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Practice Points	Attorneys for children in deprivation cases & in Superior Court should request the Order of Appointment explicitly define the role of the GAL, responsibilities to the Court & the child client and expectations as to confidentiality. There are several models of representation for children & combinations of different model.
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Cite	In the Interest of M. L. A08A0880, Blackburn, Presiding Judge. 08 FCDR 1133, (04/11/08) TPR Affirmed
Issue	Can a TPR be sustained where the Juvenile Court made findings that during the 24 plus months the children were in foster care, the mother failed to comply with a reunification caseplan, bond with the children, obtain stable housing or employment, pay child support, and visit the children? YES
Facts	The mother's nine month old was first to be removed when the mother left the child in a home without power, food, or furniture, while she performed exotic dances over the weekend in Las Vegas, Nevada. The mother's 2 older children were removed 4 months later, when the then homeless mother, left the children unsupervised & one of the children ingested chemicals from a microscope kit. The fourth child born 12 months later was immediately taken into custody at birth based on the mother's continued failure to comply with the caseplan & her living with an abusive boyfriend. The mother consented to the findings of deprivation & extension of DFCS custody. TPR was filed as to all 4 children 28 months after the first child was found deprived. Testimony at the TPR hearing included that the mother failed to comply with the case plan, that she had failed to provide for the care and support of the children, that she had not bonded with the children, that she was living in an abusive environment with her boyfriend and she had not visited the children in three months. TPR was granted. The mother appeals only the first 3 factors of step one of the TPR analysis.
Decision & Reasoning	TPR Affirmed. 1. <i>The children are deprived.</i> Present deprivation of the children established by the mother having no stable housing, employment, means of support for herself or the children; she was living with an abusive boyfriend until days before the TPR when she moved to her parents' home but left her belongings with the boyfriend with the plan to return & marry him; she had not bonded with the children, she had not visited the children in 3 months and that the mother missed scheduled visits with the children because she was with her boyfriend; 2. <i>The children's deprivation results from lack of proper parental care or control.</i> When the children have not been in the custody of the parent, <i>then the court must consider, among other things, whether that parent without justifiable cause has failed significantly for a year or more prior to the filing of the termination petition: (i) To develop and maintain a parental bond with the child in a meaningful, supportive manner; (ii) To provide for the care and support of the child as required by law or judicial decree; and (iii) To comply with a court ordered plan designed to reunite the child with the parent.</i> In addition to the evidence above, the mother missed 5 out of seven panel reviews & she admitted her children were harmed by her lack of contact; 3. <i>The cause of the deprivation is likely to continue.</i> The court may consider past conduct & assign the weight to be given any recent improvements. The mother's recent, temporary move to her parents home & just obtained employment, did not out- weigh the negative past parental behavior.
Other Citations	<i>Such failures to bond with the children, to support the children, or to comply with the case plan justify a finding that lack of proper parental care or control caused the deprivation.</i> In the Interest of R. S. , 287 Ga. App. 228 (651 SE2d 156) (2007); <i>Notably, a juvenile court may consider past conduct of a parent in deciding whether deprivation is likely to continue; the decision as to a child's future must rest on more than positive promises which are contrary to negative past fact. Ultimately, the trial court must determine whether a parent's conduct warrants hope of rehabilitation, not an appellate court;</i> In the Interest of R. N. H., 286 Ga. App. 737, 741 (1) (c) (650 SE2d 397) (2007).

Cite	In the Interest of K. A. C. , A07A1889, Phipps, Judge., 08 FCDR 1023 (04/04/08) TPR Affirmed
Issue	Can a TPR be sustained where the Juvenile Court made findings the mother is chronically depressed & has low overall cognitive abilities; where the mother has failed to protect the child from sexual abuse, failed to attend to the child's educational needs, failed to maintain adequate & stable housing & employment; failed to maintain regular contact or a parental bond; and where the child desires to be adopted & the foster parents are ready to adopt? YES
Facts	After a year of working with the mother & her seven children under a protective order, the children continued to be deprived & they were removed from the mother's custody. The court found the "children's mother had caused their deprivation through educational and supervisory neglect." The mother "failed to

	<p>maintain a stable home, failed to ensure that her children consistently attended school, failed to ensure they were appropriately clothed for school, and failed to address the children's behavioral issues." A psychological evaluation of the mother determined she was suffering with "a chronic level of depression" causing irritability, lack of motivation, failure to follow through with tasks, being overwhelmed & low overall cognitive abilities. KAC & another brother were also found to have been sexually molested by a relative, the mother knew of the sexual abuse & that she continued to allow contact between the abuser & KAC. TPR was granted as to KAC after 2 years of minimal compliance & progress with the caseplan. The mother challenges the sufficiency of the evidence for the TPR.</p>
Decision & Reasoning	<p>TPR Affirmed. <u>Parental Misconduct or Inability.</u></p> <ol style="list-style-type: none"> <i>Deprivation.</i> The mother failed to appeal every juvenile court order adjudicating the child deprived child & she is bound by the juvenile court's findings of deprivation. <i>Lack of Proper Parental Care or Control as a Cause of Deprivation.</i> Established by the mother's ongoing physical, mental, and emotional neglect of KAC, as well as her past physical, mental, or emotional neglect of her other children demonstrated during the time the children were in the mother's custody under a protective order & the children continued to suffer educational & supervisory neglect. The mother's depression & low cognitive ability rendered her incapable of parenting. The mother missed or was late for many of the visits with KAC, the casemanager stated KAC had to be coaxed to interact with his mother leading the casemanager to the conclude there no parental bond with KAC. <i>Deprivation Likely to Continue.</i> Considering the mother's past conduct the court was authorized to find the deprivation was likely to continue despite the mother's testimony that she was ready to parent KAC. The mother had failed to meet the child's educational needs, failed to protect him from sexual abuse, failed to maintain regular contact, failed to maintain adequate & stable housing & employment. Even though the mother claims she was progressing on the reunification caseplan by working two jobs & completing parenting classes, the trial judge has the discretion as to the weight of parental improvements. <i>Continued Deprivation Likely to Cause Serious Harm.</i> Court may consider the above evidence, the adverse effects of long term foster care & the child's need for permanence. The child expressed he wanted to be adopted by the foster parents who were ready to adopt him. <p><u>Best Interest.</u> Evidence of parental misconduct or inability also supports a finding that TPR is in the child's best interest. In addition the child was stable in a foster home where he wished to be adopted & the foster parents were ready to adopt. The child's GAL recommended TPR was in the child's best interest.</p>
Practice Points	<p>Mental impairment alone is not sufficient to terminate, in this case the parent's mental impairment was demonstrated to adversely impact the parent – child relationship. What other treatment or support services should be made available for the impaired parent. Even though impaired, the parent worked & completed a parenting class.</p> <p>The unappealed deprivation order is almost always used to meet the first & second step in the TPR analysis on appeal. When stipulating to a deprivation petition early in a case, always consider the effect the stipulation might have on a subsequent TPR. Parent attorneys might consider announcing to the Court that the stipulation is being offered for a limited purpose <u>only</u> AND is being made upon the condition that the stipulation & the resulting deprivation order will NOT be used in any subsequent TPR action between the same parties.</p> <p>Termination on one child out of a sibling group of seven; will the siblings continue to have contact? Should a child psychologists address the issue for the Court?</p>
Other Citations	<p><i>Unappealed deprivation orders of the juvenile court may be used to establish that a child is deprived.</i> In the Interest of M. S. , 279 Ga. App. 254, 261 (1) (630 SE2d 856) (2006)</p> <p><i>In determining whether a child lacks proper parental care or control, the court may consider, among other things, the parent's ongoing physical, mental, and emotional neglect of the child, as well as the parent's past physical, mental, or emotional neglect of another child.</i> OCGA § 15-11-94 (b) (4) (B) (v).</p> <p><i>A mental disability that renders a parent incapable of caring for the child is a valid legal basis for termination.</i> & <i>Notwithstanding the mother's claims of improvement, the juvenile court determines whether a parent's conduct warrants hope of rehabilitation, not an appellate court.</i> In the Interest of B. J. F. , 276 Ga. App. 437, 441 (1) (b) (623 SE2d 547) (2005)</p>

<p><i>Evidence that mother left children with aunt, after mother had agreed that aunt was unsuitable to supervise the children, was probative of mother's inability to protect her children.</i> In the Interest of S. Y. , 284 Ga. App. 218, 219 (644 SE2d 145) (2007)</p> <p><i>A showing was made that the pattern of deprivation would continue in light of mother's emotional instability, her illogical thoughts, and her impaired judgments; the mother's refusal to accept responsibility for her actions; the mother's failure to seek proper treatment for her child; and the mother's failure to end contact between her child and his sexual molester</i> In the Interest of H. Y. , 270 Ga. App. 497, 504-505 (1) (c) (606 SE2d 679) (2004)</p> <p><i>Evidence of past conduct may be considered in determining whether the deprivation is likely to continue and cause harm to the child.</i> In the Interest of D. L. T. , 283 Ga. App. 223, 227 (1) (641 SE2d 236) (2007)</p> <p><i>The decision as to a child's future must rest on more than positive promises which are contrary to negative past fact.</i> In the Interest of C.J. , 279 Ga. App. 213, 217 (1) (630 SE2d 836) (2006)</p> <p><i>Children need permanence of home and emotional stability or they are likely to suffer serious emotional problems.</i> In the Interest of B. I. F. , 264 Ga. App. 777, 781 (1) (592 SE2d 441) (2003)</p> <p><i>To determine whether termination of parental rights is in the best interest of the child, the court shall consider the physical, mental, emotional, and moral condition and needs of the child, including his or her need for a secure and stable home.</i> OCGA § 15-11-94 (a).</p> <p><i>Termination of parental rights was in the best interest of the children where the children needed permanency, stability, and a safe environment; the mother was unable to provide such an environment; the children had been in the care of the DFCS for an extended period; and the foster parents, who expressed a desire to adopt the children, had bonded with them, given them a stable home, and provided for the children's medical needs.</i> In the Interest of T. J. , 281 Ga. App. 673, 676 (1) (637 SE2d 75) (2006)</p>

Cite	In the Interest of A. A., A08A0087, Mikell, Judge. 08 FCDR 1368 (04/25/08)	TPR Affirmed
Issue	<p>Is a denial of relative placement resources following TPR supported where the trial court made findings the relative home evaluations were conducted, considered and rejected by DFCS; the reasons for rejection were reasonable; and testimony was presented that changing the children's placement would cause emotional harm?</p> <p>In the absence of a transcript, is the trial court's findings presumed to be supported by the evidence?</p>	<p>YES</p> <p>YES</p>
Facts	<p>A TPR was granted for three children after the children had been removed from the parents' custody for a third time following the death of a sibling. The father was convicted of cruelty to children based on evidence that he smothered the deceased child. The remaining children were removed and placed together in a foster home. According to the DFCS casemanager the children were "doing very well" in the foster family's home and that the family was willing to adopt them. According to the family therapist, who had counseled the children since the death of their sibling and their placement into foster care, the children have done "remarkably well with the situation and they're very well adjusted with the foster family"; if the children were removed it would "absolutely" cause emotional harm to the children and "would be extremely confusing and detrimental to each one of them as individual little people as well as a collective threesome as a sibling set". As to the search for and evaluation of potential relative placements, the casemanager testified that three home evaluations had been completed and rejected by DFCS as <u>not</u> "suitable as long-term placement for the children". The casemanager further testified as to the reasons for the rejection of the home evaluations and that DFCS generally provides relatives an opportunity to correct any problems in their home if the relative indicates a willingness to do so. One of the three rejected home evaluations was through the Interstate Compact on the Placement of Children (ICPC) where the evaluating state controlled the approval process. According to the record, the ICPC home evaluation was rejected because there was not a copy of the mother's birth certificate to verify the applicant was in fact the mother's brother. Efforts were made to obtain the birth certificate but the mother's whereabouts were unknown and according to the casemanager the mother's consent was required to obtain the birth certificate. TPR was granted and based on the rejected home evaluations, the Court further ruled DFCS had completed the requirement of a search for a suitable family members for placement.</p>	

	<p>The father challenges the ruling that DFCS had satisfied the requirements to place the children with relatives and alleges the efforts made by DFCS to place with relatives were unreasonable. The father did not submit a copy of the transcript..</p>
<p>Decision & Reasoning</p>	<p>TPR Affirmed</p> <ul style="list-style-type: none"> • OCGA § 15-11-103 (a) (1) states that a relative placement following TPR should be made if the court determines such placement is the most appropriate for and in the best interest of the child. The statute does not require the trial court to give preference to family members. • Additionally, numerous efforts were made to contact the mother to obtain the required document for the ICPC, “her utter lack of cooperation with the Department precluded its compliance with the ICPC” and “the absence of a transcript of the hearing on the motion for new trial, in which this issue was raised, mandates affirmance.” • The testimony of the therapist as to the harm which would be caused by a placement change was also determined to support the trial court’s ruling. • <i>The father has failed to file a transcript of the hearing on the motion for new trial, which is essential to our consideration of these arguments.</i> • <i>We discern no abuse of discretion in this case, and the absence of a transcript of the hearing on the motion for new trial, in which this issue was raised, mandates affirmance.</i>
<p>Practice Points</p>	<p>Transcript. Given the condensed time frames within which to file appeals, attorneys should confirm the method of transcription of all contested matters, including the evidentiary hearings and all motions, and the availability of an appropriate and timely transcript. Juvenile courts use various methods of recording the hearing, courts use CD recording, tape recording or live court reporters.</p> <p>ICPC. Where an ICPC home evaluation is required, attorneys should monitor the progress and timeliness of the ICPC. Problems should be brought to the attention of the court for potential corrective actions. Other attempts to correct problems with the ICPC should be made before the home is rejected. Frequently missing documents, misunderstandings of the person being evaluated or defects in the home being evaluated can be corrected. Attorneys should also consider whether an Expedited ICPC is appropriate. If an ICPC is rejected, corrections to the evaluated home or missing documents may still be submitted with a subsequent request to re-evaluate. This is a time consuming process which requires constant follow up. Delays in the approval process increase the opportunity the child is adjusting in a different placement and losing connection to the relative being evaluated. Visitation or other contact between the relative being evaluated and the child should be requested and if the home is approved then a transition plan may be beneficial to the child.</p> <p>Home Evaluations for Placement. Where a home evaluation is being conducted, attorneys should monitor the progress and timeliness of the evaluation. Problems should be brought to the attention of the court for potential corrective actions. Frequently missing documents, misunderstandings of the person being evaluated or correction of defects in the home being evaluated can be made prior to the homes’ rejection. If a home evaluation is rejected, corrections to the evaluated home or missing documents may still be submitted with a subsequent request to re-evaluate. This is a time consuming process which requires constant follow up. Delays in the approval process increase the opportunity the child is adjusting in a different placement and losing connection to the relative being evaluated. Visitation or other contact between the relative being evaluated and the child should be requested and if the home is approved then a transition plan may be beneficial to the child.</p>
<p>Other Citations</p>	<p>OCGA § 15-11-103 (a) (1) does not require a trial court to give preference to family members in making a placement of a child following termination of parental rights. Rather, the statute states that a placement shall be made "if the court determines such placement is the most appropriate for and in the best interest of the child." A trial court’s determination that placement with a relative is not in the best interest of the child will not be disturbed by this Court absent an abuse of discretion. <i>In the Interest of S. V. , 281 Ga. App. 331, 333 (2) (636 SE2d 80) (2006);</i></p> <p>Although we laud the couple’s willingness to care for these children, we are not authorized to substitute our judgment for that of the juvenile court, which "possesses a wide discretion" in determining this issue. <i>In the Interest of S. V. , 281 Ga. App. 331, 333 (2) (636 SE2d 80) (2006);</i></p> <p>In the absence of that transcript, we must assume that the juvenile court’s findings with regard to the Department’s actions were supported by the evidence. <i>Dept. of Human Resources v. Cowan , 220 Ga. App. 230, 232 (2) (469 SE2d 384) (1996); In the Interest of C. C. B. , 188 Ga. App. 46 (3) (372 SE2d 6) (1988).</i></p>