

APPEALS
INCLUDING EVIDENCE
AND PRESERVING THE RECORD

WHAT IS PARENTAL FITNESS?

- Parents are presumed fit because they have a constitutional right to the care and custody of their child BUT
- the child has a constitutional right to protect his or her person SO
- if a third party rebuts the presumption of parental fitness by showing that parental custody harms the child AND an award of custody will best promote the child's health, welfare and happiness then that person should have custody of the child

CLARK V. WADE 273 GA. 587 (2001)

- "By harm we mean either physical harm or significant, long-term emotional harm; we do not mean merely social or economic disadvantages" 273 Ga. at 598

NOTICE OF APPEAL

- Must be filed within thirty (30) days of the decision complained of and must be served on all parties.
- Unless the order states otherwise the appeal DOES NOT act as a supersedes. See O.C.G.A. O.C.G.A 5-6-34(e) "Where an appeal is taken pursuant to this Code section for a judgment or order granting nonmonetary relief in a child custody case, such judgment or order shall stand until reversed or modified by the reviewing court unless the trial court states otherwise in its judgment or order."

REQUEST FOR TRANSCRIPT

- Periodically check on the status of the transcript with the trial court clerk's office. The appeals court can dismiss an appeal if the appellant has not been diligent in seeing that the transcript is timely filed.

DOCKETING

- Appellant has twenty (20) days from the date of docketing to file the appellant brief.
- The rules for margins, cover sheets and brief format are found in Georgia Court of Appeals rule 23, 24 and 25.
- When referencing transcript use T- (page number of transcript) or R-(page number of the record)

REPLY BRIEF

- Reply brief is due 40 days after docketing or 20 days after appellant's brief is filed whichever is later.

REPLY BRIEF

- Appellant isn't done yet. This is your opportunity to have the last word.
- If you are the appellee, anticipate the appellant's argument and address it in your brief because you don't get to reply to the reply.

ORAL ARGUMENT

- Request oral argument within twenty (20) days of docketing. See Rule 28

STANDARD OF REVIEW

- “On appeal from a juvenile court’s order finding deprivation, we review the evidence in the light most favorable to the juvenile court’s judgment to determine whether any rational trier of fact could have found by clear and convincing evidence that the children were deprived.”
In re A.S. 318 Ga.App. 457 (2012).

PRESERVING THE RECORD

- Object to testimony not based on personal knowledge
- Object to evidence that does not have a proper foundation
- Properly admit your own evidence and if the court sustains an objection to it, move to proffer it anyway

EVIDENCE – A REFRESHER

STEPS TO INTRODUCING EVIDENCE

1. Mark Exhibit
2. Show to opposing counsel
3. Hand to witness
4. Do you recognize it?
5. What is it?
6. How do you recognize it?
7. Lay the foundation (either the object has a unique character or it doesn’t and a chain of custody is established by the witness)

EVIDENCE – A REFRESHER

Laying a Foundation

- Hearsay Exceptions O.C.G.A. 24-8-803
- Business Records Foundation O.C.G.A. 24-3-14
- Photos O.C.G.A. 24-4-48
- Video or Audio Recordings Henley v. State 285 Ga. 500 (2009)

EVIDENCE A REFRESHER

Direct and Cross Examination

- Leading questions can only be used on cross or with a hostile witness. Everyone else has to start their questions with who, what, when, where, how or why.

OBJECT! OBJECT! OBJECT! BUT IF YOU DON'T....

- Even without an objection, the court is obligated to use the proper burden of proof.
- If there is no evidence in the record to support the trial court's ruling, the order must be vacated.
 "We review the court's factual findings for clear error and will only sustain such findings if there is competent evidence to support them." Neill v. Brannon, 738 S.E.2d 724 (Ga. App., 2013)

QUESTIONS?

- If you think of something later, please don't hesitate to e-mail me at Karimah@bostonlegalconsultantgroup.com
