

Overview From Removal to Permanency

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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

Dependency Timeline

- Preliminary Protective Hearing (PPH) O.C.G.A. 15-11-102 held within 72 hours of child's removal. If court so directs, petition alleging dependency must be filed within five (5) days
- Adjudication Hearing O.C.G.A. 15-11-181 held no more than ten (10) days after petition is filed
- Disposition Hearing O.C.G.A. 15-11-210 immediately after adjudication or within thirty (30) days of adjudication
- Permanency Plan Hearings O.C.G.A. 15-11-230 within 9-12 months of initial removal (depending on child's age) and every 6 months after. Note: DFCS SHALL file for PPR after child has been in foster care for 15 out of last 22 months. See O.C.G.A. 15-11-233

Before the hearing

- Call or e-mail your client as soon as possible. Introduce yourself and provide your best contact information. Get their best contact information even if it is a stable relative who can pass on the message.
- Advise client what to expect regarding the course of the case (i.e., detentional, adjudication, review hearings) and find out what their desired outcome is (e.g., reunification, guardianship, surrender)
- Get a signed HIPAA compliant release from your client the next time you see them in court. Keep a copy for when you need to obtain drug screens or talk to a client in a treatment program

Before the hearing

- Contact the SAAG and Child Advocate/GAL to narrow the issues if possible
- Submit your discovery request at least 72 hours before the adjudication hearing O.C.G.A. 15-11-170
- The court shall grant continuances upon a showing of good cause. Convenience of the parties is not good cause. Unavailability of a witness or party or noncompliance to discovery request is good cause.
- Send a conflict letter pursuant to Ga Superior Court Rule 17.1

During the hearing-PPH

- At a Preliminary Protective Hearing (PPH) the burden of proof is probable cause. Hearsay is admissible. Consider this hearing an exploratory mission to determine the strength of DFCS case. Get witness names and incident dates to gather your documents.
- Consider stipulating to probable cause or asking to waive the PPH

During the hearing - Adjudication

- The burden of proof for an adjudication hearing is clear and convincing evidence.
- The Court of Appeals has consistently held that only if there is evidence of an adverse effect on the child would a court be authorized to find a parent unfit. *In re DEK* 236 Ga. App. 574, 577 (1999) (child living in less than ideal circumstances is not deprived). See also *Boddie v. Daniels* 288 Ga 143, 146 (2010) (physical harm or significant long term emotional harm not merely social or economic disadvantages must be proved to authorize a finding of parental unfitness).
- Dependency is from the perspective of the child. Focus on the harm to the child, not the wrong-doing of the parent.

Disposition Hearing

- Caseplan should be specific to THIS family and the reasons for removal.
- Do not simply agree with the caseplan!
- Read it. Change it. Add meaningful services for your client.
- Ask the Judge to remove caseplan requirements that were not related to reason for removal.

Review Hearings

- 75-Day Review Hearing
- 4 Month Review Hearing
- Permanency Hearing – 9 months for kids under 7; 12 months for kids over 7

Findings at the Review Hearings 15-11-216

- (1) Whether a child adjudicated as a dependent child continues to be a dependent child;
- (2) Whether the existing case plan is still the best case plan for such child and his or her family and whether any changes need to be made to the case plan, including whether a concurrent case plan for nonreunification is appropriate;
- (3) The extent of compliance with the case plan by all participants;
- (4) The appropriateness of any recommended changes to such child's placement;
- (5) Whether appropriate progress is being made on the permanency plan;
- (6) Whether all legally required services are being provided to a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and his or her parent, guardian, or legal custodian;
- (7) Whether visitation is appropriate and, if so, approve and establish a reasonable visitation schedule consistent with the age and developmental needs of a child adjudicated as a dependent child;
- (8) Whether, for a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living are being provided; and
- (9) Whether reasonable efforts continue to be made to prevent or eliminate the necessity of such child's removal from his or her home and to reunify the family after removal of a child adjudicated as a dependent child, unless reasonable efforts were not required.

Permanency Hearing Findings 15-11-232

- (1) Whether DFCS has made reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing;
- (2) The continuing necessity for and the safety and appropriateness of the placement;
- (3) Compliance with the permanency plan by DFCS, parties, and any other service providers;
- (4) Efforts to involve appropriate service providers in addition to DFCS staff in planning to meet the special needs of a child adjudicated as a dependent child and his or her parent, guardian, or legal custodian;
- (5) Efforts to eliminate the causes for the placement of a child adjudicated as a dependent child outside of his or her home and toward returning such child safely to his or her home or obtaining a permanent placement for such child;
- (6) The date by which it is likely that a child adjudicated as a dependent child will be returned to his or her home, placed for adoption, or placed with a permanent guardian or in some other alternative permanent placement;
- (7) Whether, in the case of a child adjudicated as a dependent child placed out of state, the out-of-state placement continues to be appropriate and in the best interests of such child;
- (8) In the case of a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living;
- (9) In the case of a child for whom another planned permanent living arrangement is the permanency plan:
 - (A) Whether DFCS has documented, reviewed, ongoing, and, as of the date of the hearing, unsuccessful efforts to return the child to the home or to secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent, including through efforts that utilize search technology, including social media, to find biological family members for the child;
 - (B) Whether DFCS has documented the steps it is taking to assure that the child's foster family home or child care institution is following the reasonable and prudent parent standard and the child has regular ongoing opportunities to engage in age- or developmentally appropriate activities, including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities; and
 - (C) After asking the child, what his or her desired permanency outcome is; and
- (10) If a child has attained the age of 14 years old, whether the permanency plan developed for the child, and any revision or addition to the plan, was developed in consultation with the child and, at the option of the child, with not more than two members of the permanency planning team who were disaffected by the child and who are not a foster parent or caseworker for the child in accordance with subparagraph (A) of paragraph (1) of [Article 15, Chapter 11, Section 15-11-216](#).

Permanency Outcomes

- Reunification
- Adoption
- Permanent Guardianship
- APPLA (Another Planned Permanent Living Arrangement)