

Recent Cases and Developments Impacting Dependency & Delinquency Practice

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Note: If no So.3d citation is available, the case citation is to the case number in the appellate court. It is not to a Westlaw or LexisNexis case number.

RULE CHANGES

JUVENILE PROCEDURE RULE CHANGES – *Yet Another Reminder that Juvenile Court is a Real Court!*

Rule 1 – The PERIOD during which a POST JUDGMENT MOTION REMAINS PENDING MAY NOT BE EXTENDED BY CONSENT OF THE PARTIES. *Don't get caught losing your right to appeal!!!*

Rule 14 – Requires RETAINED COUNSEL to file a NOTICE OF APPEARANCE &/or RESPONSIVE PLEADING. *The CivApps judges all come from a CIVIL LITIGATION background. They want us to file stuff just like in grown-up court!*

Rule 14 – After an attorney in a juvenile case has been APPOINTED or RETAINED, including the GAL, they MAY

NOT WITHDRAW FROM THE CASE WITHOUT THE COURT'S PERMISSION.

If RETAINED and you haven't been paid in full, file a LIMITED APPEARANCE, or you may get stuck in a case forever with inadequate compensation.

If APPOINTED, how does this square with OIDS? Clients and Custodians Call Forever!

Rule 28 – APPOINTED COUNSEL SHALL CONTINUE TO REPRESENT THAT PARTY THROUGH THE FILING OF A NOTICE OF APPEAL. ARE WE NOW ETHICALLY REQUIRED TO APPEAL EVERY CASE? Also, don't forget that ARAP Rule 24 says that the appointment continues through the appellate process, unless you withdraw with court's permission.

DELINQUENCY PRACTICE

ONCE AGAIN, VERY FEW DELINQUENCY CASES REPORTED. WHY???

MAKING A TERRORIST THREAT – SOCIAL MEDIA STRIKES AGAIN! – Read the Allegations of the Petition Carefully! You'll Probably Be the Only One.

NC v. State, CR-17-1134

AlaCrimApps (May 29, 2020) – Calhoun Co. – Judge Cole

In Terrorist Threat cases the **focus is on the MENTAL STATE OF THE DEFENDANT WHEN THE COMMENT** (or Instagram post) is made.

**RESTITUTION AWARDS IN DELINQUENCY CASES –
*Juvenile Court is a Real Court – There are Actual Rules
for This Stuff!!!***

DAH v State, CR-17-1049

AlaCrimApps (Jan. 11, 2019) Talladega Co. – J. Joiner

FACTORS TO BE CONSIDERED IN JUVENILE RESTITUTION. See *DJW v State*, 705 So.2d 521 (Ala.Crim.App. 1996) & ARCrP Rule 26.11.

- I. Child's AGE
- II. Child's EDUCATION
- III. Child's MENTAL & PHYSICAL CONDITION
- IV. Child's BACKGROUND
- V. Child's **ABILITY TO REASONABLY PAY**
- VI. **The GOAL OF RESTITUTION IS PRIMARILY REHABILITATION.**

MORE ON RESTITUTION PROCEDURES – *The Defense Can't Just Sit Back And Say "NUH—HUH!"*

State v. RBF, CR-18-0902

AlaCrimApps (March 13, 2020) Montgomery Co. – Judge Kellum

DEFENSE HAS THE BURDEN to ESTABLISH the CHILD’S INABILITY TO PAY, because “the defense is in possession of all material facts regarding her own wealth and is asserting a negative.”

DEPENDENCY PRACTICE

POSSIBLE RELIEF FROM E.D.!!! – *Not that E.D.! From E.D. v. Lee County Department of Human Resources*, 266 So. 3d 740 (Ala. Civ. App. 2018).

Ex parte N.G., Jr., 1190390
Ala Supremes (Sept. 4, 2020) Russell Co. – Justice Sellers

A court CAN TRANSFER a case to ANOTHER COURT IN THE SAME COUNTY under § 12-11-11

SPEAKING OF SUBJECT-MATTER JURISDICTION SANFUS – “*Button Button – Who’s Got the Button???*”

AM v. AK, 2190617
AlaCivApps (Sept. 18, 2020) Jefferson Co. – Judge Moore

Look to the SUBSTANCE of the Complaint.

**DUE PROCESS EXISTS IN ALABAMA DEPENDENCY CASES -
- You Gotta Have a Hearing Within 72 Hours of the Entry
of an Ex Parte Order!!!**

Ex parte JMS, 2190270

AlaCivApps (Feb. 21, 2020) Cullman Co. – Judge Edwards

**Due Process requires an Evidentiary Hearing WITHIN 72 HOURS of
the entry of an EX PARTE CUSTODY ORDER.**

**EVERYBODY’S CONFUSED IN THIS DEPENDENCY CASE! –
*Is it an Original Dependency? A Modification? A
McLendon Case? Best Interests? Who Knows?***

EH v. DHR, 2190441

AlaCivApps (Oct. 2, 2020) – Calhoun Co. – Judge Edwards

**“We cannot discern whether the JU court concluded that
the child remained dependent.”**

**“It appears the JU court did not apply the correct legal
standard.”**

**ANOTHER EXAMPLE OF IMPERMISSIBLE JUDICIAL
DELEGATION – *They Seemed Like Such Good Friends
When It All Started***

JC v. DHR, 2190404

AlaCivApps (June 19, 2020) Houston Co. – Judge Edwards

“The JU Ct’s judgment, as worded, gives the custodian the unfettered right to arrange, or to decline to arrange, visitation between the mother and the child at her sole discretion and provides only an illusory right to visitation in the mother.”

PERSISTANT GRANNY FINDS OUT THAT GRANDPARENT VISITATION ACT CASES CAN BE VERY PERSNICKITY! – *Make Sure That There is Clear and Convincing Evidence!*

KJ v. SB, 2180912

AlaCivApps (April 10, 2020) – Jefferson Co. – Judge Donaldson

There must be clear & convincing evidence of each statutory element.

ALABAMA’S PECULIAR PERSISTENCE IN PATERNITY STATUTE IS HANGING ON BY A THREAD IN THIS 3-2 DECISION – *The Case of the Mom Who Would Do Anything to Make Sure that Bio-Dad Was Out of the Picture.*

ZWE V. LB, 2180796

AlaCivApps (June 5, 2020) Jackson Co. – Judge Thompson

Majority says: it is up to the legislature to fix this.

PERSISTENCE IN PATERNITY CHAPTER 2 – Never Give Up – Never Surrender!

RD, Sr. v. SS, 2180650 & 2180651

AlaCivApps (May 22, 2020) – Mobile Co. – ***Per Curiam!***

“Once the presumed father ceases to persist in his parentage, then an action can be brought” to adjudicate paternity.

TPR HORROR STORY #1 – *Parents’ Lawyer Got the Time Wrong for the TPR Trial and They Were Locked Out!*

Ex parte JW & RL, 1180339 & 1180340 [certiorari denied]

AlaSupremes (January 31, 2020) – Cullman Co. – J. Bolin

Bolin Scathing Dissent! Joined by Wise & Stewart.

TPR HORROR STORY #2 – *Don’t Let This Happen To You!*

MLM v. DHR, 2180509 & 2180510

AlaCivApps (January 10, 2020) Madison Co. – Judge Edwards

Mother’s Lawyer Was Double-Booked and Didn’t Stay for TPR Trial. Mother’s Lawyer then Compounded the Problem with an Anders Brief.

Judge Edwards BLISTERED the Mother’s Lawyer BY NAME.

BEWARE THE PRIVATE TPR! – *There Really Needs to be Clear and Convincing Evidence!*

DHE v. WD & MD, 2190159

AlaCivApps (August 7, 2020) – Tuscaloosa Co. – J. Donaldson

TPR Statute is Phrased in Present & Future Terms:

A JU Ct MAY TERMINATE only if Clear & Convincing evidence:

Parent is CURRENTLY UNABLE to discharge duties

AND

The Conduct or Condition that Prevents the Parent from exercising proper care WILL LIKELY PERSIST IN THE FORESEEABLE FUTURE.

THE LEGISLATURE ACTUALLY PASSED SOMETHING PRIOR TO “THE RONA” – ACT 2020-34, AMENDING § 12-15-319(a) – *Will TPRs become a Battle Between Foster Parents and Legal Parents?*

§ 12-15-319(a)(13) now provides that the JU Ct should also consider:

“the existence of any significant emotional ties that have developed between the child and his or her current foster parent or parents” as a factor in determining whether to terminate a parent’s parental rights.

POTENTIAL CONSTITUTIONAL & OTHER CHALLENGES:

Substantive Due Process

Statutory Conflict – Viable Alternative to TPR