



Tuesday, November 18, 2025

Involuntary Terminations

**Judge Stephanie Williams and
Special Master Kristen Menke**

“Among the most serious decisions courts make is the termination of a parent’s rights to his or her child.” (citations omitted).

“A parent’s right to the care and custody of his/her child is among the oldest of the judicially recognized fundamental liberty interests protected by the Due Process Clauses of the federal and state constitutions.” *In re Carrington H.*, 483 S.W.3d at 521-22.

“Thus, the state may interfere with parental rights only if there is a compelling state interest.” *In re Dakota C.R.* 404 S.W.3d 484, 495 (Tenn. Ct. App. 2012). Tennessee’s, “termination statutes identify ‘those situations in which the state’s interest in the welfare of a child justifies interference with a parent’s constitutional rights by setting forth grounds on which termination proceedings can be brought.’” *Id.* at 495-96.

INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

Involuntary termination of parental rights (TPR) occurs by court order without the parent's consent.



Involuntary termination may or may not be contested.

WHERE DO I FILE PETITION FOR TPR?

- ▶ A TPR action may be filed on its own or as part of an adoption action
- ▶ A TPR action may be filed in Juvenile, Circuit and Chancery Court
- ▶ An adoption action may only be filed in Circuit or Chancery Court
- ▶ In Davidson County, an adoption action may only be filed in Fourth Circuit Court
- ▶ Benefit to filing TPR and adoption together – one judge, one filing fee, one petition, one set of lawyers (including GAL) and exclusive jurisdiction of adoption court

VENUE

T.C.A. § 36-1-114(a)

- ▶ TPR petitions may be filed in the county:
 1. Where the petitioners reside
 2. Where the child resides;
 3. Where, at the time the petition is filed, any respondent resides;
 4. The location of any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or any such agency to which the child has been surrendered
 5. Where the child became subject to the care and control of a public or private child-caring or child-placing agency; or
 6. Where the child became subject to partial or complete guardianship or legal custody of the petitioners

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- ▶ UCCJEA governs subject matter jurisdiction in child custody proceedings, including TPR – T.C.A. § 36-6-205
- ▶ Subject matter may be raised at any time, including for the first time on appeal
- ▶ If an action is pending in another state when the TPR is filed, the UCCJEA may be implicated – UCCJEA controls where case is filed
- ▶ Consider UCCJEA in Tennessee and other applicable state
- ▶ T.C.A. § 36-1-116(h) – An adoption seeking an involuntary TPR is a custody action for UCCJEA purposes. An adoption alone or with a voluntary TPR is not a custody proceeding for UCCJEA purpose. “

ADOPTION COURT – EXCLUSIVE JURISDICTION

- ▶ In Tennessee, the adoption court has exclusive subject matter jurisdiction for all matters regarding a child during a pendency of the case – T.C.A. § 36-1-116(f)(1)
- ▶ All other actions suspended pending adjudication of adoption
- ▶ Exceptions: parentage actions, allegations of delinquency, unruliness or truancy of the child, permanency plan meetings/CFTM
- ▶ Parentage action transferred to adoption court – MUST be heard before adoption proceeds – T.C.A. § 36-1-117(b)(2)
- ▶ TPR alone does not have this power
- ▶ TPR + Adoption = Exclusive Subject Matter Jurisdiction

REQUIRED CONTENTS OF PETITION

T.C.A. § 36-1-113(d)

- ▶ The child's birth name;
- ▶ The child's age or date of birth;
- ▶ The child's current residence address or county of residence or that the child is in the custody of the department or a licensed child-placing agency;
- ▶ Any other facts that allege the basis for termination of parental rights and that bring the child and parties within the jurisdiction of the court;
- ▶ Any notice required pursuant to subdivision (d)(4) has been given; and
- ▶ The medical and social history of the child and the child's biological family has been completed to the extent possible on the form; provided, however, the absence of such completed information shall not be a barrier to termination of parental rights.
- ▶ Initials or pseudonyms may be used in the petition in lieu of the full names of the petitioners to promote the safety of the petitioners or of the child, with permission of the court;

T.C.A. § 36-1-113

Petition Must State:

- ▶ The Tennessee putative father registry has been consulted prior to the filing of the petition or will be consulted within ten (10) working days of filing
- ▶ PFR response is required unless the biological father has been identified through DNA testing and that DNA identification is set out in the petition;
- ▶ A copy of the PFR response shall be provided to the court immediately upon receipt by the petitioner; and
- ▶ Notice of the filing of the termination petition has been provided to the Tennessee putative father registry if the child is less than thirty (30) days old at the time the petition is filed.

TPR PETITION OR PETITION FOR ADOPTION WITH TPR SHALL STATE:

- ▶ The TPR petition or request for termination in the adoption petition, if granted, shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent or parents or the guardian or guardians to the child who is the subject of the order, and of the child to the parent or parents or the guardian or guardians;
- ▶ The child will be placed in the guardianship of other persons or public or private agencies who shall have the right to adopt the child or to place the child for adoption and consent to the child's adoption; and
- ▶ The parent or guardian shall have no further right to notice of proceedings for the adoption of the child by other persons and that the parent or guardian shall have no right to object to the child's adoption or have any relationship, legal or otherwise, with the child, except as provided by contract pursuant to § 36-1-145.

NOTE:

- ▶ A TPR petition if filed separately from the adoption petition, may be filed as provided in § 36-1-114.
- ▶ If the petition is filed in a court different from the court where there is a pending custody, dependency, neglect or abuse proceeding concerning a person whose parental rights are sought to be terminated in the petition, a notice of the filing of the petition, together with a copy of the petition, shall be sent by the petitioner to the court where the prior proceeding is pending.
- ▶ Additionally, the petitioner filing a petition under this section shall comply with the requirements of § 36-1-117(e) (notice to agency).

SERVICE ON INCARCERATED PARENT

- ▶ Service of process of the petition shall be made as provided in § 36-1-117.
- ▶ A parent or guardian who is incarcerated at the time the parent is served with a petition to terminate parental rights shall receive notice that:
 - ▶ A hearing will be held to determine whether the parent's rights will be terminated;
 - ▶ If the parent files a timely, written answer within thirty (30) days of service of the petition to terminate their parental rights, then:
 - ▶ The parent must receive advance notice of the time and place of the hearing;
 - ▶ The parent has the right to participate in the hearing and to contest the allegation that the parent's rights should be terminated. At the discretion of the court, such participation may be achieved through personal appearance, teleconference, telecommunication, or other means deemed by the court to be appropriate under the circumstances;

INCARCERATED PARENT WAIVER OF RIGHTS IN T.C.A. § 36-1-117

- ▶ An incarcerated parent's rights as set forth above may be voluntarily waived by:
 - ▶ The parent's written or verbal statement
 - ▶ A court's determination that the parent has waived the rights by the parent's action or inaction
 - ▶ If the court determines that an incarcerated parent has waived their rights, the court may hear and decide the petition without the parent's participation

DEFAULT JUDGMENT

- ▶ Respondent properly served
- ▶ No response filed within 30 days of service
- ▶ Motion for default filed- default hearing may be set as soon as 30 days runs for response time
- ▶ T.R.C.P. 55.01 - Respondent given 5 days' notice of the default hearing by order sent to last address (Fourth Cir. requires 11 days' notice)
- ▶ Be reasonable. Be thorough. Be prudent.
- ▶ T.C.A. § 36-1-117(n) – Court may enter a default judgment against any party to adoption or TPR proceeding upon finding that service of process is validly made
- ▶ TPR proceedings – proof must be presented as to legal grounds and best interest pursuant to 36-1-113

ANSWERING THE TPR PETITION

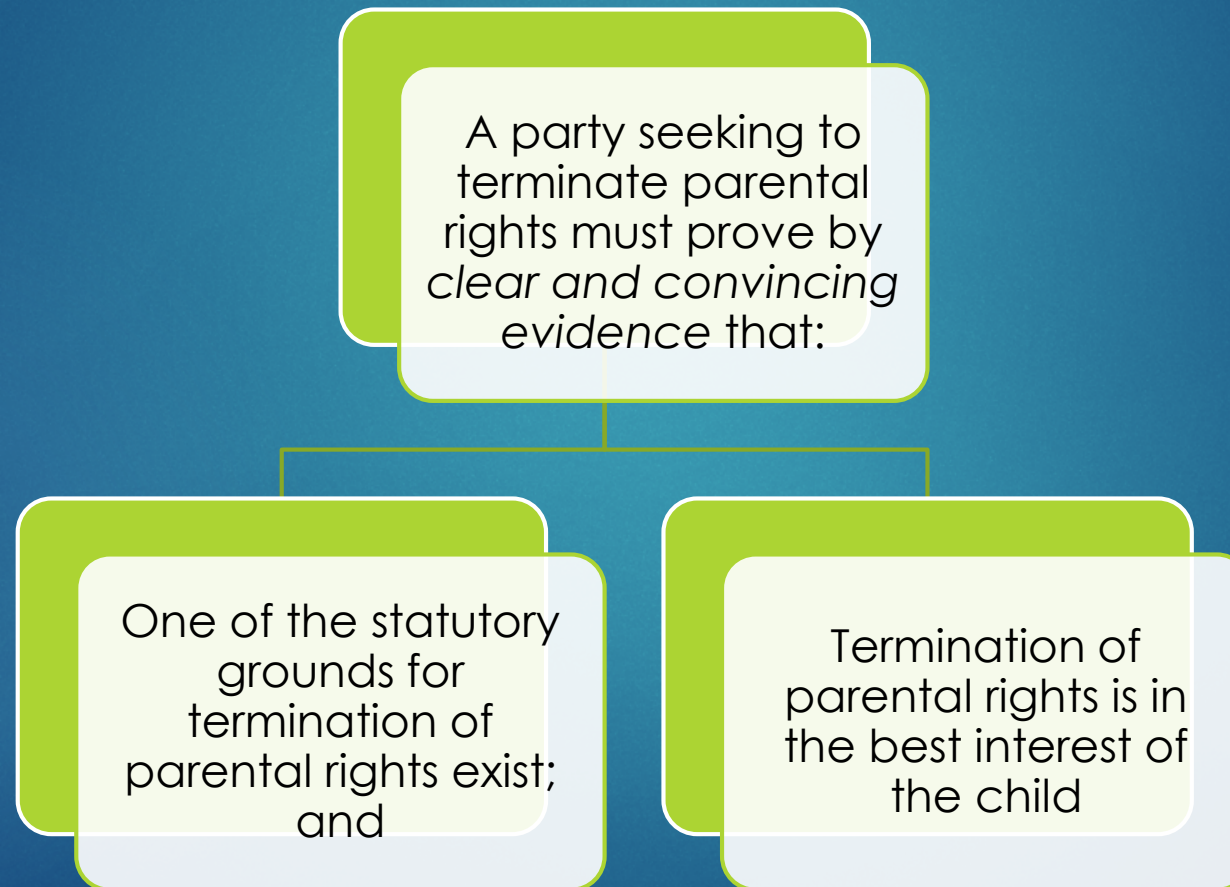
- ▶ 30 days to File an Answer or motion for default may be filed
- ▶ All Affirmative Defenses – Any defense in law – should be asserted in the answer – T.R.C.P. 12.02
 - ▶ Absence of willfulness MUST be asserted in Answer as defense to Abandonment for failure to support / visit - T.C.A. § 36-1-102(1)(I).
 - ▶ Failure to alleged may be fatal – case law says too late at trial
- ▶ Answer MUST be signed by Respondent, sworn, and verified – T.C.A. § 36-1-117(o)

AN ANSWER IS FILED – NOW WHAT?

- ▶ 6 MONTHS TO TRIAL – T.C.A. § 36-1-113(k)
- ▶ APPOINTMENT OF COUNSEL FOR RESPONDENT(S)
- ▶ INDIGENCY DETERMINATION – T.C.A. 40-14-202(c)
 - ▶ KEY: Not just income alone
- ▶ MOTION FOR DETERMINATION OF PARTICIPATION
- INCARCERATED PARENTS
- ▶ GAL
- ▶ SCHEDULING ORDER

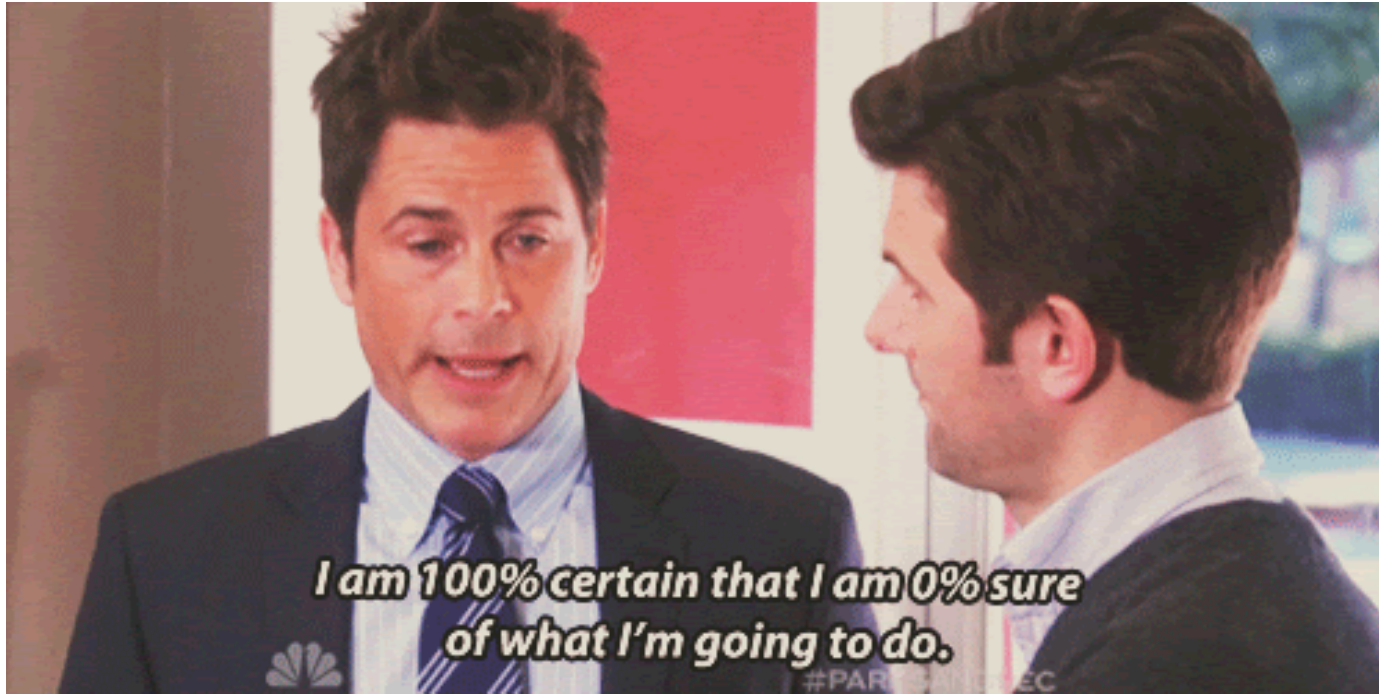
T.C.A. § 36-1-113(C)

Termination of Parental Rights



“Clear and convincing evidence ‘establishes that the truth of the facts asserted is highly probable . . . And eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence.’” Dakota C.R., 404 S.W.3d at 496.

Clear and convincing evidence “produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established.” In re Audrey S., 182 S.W.3d at 861.



DETERMINING GROUNDS

GROUND S FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS T.C.A. § 36-1-113

- ▶ The parent has abandoned the child.
- ▶ The parent has failed to comply with the permanency plan.
- ▶ The child has been removed from the home of the parent for 6 months, and the following apply:
 - ▶ The conditions that led to the child's removal still persist.
 - ▶ There is little likelihood that these conditions will be remedied in the near future so that the child can safely return home.
 - ▶ The continuation of the parent-child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home.
- ▶ The parent has been found to have committed severe child abuse against any child or failed to protect the child from severe child abuse.
- ▶ The parent has been sentenced to more than 2 years' imprisonment for committing severe child abuse.
- ▶ The parent has been incarcerated for 10 or more years, and the child is under age 8 at the time.
- ▶ The parent has been convicted or found civilly liable for the intentional and wrongful death of the child's other parent.
- ▶ The parent has been found to be mentally incompetent to provide for the further care and supervision of the child.

GROUND S FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS T.C.A. § 36-1-113

- ▶ Placing custody of the child in the parent's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.
- ▶ The parent was convicted of rape, from which the child was conceived.
- ▶ The parent has been found to have committed severe child sexual abuse, including any of the following:
- ▶ The parent has been convicted of trafficking for commercial sex acts or sex trafficking of children.
- ▶ A legal parent or guardian has failed to manifest an ability and willingness to personally assume legal and physical custody or financial responsibility of the child and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the welfare of the child.

GROUND S FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS T.C.A. § 36-1-113

- ▶ The parent has done any of the following:
 - ▶ Committed murder or manslaughter of any sibling or half-sibling of the child
 - ▶ Aided, abetted, attempted, conspired, or solicited to commit such murder or a voluntary manslaughter
 - ▶ Attempted murder of the child's other parent
 - ▶ Committed a felony assault that has resulted in serious bodily injury or severe child abuse to the child or any sibling or half-sibling
 - ▶ Sex trafficking of children or by force, fraud, or coercion
- ▶ The parent has been found to have committed severe child sexual abuse. The term 'severe child sexual abuse' includes any of the following offenses toward a child:
 - ▶ Rape of a child, aggravated rape, or aggravated sexual battery
 - ▶ Aggravated sexual exploitation of a minor or especially aggravated sexual exploitation of a minor
 - ▶ Incest or promoting prostitution
 - ▶ Sexual battery or statutory rape by an authority figure
 - ▶ Trafficking for a commercial sex act

WHEN MAY THE OTHER PARENT FILE TO TERMINATE?

T.C.A. § 36-1-113(2)(A)-(C)

- ▶ (2)(A) When one (1) of the child's parents has been convicted of aggravated rape pursuant to [§ 39-13-502](#), rape pursuant to [§ 39-13-503](#), or rape of a child pursuant to [§ 39-13-522](#), from which crime the child was conceived, the child's other parent has standing to file a petition to terminate the parental rights of the convicted parent.
- ▶ (B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(1)(A)(ii), the child's other parent has standing to file a petition to terminate the parental rights of the abusive parent.
- ▶ (C) When one (1) of the child's parents or legal guardians has been convicted of attempted first degree murder or attempted second degree murder of the child's other parent or legal guardian, the child's non-offending parent or legal guardian has standing to file a petition to terminate the parental or guardianship rights of the convicted parent or legal guardian.
- ▶ NOTE: This section does not give a parent or legal guardian standing to file a petition to terminate parental or guardianship rights based on grounds other than those listed in subdivision (b)(2).

GROUNDINGS FOR PUTATIVE FATHERS

T.C.A. § 36-1-113(g)(9)(A)(i)-(v)

- ▶ (9)(A) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The parental rights of a person who is not a legal parent at the time of the filing of a petition to terminate parental rights of such person, or if no such petition is filed, then at the time of the filing of a petition to adopt a child, is the putative father of the child, may also be terminated based upon any one (1) or more of the following additional grounds:
- ▶ (i) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the department pursuant to [§ 36-5-101](#);
- ▶ (ii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in [§ 36-1-102](#);
- ▶ (iii) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;
- ▶ (iv) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or
- ▶ (v) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity, or as required in [§ 36-2-318\(j\)](#), or after making a claim of paternity pursuant to [§ 36-1-117\(c\)\(2\)](#);

GROUND FOR TERMINATION OF PARENTAL RIGHTS

T.C.A. § 36-1-113(g)

Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection.


The following grounds are cumulative and nonexclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground.

ABANDONMENT

T.C.A. §§ 36-1-113(g)(1) AND 36-1-102(1)(A)

- ▶ **Child four (4) years old or older** - for a period of four (4) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or amended or supplemental petition to terminate the parental rights, the parent(s) or guardian(s) of the child has either failed to visit or failed to support or failed to make reasonable payments toward the support of the child;
- ▶ **Child less than four (4) years old** - for a period of three (3) consecutive months immediately preceding the filing of a proceeding, pleading, petition, or amended or supplemental petition to terminate the parental rights, the parent(s) or guardian(s) either failed to visit or failed to support or failed to make reasonable payments toward the support of the child;
- ▶ **Substantial noncompliance** with the statement of responsibilities in a permanency plan;

RELEVANT PERIOD



For petitions filed after July 1, 2023, the relevant period is the three months immediately prior to filing if the child is less than four years old at the time of filing or the four months immediately prior to filing if the child is four or more years old at the time of filing.



For petitions filed before July 1, 2023, the relevant period is the four months immediately prior to filing for all children, regardless of their age



The relevant period does not include the date the petition was filed. So, if the petition was filed on May 2, 2024, the relevant period would be February 2, 2023, to May 1, 2024.

ABANDONMENT DEFINED

- ▶ “Token visitation” means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;
- ▶ “Failed to support” or “failed to make reasonable payments toward such child's support” means the failure, for the applicable period, to provide monetary support or the failure to provide more than token payments toward the support of the child. That the parent had only the means or ability to make small payments is not a defense to failure to support if no payments were made during the relevant period;
- ▶ “Failed to visit” means the failure, for the applicable period, to visit or engage in more than token visitation. That the parent had only the means or ability to make very occasional visits is not a defense to failure to visit if no visits were made during the relevant period;
- ▶ Abandonment may not be repented of by resuming visitation or support after the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child;

ABANDONMENT BY FAILURE TO SUPPORT

- ▶ “[T]he word ‘means’ connotes both income and available resources for the payment of debt.” *In re Adoption of Angela E.*, 402 S.W.3d 636, 641 (Tenn. 2013).
- ▶ “Because ‘token’ is determined in light of the parent's ability to pay, whether support payments are token **requires considerable proof of the parent's financial circumstances.**” *In re Skylith F.*, No. M2022-01231-COA-R3-PT, 2023 WL 6546538, at *3 (Tenn. Ct. App. Oct. 9, 2023).
- ▶ “Determining a parent's available income and expenses is crucial for determining whether support is token.” *In re Stephen H.*, No. M2022-00674-COA-R3-PT, 2022 WL 17843018, at *6 (Tenn. Ct. App. Dec. 22, 2022).
- ▶ **KEY TAKEAWAY:** Through a long line of cases, Tennessee's appellate courts have determined that without sufficient evidence of a parent's expenses, it is difficult for a court to find support is merely token.

BURDEN OF PROOF TOKEN SUPPORT

- ▶ Under current law, the parent or guardian bears the burden of proving by a *preponderance of the evidence* that any support provided was more than token support.” Tenn. Code Ann. § 36-1-102(1)(B). (more likely true than not)
- ▶ For petitions filed prior to July 1, 2024, the burden is on the petitioner to prove that support was token by *clear and convincing* evidence. (firm belief or conviction of truth of facts)

ABANDONMENT BY FAILURE TO VISIT


- ▶ “Whether visitation is ‘token’ under this definition is a fact-intensive inquiry to be decided on a case-by-case basis.” *In re Keri C.*, 384 S.W.3d 731, 748 (Tenn. Ct. App. 2010).
- ▶ Perfunctory visitation: done merely as a duty; lacking in interest or enthusiasm. Visits are perfunctory when the parent is merely present and not interested or focused on the child. *Keri C.*, 384 S.W.3d at 748;
- ▶ Are the visits of such an infrequent nature or of such short duration: “while the parent's subjective intent and interest in the child is relevant, the termination statutes generally require that such interest manifest in the form of objectively reasonable action geared toward establishing a healthy parental relationship.” *Id.* at 751.

SHOULD YOU PLEAD ABANDONMENT BY FAILURE TO VISIT?

- ▶ Have and parent and child formed a significant bond or relationship prior to the relevant period?
 - ▶ If so, are the parent's actions reasonably geared toward maintaining or growing that relationship?
Since there is already a relationship, fewer visits during the relevant period is not as damaging to the respondent as it would be if there was no relationship
 - ▶ If not, are the parent's actions reasonably geared toward establishing a healthy parental relationship?

AFFIRMATIVE DEFENSE TO ABANDONMENT

- ▶ It shall be a defense to abandonment for failure to visit or failure to support that a parent or guardian's failure to visit or support was not willful.
- ▶ The parent or guardian shall bear the burden of proof that the failure to visit or support was not willful. Such defense must be established by a preponderance of evidence.
- ▶ The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure;

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- ▶ For purposes of this subdivision (1), it shall be a defense to abandonment for failure to visit or failure to support that a parent or guardian's failure to visit or support was not willful. The parent or guardian shall bear the burden of proof that the failure to visit or support was not willful. Such defense must be established by a preponderance of evidence. The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure;
 - ▶ (J) For purposes of this subdivision (1), a period of incarceration lasting less than seven (7) consecutive days must be counted as days of nonincarceration;
 - ▶ (K) For purposes of this subdivision (1), aggregation is accomplished by counting the days preceding, following, and in-between each period of incarceration of at least seven (7) consecutive days; and

AMENDING AND SUPPLEMENTING THE PETITION

- ▶ T.R.C.P. addresses amended and supplemental petitions
- ▶ Amending and Supplementing are not the same thing
- ▶ When do I amend?
 - ▶ To add a ground you could have pled in initial petition
 - ▶ To correct a technical error
 - ▶ To file a different petition
 - ▶ Change or add party
- ▶ When do I supplement?
 - ▶ To add a new ground that happened post-petition

AMENDING AND SUPPLEMENTING THE PETITION

- ▶ Amending
 - ▶ Amend once before answer
 - ▶ By Agreement
 - ▶ With Leave of Court – Leave freely given
 - ▶ 15 days to answer after service
- ▶ Supplementing
 - ▶ Must file motion – requires leave of Court
 - ▶ Court sets response time – Petitioner should request specific response time
- ▶ “If the original pleading is amended or supplemented to allege a new or additional period of abandonment occurring after an original pleading, then each period of abandonment constitutes an additional ground for termination of parental rights for the court's consideration. For *supplemental petitions* to terminate parental rights, the calculation of the applicable time periods for abandonment are calculated from the date a motion to supplement was filed.” T.C.A. § 36-1-102(1)(L)


ADDITIONAL GROUNDS FOR ABANDONMENT


- ▶ **Failure to provide suitable home** - child has been removed from the home or the physical or legal custody of a parent **for a period of 6 months by court order** at any stage of dependent and neglect proceedings; AND
 - ▶ **Persistence of Conditions** preventing the child's safe return to the care of the parent or guardian; AND
 - ▶ **Low likelihood conditions will be remedied** at an early date so that the child can be safely returned to the parent or guardian soon; AND
 - ▶ **Continuation of the parent-child relationship** greatly diminishes the child's chances of early integration into a safe, stable, and permanent home;
- ▶ **The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard.**


ABANDONMENT BY INCARCERATED PARENT


T.C.A. § 36-1-1-2(1)(a)(IV)(a)-(c)


- ▶ A parent or guardian is incarcerated at the time of the filing or has been incarcerated during all or part of the four (4) consecutive months immediately preceding the filing of the action if the child is four (4) years of age or more or three (3) consecutive months immediately preceding the filing of the action if the child is less than four (4) years of age and has:
 - ▶ **If the child is 4yo or older** - Failed to visit, failed to support, or failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding incarceration; or
 - ▶ **If the child is under 4yo** - Failed to visit, has failed to support, or failed to make reasonable payments toward the support of the child for three (3) consecutive months immediately preceding incarceration; or
 - ▶ **If the child is 4yo or older** - Failed to visit, failed to support, or failed to make reasonable payments toward the support of the child during an aggregation of the first one hundred twenty (120) days of non-incarceration immediately preceding the filing of the action; or
 - ▶ **If the child is under 4yo** - Failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child during an aggregation of the first ninety (90) days of nonincarceration immediately preceding the filing of the action; or
- ▶ **Wanton Disregard** - With knowledge of the existence of the born or unborn child, engaged in conduct prior to, during, or after incarceration that exhibits a wanton disregard for the welfare of the child;


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- ▶ The parent may claim to be indigent and offer evidence of their financial circumstances. If the court finds the parent indigent, the parent must be provided with a court-appointed attorney;
 - ▶ The parent has the right to offer testimony and other evidence by any means permitted by the Tennessee Rules of Civil Procedure; and
 - ▶ The parent has the continuing responsibility to update the court and petitioner's counsel with the parent's current contact information and mailing address promptly upon the parent's release from incarceration and upon any subsequent changes; and

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- ▶ (4) Under a prior order of a court or by the court hearing the petition to terminate parental rights or the petition for adoption, a child has been found to be a victim of severe child abuse, as defined in § 37-1-102, and the parent or guardian has been found to have knowingly or with gross negligence either committed severe child abuse or failed to protect the child from severe child abuse.

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- ▶ (5) The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against a child that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102. Unless otherwise stated, for purposes of this subdivision (g)(5), “sentenced” shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of more than two (2) years upon the parent or guardian;

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- ▶ (6)(A) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court; or
 - ▶ (B) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of one (1) or more criminal acts, under a sentence of six (6) or more years, and one (1) or more other grounds within this subsection (g) have been satisfied;

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- ▶ (7) The parent has been:
 - ▶ (A) Convicted of first degree or second degree murder of the child's other parent or legal guardian; or
 - ▶ (B) Found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian;
 - ▶ (8)(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child;
 - ▶ (B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:

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- ▶ (i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and
 - ▶ (ii) That termination of parental or guardian rights is in the best interest of the child;
 - ▶ (C) In the circumstances described under subdivisions (8) (A) and (B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated;

CONSIDERATION OF BEST INTEREST FACTORS:

- ▶ The prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.
- ▶ All factors considered by the court to be applicable to a particular case must be identified and supported by specific findings of fact in the court's written order. T.C.A. § 36-1-113(i)(3)
- ▶ Expert testimony is not required to prove or disprove any factor by any party.

CONSIDERATION OF BEST INTEREST FACTORS:

- ▶ “All factors considered by the court to be applicable to a particular case must be identified and supported by specific findings of fact in the court’s written order.” § 36-1-113(i)(3).
- ▶ “When considering the factors . . . the prompt and permanent placement of the child in a safe environment is presumed to be in the child’s best interest.” T.C.A. § 36-1-113(i)(2).
- ▶ The court must “then consider the combined weight of those facts to determine whether they amount to clear and convincing evidence that termination is in the child’s best interest.” *Kaliyah S.*, 455 S.W.3d at 555-56.

BEST INTEREST FACTORS:


T.C.A. § 36-1-113(i)(1)


The court shall consider all relevant and child-centered factors applicable to the case before the court.


- ▶ (A) The effect a termination of parental rights will have on the child's critical need for stability and continuity of placement throughout the child's minority;
- ▶ (B) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition;
- ▶ (C) Whether the parent has demonstrated continuity and stability in meeting the child's basic material, educational, housing, and safety needs;

BEST INTEREST FACTORS:

- ▶ (D) Whether the parent and child have a secure and healthy parental attachment, and if not, whether there is a reasonable expectation that the parent can create such attachment;
- ▶ (E) Whether the parent has maintained regular visitation or other contact with the child and used the visitation or other contact to cultivate a positive relationship with the child;
- ▶ (F) Whether the child is fearful of living in the parent's home;
- ▶ (G) Whether the parent, parent's home, or others in the parent's household trigger or exacerbate the child's experience of trauma or post-traumatic symptoms;

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- ▶ (H) Whether the child has created a healthy parental attachment with another person or persons in the absence of the parent;
 - ▶ (I) Whether the child has emotionally significant relationships with persons other than parents and caregivers, including biological or foster siblings, and the likely impact of various available outcomes on these relationships and the child's access to information about the child's heritage;
 - ▶ (J) Whether the parent has demonstrated such a lasting adjustment of circumstances, conduct, or conditions to make it safe and beneficial for the child to be in the home of the parent, including consideration of whether there is criminal activity in the home or by the parent, or the use of alcohol, controlled substances, or controlled substance analogues which may render the parent unable to consistently care for the child in a safe and stable manner;
 - ▶ (K) Whether the parent has taken advantage of available programs, services, or community resources to assist in making a lasting adjustment of circumstances, conduct, or conditions;

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- ▶ L) Whether the department has made reasonable efforts to assist the parent in making a lasting adjustment in cases where the child is in the custody of the department;
 - ▶ (M) Whether the parent has demonstrated a sense of urgency in establishing paternity of the child, seeking custody of the child, or addressing the circumstance, conduct, or conditions that made an award of custody unsafe and not in the child's best interest;
 - ▶ (N) Whether the parent, or other person residing with or frequenting the home of the parent, has shown brutality or physical, sexual, emotional, or psychological abuse or neglect toward the child or any other child or adult;
 - ▶ (O) Whether the parent has ever provided safe and stable care for the child or any other child;

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- ▶ (P) Whether the parent has demonstrated an understanding of the basic and specific needs required for the child to thrive;
 - ▶ (Q) Whether the parent has demonstrated the ability and commitment to creating and maintaining a home that meets the child's basic and specific needs and in which the child can thrive;
 - ▶ (R) Whether the physical environment of the parent's home is healthy and safe for the child;
 - ▶ (S) Whether the parent has consistently provided more than token financial support for the child; and
 - ▶ (T) Whether the mental or emotional fitness of the parent would be detrimental to the child or prevent the parent from consistently and effectively providing safe and stable care and supervision of the child.

Questions?



THANK
YOU!









