

TERMINATION

OF PARENTAL RIGHTS

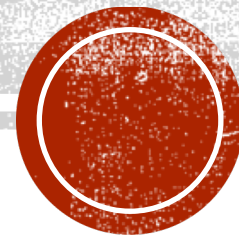


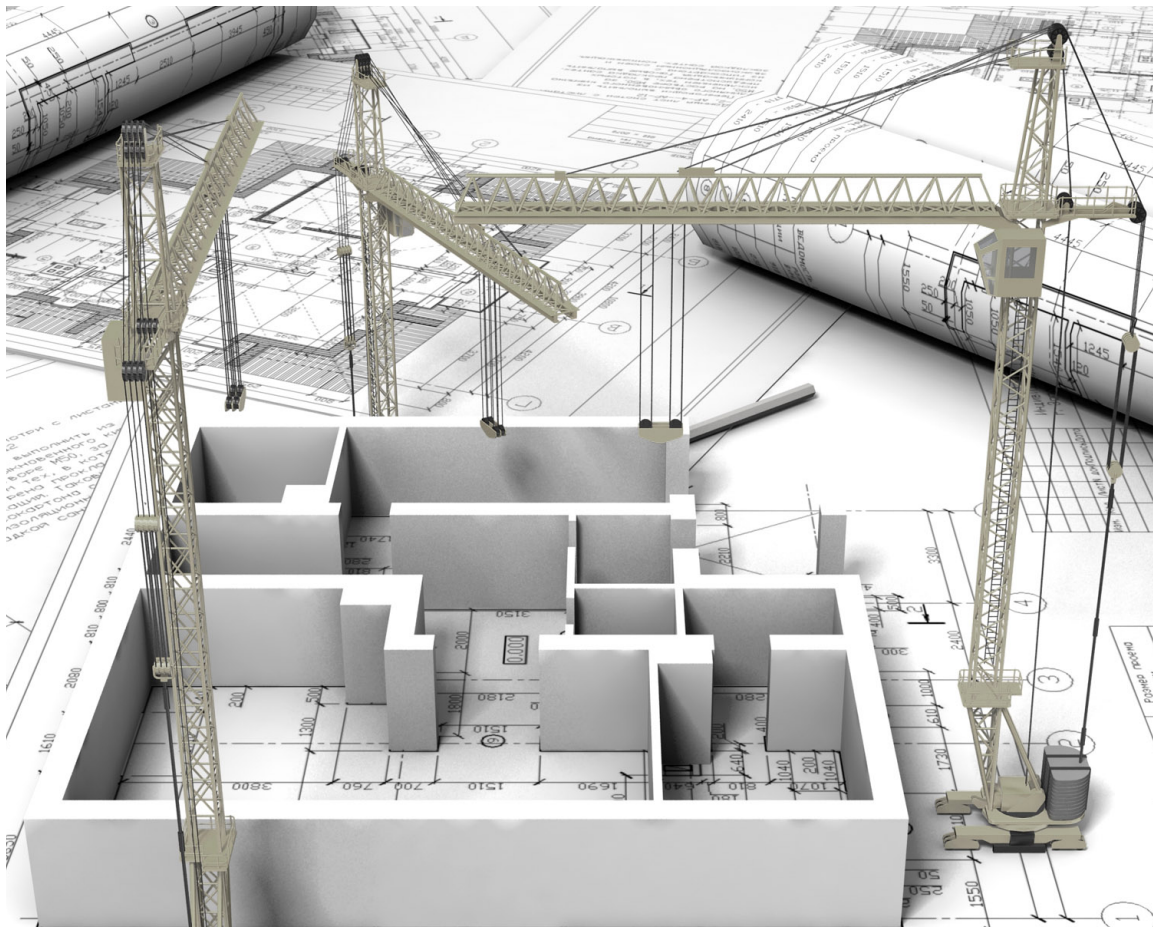
TPR ARCHITECTURE



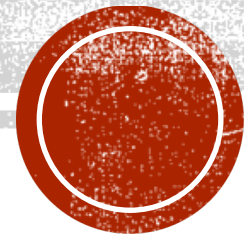


**YOU CAN'T
GET TO
THIS**





**WITHOUT
THIS**



TWO PART TEST

- Determination, by clear and convincing evidence, that one or more of the statutory grounds for termination exist.
- Determination, by clear and convincing evidence, that termination of parental rights is in the child's best interest.



GROUNDS FOR TERMINATION

- (1) The parent has given written consent to termination which has been acknowledged by the court or has voluntarily surrendered his or her child for adoption;
- (2) The parent has subjected his or her child to aggravated circumstances;
- (3) The parent has wantonly and willfully failed to comply for a period of 12 months or longer with a decree to support his or her child that has been entered by a court of competent jurisdiction of this or any other state;
- (4) A child is abandoned by his or her parent; or



GROUNDS FOR TERMINATION

(5) A child is a dependent child due to lack of proper parental care or control by his or her parent, reasonable efforts to remedy the circumstances have been unsuccessful or were not required, such cause of dependency is likely to continue or will not likely be remedied in the reasonably foreseeable future, and:

(A) Returning such child to his or her parent is likely to cause serious physical, mental, moral, or emotional harm to such child or threaten the physical safety or well-being of such child; or

(B) Continuation of the parent and child relationship will cause or is likely to cause serious physical, mental, moral, or emotional harm to such child.



GROUNDS FOR TERMINATION

In determining whether a child who is not in the custody and care of his or her parent is without proper parental care and control, the court shall also consider, without being limited to, whether such parent, without justifiable cause, has failed significantly for a period of six months prior to the date of the termination hearing:

- (1) To develop and maintain a parental bond with his or her child in a meaningful, supportive manner;
- (2) To provide for the care and support of his or her child as required by law or judicial decree; and
- (3) To comply with a court ordered plan designed to reunite such parent with his or her child.



BEST INTEREST CONSIDERATIONS

If any of the statutory grounds for termination has been met, the court shall then consider whether termination is in a child's best interests after considering the following factors:

- (1) Such child's sense of attachments, including his or her sense of security and familiarity, and the continuity of affection for such child;
- (2) Such child's wishes and long-term goals;
- (3) Such child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives;
- (4) Any benefit to such child of being integrated into a stable and permanent home and the likely effect of delaying such integration into such stable and permanent home environment;



BEST INTEREST CONSIDERATIONS

- (5) The detrimental impact of the lack of a stable and permanent home environment on such child's safety, well-being, or physical, mental, or emotional health;
- (6) Such child's future physical, mental, moral, or emotional well-being; and
- (7) Any other factors, including the factors set forth in Code Section 15-11-26, considered by the court to be relevant and proper to its determination.



SERVICE

(a) If a party to be served with a summons is within this state and can be found, the summons shall be served upon him or her personally as soon as possible and at least 30 days before the termination of parental rights hearing.

(b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least 30 days before the termination of parental rights hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested.

(c) If a party to be served is outside this state but his or her address is known or can be ascertained with due diligence, service of the summons shall be made at least 30 days before the termination of parental rights hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt requested.



SERVICE

(d) If, after due diligence, a party to be served with a summons cannot be found and such party's address cannot be ascertained, whether he or she is within or outside this state, the court may order service of the summons upon him or her by publication. The termination of parental rights hearing shall not be earlier than 31 days after the date of the last publication.

- (1) Service by publication shall be made once a week for four consecutive weeks in the legal organ of the county where the petition to terminate parental rights has been filed and of the county of the biological father's last known address. Service shall be deemed complete upon the date of the last publication.
- (2) Within 15 days after the filing of the order of service by publication, the clerk of court shall mail a copy of the notice, a copy of the order of service by publication, and a copy of the petition to terminate parental rights to the absent party's last known address.



SERVICE

“[T]he record contained no evidence that the petitioner filed any motion requesting service by publication, that the petitioner filed an affidavit or presented sworn testimony in support of service by publication, that the trial court concluded that the petitioner exercised due diligence in attempting to personally serve the mother, or that the trial court issued an order permitting service by publication.”

TPR Reversed.

ITIO R.C., 343 Ga. App. 682, 684 (2017)



PRETRIAL CONSIDERATIONS

Consider pre-trial hearings to focus the issues, make more efficient use of trial time, ensure availability of witnesses and status of subpoenas. These can substantially reduce the need for continuances.

Consider mediation, using county ADR funds.



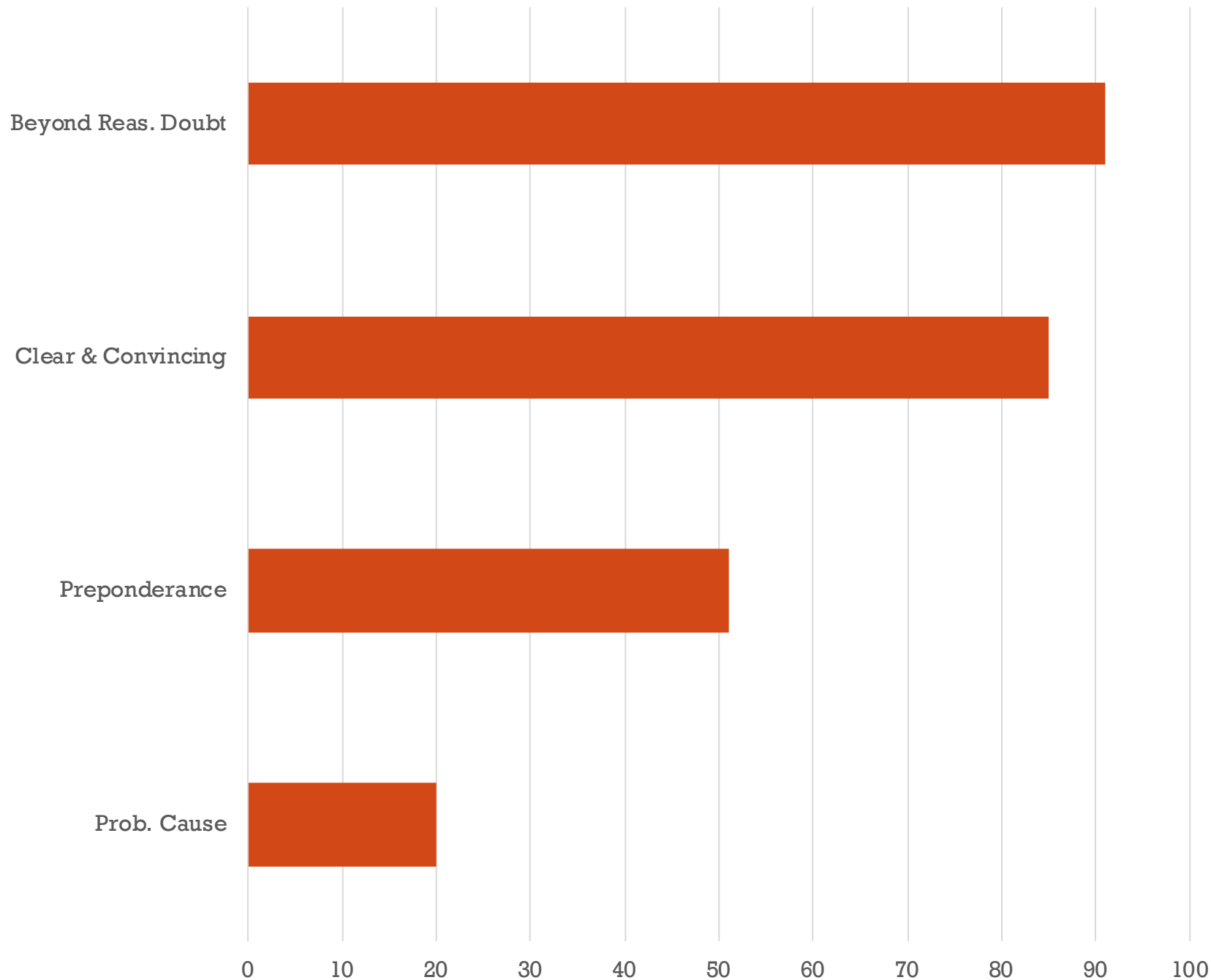


BURDEN OF PROOF

The State bears the burden of proving every element of the petition by clear and convincing evidence, and the burden never shifts to the parents.

“A mere recitation that [any] legal requirement has been met will not suffice.” *ITIO A.S.*, 339 Ga.App. 875, 881 (2016)





**SUBSTANTIALLY
MORE
LIKELY
THAN NOT**



SUBJECTIVE CERTAINTY

Santosky compared Beyond a Reasonable Doubt to Clear & Convincing by comparing “*absolute certainty*” to “*subjective certainty*” – that is, does the evidence provide enough certainty for the factfinder to conclude that the outcome is substantially more likely than not?



EVIDENCE

“The Juvenile Code clearly contemplates that witnesses must be sworn and subject to cross-examination, hearsay will not be allowed (unless under a statutory exception), parties have the right to confront witnesses, and rules of evidence regarding the introduction of exhibits should be followed. Like the right to counsel, these rights are not optional.” *ITIO C.H.*, 343 Ga. App. 1, 13



HOW DOES A COURT LEARN FACTS?

1. Sworn testimony of a witness subject to cross-examination (any facts the court hears)
2. Properly introduced document or exhibit (any words, pictures, or objects the court sees)
3. Stipulation of the parties (any of the above)
4. Judicial notice



STIPULATIONS

- Parties may stipulate to the truth of evidence or simply to its admissibility.
- A stipulation as to admissibility does not prevent an argument that the evidence is not truthful or that it is inaccurate.
- Parties may not stipulate to conclusions of law, which are the exclusive province of the court.
- All stipulations must be made in writing or on the record.



JUDICIAL NOTICE

- Judicial notice concerns “adjudicative facts”.
 - “Adjudicative facts” are “the facts necessary to the determination of events in a particular case” - “who did what, where, when, how, and with what motive or intent”.
 - The adjudicative fact judicially noticed must be beyond reasonable dispute.
- A court cannot take judicial notice of a fact that would be inadmissible if offered as evidence.



JUDICIAL NOTICE

- Court records: strictly speaking, a court may not take judicial notice of court records, but only of adjudicative facts found within the court record.
- The court may not take notice of the truth of facts contained in its records.



JUDICIAL NOTICE

- Courts may take judicial notice of the non-disputed content of its own records and of the records of any other court – state or federal.
- All acts of judicial notice should be clear, specific, and on the record.
- Whatever has been judicially noticed in a record has to be stated specifically on the record so that it's clear what is being noticed and why.
- If a document is judicially noticed, it must be introduced at the hearing and made part of the record.



CONDUCTING THE HEARING

- Ensure presence of all parties. Proof of service of petition.
- Parties should ensure that all documents and exhibits the court is to consider are ready and in an admissible form (e.g., certification where required), and that all other parties are familiar with them.
- Parties should ensure that witnesses are present.
- Continuances, when absolutely necessary, are supported by explicit findings of fact and conclusions of law ("can't be reached" not sufficient alone).



CONDUCTING THE HEARING

“In advance of each hearing to terminate parental rights, DFCS shall give written notice of the date, time, place, and purpose of the hearing to the caregiver of the child at issue, the foster parents of such child, if any, any preadoptive parent, or any relative providing care for such child, including the right to be heard. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing by United States mail, e-mail, or hand delivery.”
OCGA §15-11-300(a)



WAIVERS AND STIPULATIONS

- Stipulations should be clearly-stated on the record, and the court should ensure that they are specific. Parties may not stipulate to legal conclusions.
- Waiver of counsel must be on the record, and there must be an explicit finding on the record that the waiver is made freely, voluntarily, and knowingly.
- Consent to TPR must be in writing and received in open court. There should be extensive record-making to ensure that the consent is entered freely, voluntarily, and knowingly, and that the parent truly understands the legal consequences of TPR.



SURRENDERS

- Once the TPR petition is filed, parents lose the ability to take any action affecting the custody of the child, except:
 - Consent to TPR
 - Surrender to DFCS
 - Surrender to third party if all parties to petition agree.
- The best practice is for the surrender to be reviewed in open court to ensure that it was entered freely, voluntarily, and knowingly. If the parent is unavailable, then the DFCS representative who assisted the parent should testify to facts sufficient for the court to determine that the surrender was entered freely, voluntarily, and knowingly.



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REASONABLE EFFORTS

- Clear and convincing evidence must be presented that the agency has used reasonable efforts to set forth the permanency plan (appropriate services). The court should have this evidence before considering the parent's actions or inactions (except in cases of aggravated circumstances or abandonment).
- If there has been a concurrent plan, the court must find that the agency has used reasonable efforts to set forth both concurrent plans. At TPR, the court and other parties should enquire diligently into pre-TPR efforts to find an appropriate placement and to complete necessary paperwork.



GAL ADVOCACY

- The GAL should give a specific recommendation that shows a consideration of the best interest factors, an independent assessment, and the evidence adduced at the trial.
- Attorney GALs must be allowed to do lawyer things.



ORDERS

- A recitation of all the evidence presented, no matter how detailed, is not legal fact-finding.
- Each fact found must be tied explicitly to testimony, exhibits, judicial notice, or stipulation.
- Each conclusion stated must follow clearly and logically from one or more of the facts found.
- Every exhibit or document relied upon by the court should be incorporated into the order.



ORDERS

- Orders are binding upon the parties once they are signed and filed.
- Orders must be transmitted to the State Adoption Unit within 15 days of filing.
- Orders must notify the parent whose rights have been terminated of the right to use the Georgia Adoption Reunion Registry.
- The order must make a custodial disposition.



ORDERS

The order must show that the post-TPR placement is based upon a consideration of:

- (1) [The] child's need for a placement that offers the greatest degree of legal permanence and security;
- (2) The least disruptive placement for such child;
- (3) Such child's sense of attachment and need for continuity of relationships;
- (4) The value of biological and familial connections; and
- (5) Any other factors the court deems relevant to its determination.



ORDERS

If the court does not order the termination of parental rights but the court finds that there is clear and convincing evidence that a child is a dependent child, the court may enter a disposition order as it would following an initial adjudication.

The order should set the date for the next judicial review. (Six months out is too long!)



ORDERS

DFCS policy requires that a TPR order prepared by a SAAG be presented to the court within 30 days of the hearing.



QUESTIONS?

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