



THE PRELIMINARY PROTECTIVE HEARING

MD CANI: THE FIRST 75 DAYS

PRESENTED BY JUDGE R. MICHAEL KEY
TROUP COUNTY, GEORGIA JUVENILE COURT



2022

LEARNING OBJECTIVES

- Understand the legal and “best practice” tasks, roles and responsibilities relative to the initial review hearing
- Know strategies that may be applied to improve system handling of the initial review hearing



SETTING THE TRAJECTORY



GOALS and PRIORITIES

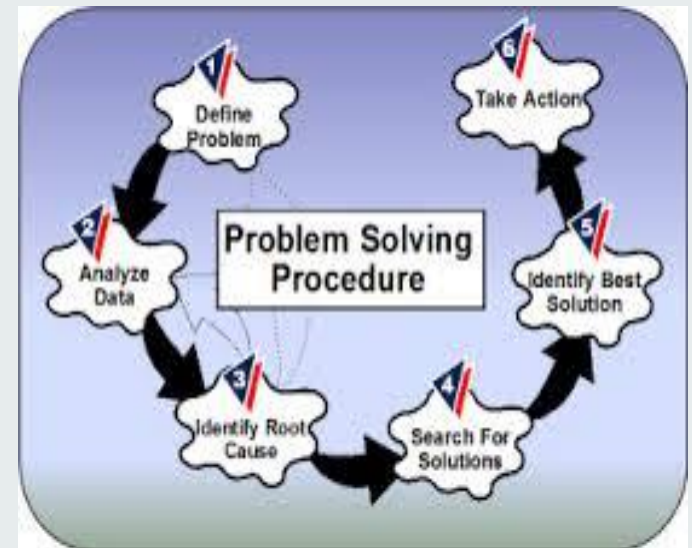
Time

Resources



THE PRELIMINARY PROTECTIVE HEARING

- Should be as thorough and meaningful as possible
- Should move litigation forward quickly
- Should set the tone for a problem-solving atmosphere
- Judges should be willing to critically review the removal decision.



REFLECTIONS ON THE DECISION-MAKING PROCESS TO GUARD AGAINST BIAS

Just a few:

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or might influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn?
- Is this family receiving the same level and tailoring of services as other families?
- Is the parents' uncooperative or negative behavior rationally related to the involvement of the agency and/or the court?
- If this were my child, would I be making the same decision? If not, why not?

TIMING AND NOTICE

Timing:

- 72 hours after child is placed in foster
- Weekends and holidays excluded

Notice:

- Reasonable oral or written notice
- Time, date and purpose
- To the child; and
- To the child and to the child's parent, guardian or legal custodian
- Entitled to rehearing upon submission of affidavit

WHO CAN OR MAY BE PRESENT?

Right to Participate:

- Parent, guardian, or legal custodian
- Child Attorney
- GAL if appointed
- Child, if not contrary to child's best interest
- Parent's attorney
- Assigned DFCS worker
- SAAG

May be Present:

- Relative or person demonstrating ongoing commitment
- DFCS employees
- An advocate as requested by child's parent, guardian, or legal custodian
- Other persons having knowledge of or interest in the child's welfare

PRIOR TO COMMENCEMENT

- Contents of the complaint...
- ...in terms understandable to the parties
- Nature of the proceedings...
- ... in terms understandable to the parties



The parties' due process rights:

- Right to an attorney
- Right to call witnesses
- Right to cross-examine witnesses
- Right to present evidence
- Right to a trial by the court

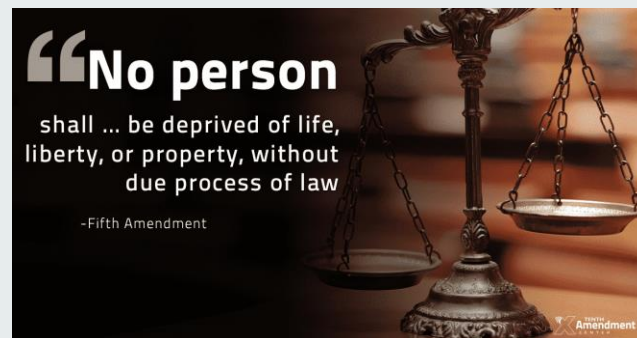
AT THE HEARING

Court may consider any evidence, including hearsay evidence that the court finds to be:

- Relevant,
- Reliable, and
- Necessary to determine the needs of an alleged dependency child or to make determinations or findings required by O.C.G.A. Section 15-11-146

The parties' due process rights:

- Right to an attorney
- Right to call witnesses
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REQUIRED FINDINGS

Probable cause to believe a child is a dependent child; and whether protective custody is necessary to prevent abuse or neglect

Abuse:

- Non accidental physical injury or physical injury inconsistent with explanation
- Emotional abuse
- Sexual abuse or exploitation
- Prenatal abuse
- Act of family violence in the presence of child

Neglect:

- Failure to provided proper parental care or control, subsistence, education as required by law, or other are or control necessary for child's physical, mental, or emotional health
- Failure to provide a child with adequate supervision necessary for such child's well-being
- Abandonment of a child by parent, guardian or legal custodian

OPTIONS BASED ON FINDINGS

Where burden of proof is not met as to either element of proof

Dismiss the case and return the child

Where burden of proof is met as to dependency, but not as to necessity of for protective custody

- Return the child pending hearing on dependency petition
- Order alternatives to foster care

Where burden of proof is met as to both elements of proof

Place the child in protective custody of DFCS, who shall prioritize placement with relative or fictive kin

ADDITIONAL FINDINGS

Contrary to the welfare findings:

- Must be made anytime the court sanctions the removal of a child from the home.
- Made on a case-by-case basis and documented

Best interest findings:

- In determining whether a child shall be removed or continued outside the home, the court shall consider whether reasonable efforts can prevent or eliminate the need to separate the family.
- The Court shall make written findings in every order of removal that describes why it is in the best interest of the child to be removed or to continue to be separated.

Required reasonable efforts (written) findings:

- Whether DFCS made reasonable efforts to prevent or eliminate the need for removal; and
- Whether DFCS made reasonable efforts to eliminate the need for removal so child could return home safely.
- Whether DFCS is deemed to have made reasonable efforts because there were no services that could have provided that would have eliminated removal
- All based on evidence presented by DFCS

DON'T FORGET

- **Americans with Disabilities Act**
- **Service Members Civil Relief Act**
- **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**
- **Interstate Compact on the Placement of Children (ICPC)**
- **Other federal law apply to this case?**

COURT CASE MANAGEMENT

PREPARE FOR THE NEXT HEARING

- Identify tasks to be accomplished by the next hearing.
- Make oral findings and orders that all participants can understand.
- Consider the appropriateness of ADR processes, and order if applicable.
- Set the date and time of the next hearing within state and federal timeframes, and identify persons whose presence is needed at the next hearing.
- Order that the child (if appropriate) and caregivers receive notice of all proceedings and hearings.
- Ensure all orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the PPH order immediately following the hearing.

ENGAGE PARENTS, CHILDREN AND FAMILY MEMBERS

- Specifically ask parents and children if they understand what occurred at the hearing, and engage them in a conversation about next steps.
 - Can you tell me what happened here today?
 - Can you tell me what the next steps are?
- Advise parents of the importance of their active participation in all proceedings.
 - Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in state and federal laws.
 - Advise parents of the consequences for failure to appear at any further court hearings.
 - When calendaring the next hearing, all parties, including the parents, should be asked if the scheduling works for them, and if not, ask for a better time.
- Ensure that parents and children have contact information for caseworkers and attorneys and that they understand the process to request court review if necessary.
- Ask if there are any questions for the court.

WHAT HAPPENS NEXT?

- For DFCS
- For the SAAG
- For the parents
- For the parents attorneys
- For the child
- For the child's attorney
- For the attorney GAL
- For the non-attorney GAL/CASA
- For the Court
- For service providers

EFFECTIVE PPH HEARINGS ARE...

- Thorough and meaningful
- Engage parents who are present, identify those who are not, and determine the agency's efforts to locate them
- Ensure early, active participation of parties
- Avoid or strictly limit continuances
- Set a problem-solving tone
- Have a judge who actively engages parties who are present
 - Sets clear expectations moving forward
 - Establishes a focus on child well-being



PPH BEST PRACTICES

Engaging Families from the Bench

- Conduct an inquiry to ensure diligent searches comply with all statutory and due process requirements
- Verify reasonable efforts were made to prevent removal and ask for a description of which specific services could prevent the need for removal or continued removal
- Ask about relatives
- Ask “who is the team surrounding the family?”
- Involve children in court
- Involve caregivers in court

**Nothing
About
Us
Without
Us**

PPH BEST PRACTICES

Engaging Families from the Bench

- Make child specific decisions and findings
- Ensure parents and children are actively involved in case development
- Encourage concurrent planning
- Ask about placement and ongoing connections with siblings
- Name family strengths during court proceedings



THOUGHTS, QUESTIONS OR PUSHBACK?

