

Georgia Appellate Decisions – March 2006

In the Interest of A.R.A.S.

Case No. [A06A0331](#)

Decided – March 1, 2006

[out of Murray County]

Affirmation of TPR

- holding that the litigant (here DFCS) is entitled to call an opponent (here the parent) for purposes of cross-examination
 - o i.e OCGA §24-9-82 applies to TPR hearings
 - o no right to refuse to testify, not even to avoid self-incrimination. If do refuse, court can draw negative inference from silence.
- standard denial of challenge to sufficiency of evidence

In the Interest of K.A.P.

Case No. A05A2332

Decided – February 28, 2006

[County not identified]

Affirmation of TPR

- standard denial of challenge to sufficiency of evidence
- court does uphold the juvenile court's denial of a motion for continuance
 - o found there to be no abuse of discretion
 - o facts are such that continuance had already been granted once for purpose of mother retaining counsel. Mother had nearly 6 weeks to do so. When she returned to court, new counsel asked for continuance b/c he was retained only the previous afternoon and had not had an opportunity to prepare. Mother offered no reason for delay in seeking counsel. Court denied continuance.

In the Interest of B.R.

Case No. A06A0372

Decided – March 1, 2006

[out of Laurens County]

Affirmation of TPR

- standard denial of challenge to sufficiency of evidence

In the Interest of J.K.

Case No. A05A1789

Decided – March 30, 2006

[out of Gwinnett County]

En banc decision

- unanimous on upholding TPR
- but – 3 justices wrote special concurrence to address matter in need of clarification

Affirmation of TPR

- challenge was to sufficiency of evidence
 - o upheld by all as sufficient
- Issue in contention regards what is the necessary evidence to prove the fourth factor of the TPR statutory requirement (*The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.*)
 - o Essentially asking whether or not evidence used to prove the first three factors required for TPR, could also be used to prove the fourth factor.
 - o Please read the full opinion below for details but my best summary of the ruling is that every factor required by the statute must be proven. However, the Court recognizes that “facts do not come neatly bundled” and that “relevant and persuasive evidence” may at times prove more than one of the required elements. They hold that when cases “contain[] clear evidence of harm to the children [they] should not be disapproved just because the decisions cited evidence from the prior three factors in determining that harm to the children.”
 - o The decision seems to suggest expert testimony as to harm to the child is not a necessary element of proof for TPR