

**Georgia Appellate Decisions**  
**Deprivation Cases**  
**June 06**

SUMMARY: 8 cases where challenge was to sufficiency of evidence - 6 affirmed, 2 reversed. 1 contempt of court appeal with ruling potentially impacting placement decisions

**In re TIDWELL et al.**

**In re FRENCH et al.**

A06A0731, A06A0732

2006 Ga. App. LEXIS 685

Posture: Reversal of contempt of court charges against DFCS employees for failure to comply with a court order

- Argument – the court does not have authority to order specific placement of a child in the custody of DFCS and therefore the order directing such a placement was illegal. Appellate court agrees.
  - Finds DFCS has sole right to determine where and with whom the child will live
  - “Any effort of the court to direct this decision [placement] is ‘merely exhortatory, and not binding.’” (at 15)

There were also issues regarding the appropriate analysis when a witness invokes her Fifth Amendment right against self-incrimination and that oral pronouncements from the bench are not binding

**In the Interest of S.L.E. et al.**

A05A2249

2006 Ga. App. LEXIS 769

Decided 6/26/06

Posture: Reversal (of order terminating reunification services) on sufficiency of the evidence challenge

Note – overturning a case based solely on a challenge to the sufficiency of the evidence is fairly rare but both this case and the one below (*J.P.*) do just that. The standard of review for a challenge to the sufficiency of the evidence is high. The appellate court views the evidence in the light most favorable to the juvenile court’s judgment and will defer to that judgment if any rational trier of fact could have found clear and convincing evidence to support the verdict.

- As with any Sufficiency of the Evidence challenge, the outcome is highly fact specific. Here Dad essentially complied with entire caseplan. Disputes were over things like if a “psychiatric assessment” was acceptable when the caseplan had actually called for a “psychological evaluation” and whether Dad failed to comply

with requirement of counseling after a DFCS selected provider determined Dad did not need counseling

- As to the clear and convincing standard, the court cites to *In the Interest of S.J.*, 270 Ga. App. 598.” The C & C standard “safeguards the high value society places on the integrity of the family unit and helps eliminate the risk that a factfinder might base his determination on a few isolated instances of unusual conduct or idiosyncratic behavior.”

**In the Interest of J.P.**

A06A0102, A06A0104

2006 Ga. App. LEXIS 770

Decided 6/23/06

Posture: As to Mom - Affirmation of non-reunification plan. Challenge was to sufficiency of evidence.

As to Dad – Reversal (of extension of custody order) on sufficiency of evidence challenge (lack of evidence that child continued to be deprived).

- To extend custody, DFCS must show it is necessary to accomplish the purposes of the order. Deprivation must be shown by clear and convincing evidence.
- Again, as with any Sufficiency of the Evidence challenge, the outcome is highly fact specific. Here Dad substantially complied with caseplan. DFCS testified there was no reason he couldn't take the child home immediately. DFCS's concern was over lack of candor about a relationship and about Dad hiding from DFCS on one occasion.

**In the Interest of M.T.H. et al.**

A06A0440

2006 Ga. App. LEXIS 670; 2006 Fulton County D. Rep. 1772

Decided 6/8/06

Posture: Affirmation of TPR. Challenge was to sufficiency of evidence.

**In the Interest of K.A.S. et al.**

A06A0508

2006 Ga. App. LEXIS 667; 2006 Fulton County D. Rep. 1773

Decided 6/7/06

Posture: Affirmation of TPR. Challenge was to sufficiency of evidence.

**In the Interest of A.C. et al.**

A06A0608

2006 Ga. App. LEXIS 796

Decided 6/29/06

Posture: Affirmation of TPR. Challenge was to sufficiency of evidence.

**In the Interest of C.A.**

A06A0770

*2006 Ga. App. LEXIS 694; 2006 Fulton County D. Rep. 1883*

Decided 6/12/06

Posture: Affirmation of non-reunification. Challenge was to sufficiency of evidence.

**In the Interest of C.G. et al.**

A06A0680

*2006 Ga. App. LEXIS 688; 2006 Fulton County D. Rep. 1882*

Decided 6/7/06

Posture: Affirmation of TPR. Challenge to sufficiency of evidence and challenge re ineffective assistance of counsel.

**In the Interest of D.C. AND A.C.**

A06A0810

*2006 Ga. App. LEXIS 712; 2006 Fulton County D. Rep. 1996*

Decided 6/16/06

Posture: Affirmation of TPR. Challenge to trial courts finding of no common law marriage and to denial of continuance – both rejected by appellate court.