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**GAL'S IN DV COURT**

**A DIVA GALA**



# AGENDA

Where we are today

How we got here

What the bench wants you to know

# 2023 BY THE NUMBERS

- ❖ Data courtesy of Bluegrass Domestic Violence Prevention Coalition, publication forthcoming



# 2023 BY THE NUMBERS

- ❖ Last year, the Fayette Family Court adjudicated 2,443 petitions for DVO/IPO
- ❖ 25% of all petitions did not allege a family relationship, dating relationship, or sexual violence
- ❖ 74% of Petitioners were women
- ❖ 51% of all parties were white
- ❖ 10% of cases conducted w/interpreters in at least 17 unique languages



# 2023 BY THE NUMBERS: CASE OUTCOMES

- ❖ 29.86% granted long-term order
  - ❖ 23.98% denied after hearing
  - ❖ 26.31% dismissed at Petitioner's request
  - ❖ 6.46% resolved by agreed order
  - ❖ 5.45% rescinded without service
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- ❖ So, 54% of petitions made it to full hearing. Of those, 55% were granted and 45% denied.



# MAY 2024, FOR EXAMPLE

- ❖ Courthouse open 22 days
- ❖ Judge A heard DV hearings on 13 days
- ❖ Judge B heard DV hearings on 16 days
- ❖ Judge C heard DV hearings on 17 days
- ❖ Judge D heard DV hearings on 17 days
- ❖ Obvious impact on availability for other hearings

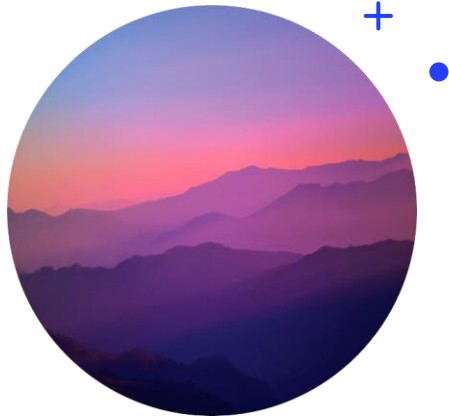


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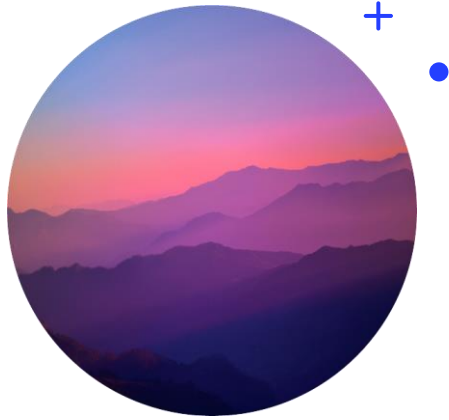
**HOW DID WE GET HERE?**



# COA: MEANINGFUL HEARING

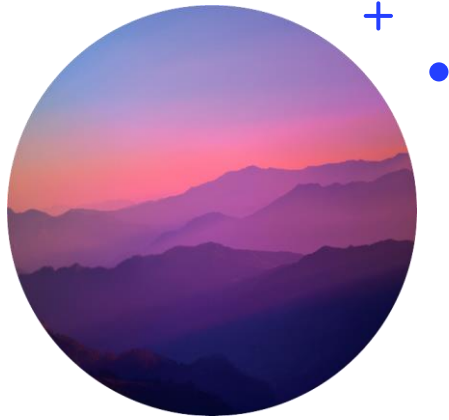
- Cannot be cursory hearing.
- Must be full evidentiary hearing with sworn testimony and witnesses
- Rules of evidence apply.
- COA very regularly reverses DVOs and IPOs for failure to provide meaningful evidentiary hearing. *See e.g., Wright v. Wright*, 181 S.W.3d 49 (Ky.App. 2005); *Rankin v. Criswell*, 277 S.W.3d 621 (Ky.App. 2008); *Clark v. Parrett*, 559 S.W.3d 872 (Ky.App. 2018); *Tipan v. Tipan*, 582 S.W.3d 70 (Ky.App. 2019)
- Countless unpublished cases too – still at least one per month.
- True even if CHFS does not substantiate! *Lankford v. Lankford*, 688 S.W.3d 536 (Ky.App. 2024)





# COA: GAL'S FOR MINORS

- *Smith v. Doe*, 627 S.W.3d 903 (Ky. 2021)
  - Unrepresented minor who is Petitioner or Respondent must have a guardian ad litem appointed per CR 17, for either IPO or DVO cases.
  - Many judges and practitioners already did this.
  - Provides no mechanism for payment of that person, KRS 403.730(3) prohibits requiring Petitioner to pay a fee
  - Note: Isn't CR 17 for defendants/respondents? Other rules for petitioners?
- *Hamilton v. Milbry*, 676 S.W.3d 42 (Ky.App. 2023)
  - "We believe *Smith* requires that a minor child who is listed as a party on the petition for protection is in need of an appointed guardian." *Id.* at 47.
  - "Pursuant to *Smith*, we believe that such a petition filed on behalf of a child and which concerns alleged acts of violence as to a minor, requires the appointment of a GAL." *Id.*
  - Actual Petition in the case did not do either but listed child as "other protected person" – still reversed.
  - Still no mechanism for payment or direction



# COA DIALS IT BACK?

Not needed if adult petitioner has attorney and that attorney adequately argues child's case? Or needed but harmless error to exclude?

- “In contrast to Smith, where no attorney was present to act on behalf of the minor child, in the case at bar the petitioner's attorney actively engaged in the hearing on behalf of Child; calling witnesses and making arguments. Here, the allegations were centered around alleged actions of Herrell toward Child. If any party were to be aggrieved by the court's failure to appoint a GAL it would be Child; and, in the case at bar, Child received the utmost protection afforded in the law. Therefore, any misstep on the part of the family court was harmless error. However, trial courts should be warned that this outcome may not follow in subsequent cases. Per Smith, a minor child must be represented in hearings for protective orders either as private counsel, or where there is none, by the appointment of a GAL.
- Herrell v. Miller, No. 2022-CA-1199-ME, 2023 WL 4139889, at \*4 (Ky. Ct. App. June 23, 2023)



# ...THEN EXPANDS BUT STILL DIALS BACK?

Would have been needed **on extension motions** but harmless error if adequately protected?

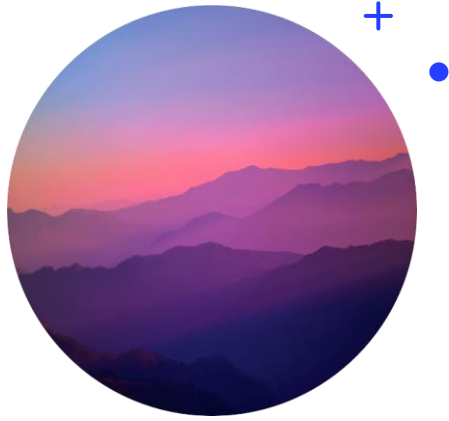
“We are satisfied that Juanita's counsel's representation at the hearing was in conformity with the role of the GAL as described in Smith. We conclude that any error in the trial court's failure to appoint a GAL under the facts of this case was harmless.”

*Prater v. Ramos*, No. 2023-CA-0597-ME, 2023 WL 6522195, at \*3 (Ky. Ct. App. Oct. 6, 2023)



# IS COA JUST TALKING TO ITSELF?

- This issue was not presented or briefed in ANY post-*Smith* case!
- What is this really?



# GENERAL ASSEMBLY: GAL'S

- 2024 HB 436
- For IPOs, Ct. shall appoint when petition filed on behalf of minor who is victim of dating violence, sexual assault, or stalking, or “in which the minor is named as a respondent or petitioner.”
- For DVOs, Ct. shall appoint when petition filed on behalf of minor who is victim of domestic violence and abuse or “in which a minor is named as a respondent or petitioner.”
- Creates mechanism for payment of fee: no more than \$500, paid by Finance and Administration Cabinet
- *Hamilton v. Milbry* still require in more contexts?
- *Herrell* and *Prater* certainly do.



# GENERAL ASSEMBLY: GAL'S

- 2024 HB 436
- Section 2 often overlooked – “encourages” Supreme Court of Kentucky to develop rules for civil trials involving child abuse
- FCRPP committee getting back together
- Send us ideas or let us know if you’re willing to serve!

# EXPECTATIONS FOR GAL'S

- Are they different in a *Smith v. Doe* appointment and a *Hamilton v. Milbry* appointment?
- *Smith* appointments may look more like direct representation of the minor.
- Still, *Hamilton* requires GALs, not FOCs.
- Question witnesses, make motions and objections etc.
- In Hamilton-type cases, GAL's "recommendations" may take the form of requesting specific relief for child

# EXPECTATIONS FOR GAL'S

- What to do when adult petitioner requests a DVO/IPO and GAL for minor does not?
  - Is it different at the close of proof?
- What if adult petitioner wishes to dismiss and GAL for minor still requests order on behalf of child?
  - This should be the next big appellate case

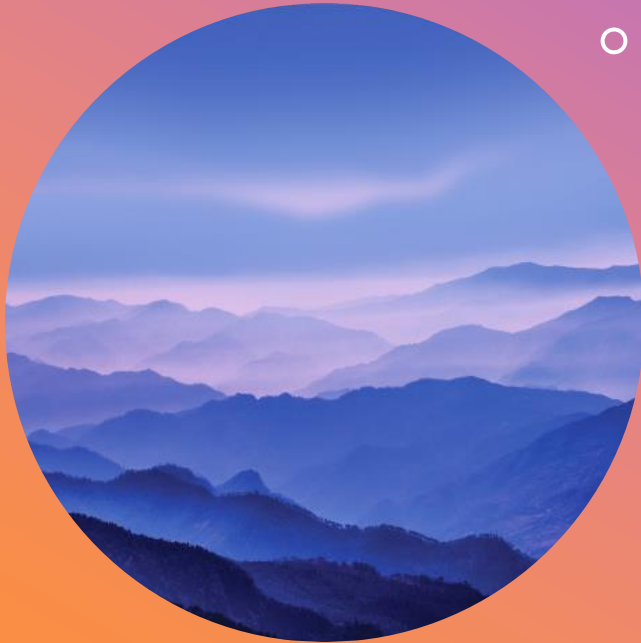


1. File a written Entry of Appearance and introduce yourself on the docket. Every time.
2. There is no zoom link for this docket. Appear in person. Court may allow witnesses via zoom at evidentiary hearings – ask, don't assume.
3. Expect an off-docket hearing. Temporary orders may be amended by agreement – try to talk to other attorney if possible.
4. Expect a GAL if children are involved.
5. The parties may agree - *Alford* stipulation is possible.
6. Petitioner is not limited to testifying to contents of Petition. *Collett v. Dailey*, 371 S.W.3d 777 (Ky.App. 2011); *Clark*, supra.

# WHAT JUDGES WANT IN DV COURT

8. Remember the standard is preponderance of the evidence!
9. If you enter an agreed civil restraining order in a companion CI action, it also needs to be entered in DV action.
10. Court may order any relief “the Court believes will be of assistance in eliminating future acts of domestic violence and abuse” – no requirement that it be at request of Petitioner.
11. Read the *current* statute!

# WHAT JUDGES WANT IN DV COURT



**THANK YOU!**

Hon. Ross Ewing  
and  
Hon. Traci Brislin