



Spring 2007

***The Importance of Establishing the Standard of Review in
Termination of Parental Rights Appeals***

When representing a parent in a termination appeal, counsel should emphasize the standard of review that applies to the issues they have raised.

Counsel should argue that the appellate court should (1) defer to the trial court's fact and credibility determinations but (2) not defer to its legal conclusions.

Appellate courts should defer to a trial court's fact and credibility determinations because they depend in part on the trial court's evaluation of live witnesses, which an appellate court cannot judge by reviewing transcripts. Thus, these determinations are properly upheld on appeal as long as they're supported by "adequate, substantial and credible evidence" in the record.¹

But this rationale does not apply to legal and other determinations that the trial court has made, which at least some New Jersey courts have recognized are entitled to much less deference:

¹ New Jersey Div. of Youth and Family Services v. M.M., 189 N.J. 261, 279, 914 A.2d 1265, 1276-77 (2007).



- No deference should be given to purely legal determinations—as in other civil and criminal matters.²
- The appellate court must ensure that the trial court has reached a “balanced and informed resolution of the evidence in light of the contrasting views of the experts” who have testified in the case. The ultimate decision must be rooted in both the expert testimony and the facts established at trial.³
- Even where the appellant claims that the trial judge has simply “miscalculated” the implications to be drawn from the facts, the “traditional scope of review is expanded,” with New Jersey’s Supreme Court recently noting that reversal is warranted where the decision is “so wide of the mark that a mistake must have been made.”⁴

Why is it so important to emphasize these varying standards of review?

Because the State has urged appellate courts to employ a deferential standard of review to entire termination decisions, regardless of the issues the parent has raised

² See New Jersey Div. of Youth and Family Services v. R.L., 388 N.J. Super. 81, 89, 906 A.2d 463, 467 (App. Div. 2006) (“A trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.”) (citing Manalapan Realty v. Township Comm. of Manalapan, 140 N.J. 366, 378, 658 A.2d 1230, 1237 (1995)).

³ Matter of Guardianship of K.L.F., 129 N.J. 32, 44, 608 A.2d 1327, 1333 (1992).

⁴ M.M., 189 N.J. at 279, 914 A.2d at 1276-77.



on appeal. Some appellate courts appear to have employed this deferential standard, improperly insulating termination decisions from meaningful review.

It's particularly important to ensure meaningful review in termination cases because, very often, the judge sitting for the termination trial is the same judge who has already heard about years of family turmoil as the case progressed through the courts. This one-judge practice is unfair to parents, who are entitled to a neutral decision maker. Until this one-judge practice is changed, counsel must continue urging appellate courts to take hard, concrete looks at termination decisions. Arguing for a stringent review standard furthers this goal and helps protect the constitutional rights of parent and child.

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