

## Preventing Appellate Pitfalls by Preserving the Record

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## What Does It Take to Adequately Preserve the Record?

- An objection must be specific enough to alert the trial court to a possible error and to allow the court an opportunity to correct such error.
- Preservation for appeal requires a timely objection (i.e. at the time of attempt to introduce evidence) or notice in proper form.
- Argument going to the essence of the ruling desired is sufficient to preserve an issue. *People v. Syrie*, 101 P.3d 201, 223 n. 7 (Colo. 2004).

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## Exceptions to the General Rule Against Considering Issues for the First Time on Appeal

- The general rule is that legal arguments neither presented to, nor ruled upon by the trial court may not be raised for the first time on appeal. *People ex rel. K.L.-P.*, 148 P.3d 402, 403 (Colo. App. 2006).
- This general rule is no guarantee of the appellate court's refusal to consider an unpreserved issue on appeal:
  - See e.g. *People ex rel. S.N.-V.*, 300 P.3d 911, 916-918 (Colo. App. 2011) (permitting a parent to raise inappropriate treatment even where not raised at trial level and permitting parent to raise reasonable efforts despite preservation.
  - Errors affecting substantial rights that weren't raised potentially could be addressed by the Court.

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## Protecting the Record From The Outset

### Avoiding Jurisdictional Issues

#### Subject Matter Jurisdiction:

- relates to the court's authority to hear and make findings on a certain class of case as provided within statute or by the constitution. *People in Interest of C.N.*, 431 P.3d 1219, 1223 (Colo. App. 2018)
- Don't forget the UCCJEA - are there preexisting orders in another state?

#### Personal Jurisdiction:

- Even with subject matter jurisdiction, the court may not enter judgment without personal jurisdiction over the parties. See *Giduck v. Niblett*, 2014 COA 86.
- The trial court's jurisdiction is really only temporary until the child is adjudicated dependent and neglected. See 19-1-104(1)(b), C.R.S.; see also *People v. C.O.*, 2017 CO 105.
- Must have service on the parties.

Don't Forget ICWA!

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## Common Issues Raised on Appeal and How To Protect Yourself

- Less Drastic Alternative - Whether the court erred in finding termination was the only outcome that would meet the best interests of the child.
- Less Drastic Alternative/Lack of Reasonable Efforts - Whether the court erred in finding the Department made reasonable efforts to reunify the family (as related to lack of less drastic alternatives).
- Fitness and Reasonable Efforts - Whether the court erred in finding the unfit despite the Department's reasonable efforts to rehabilitate the parent.
- Likelihood of becoming fit within a reasonable period of time.
- Be prepared in cases of an incarcerated parent or a disabled parent!

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## Common Issues Raised on Appeal and How to Protect Yourself

Whether the court erred in finding termination was in the best interests of the child.

- Ensure you have sufficient evidence of this child's specific needs and best interest. A mere assertion that the child is young and needs only the permanency that adoption offers, without unique, individualized support relative to the child's interests may not be sufficient.

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## Common Issues Raised on Appeal

Whether the trial court erred in determining parent was unfit despite the Department's reasonable efforts to rehabilitate parent or reunify the family.

- Know the services that have been recommended to assist with parent's compliance with the treatment plan.
- Make sure the treatment plan is crafted in a way that the parent can actually complete it with the services you know are available and the parent's barriers.
- Reasonable efforts are satisfied where the services required by 19-3-208 have been made available. (Note the parent's obligation to complete the treatment plan).
- Make a specific record about why you believe reasonable efforts are being made at every hearing.

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## Common Issues Raised on Appeal

Whether the court erred in finding the Department made reasonable efforts to reunify the family (as related to lack of less drastic alternatives).

- Be aware of your role regarding diligent search and the requirements.
- Ask for ICPC sooner rather than later.
- Make sure Department is consistently asking about family or friend placement options.

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