

GENERAL INFORMATION ABOUT THE STANDARD OF REVIEW ON APPEAL

An appeal is different than proceedings in the juvenile court. In an appeal, the appellate court does not hear any new evidence, or reweigh the evidence. The court merely reviews the decision made by the juvenile court based on the evidence before the juvenile court at the time of the hearing. It only considers matters that are in the record and decides if the law was correctly applied and whether the evidence supports the juvenile court's decision. (Note that an appeal is also different than some writ proceedings, where evidence that was not before the juvenile court may be considered by an appellate court.)

Appellate courts will not reverse a judgment unless the error was either an abuse of discretion, substantial evidence didn't support the decision, or the error was one of law and the error was prejudicial and not waived. Generally, these are known as the standards of review appeal, described further below.

The first standard of review is abuse of discretion. The appellate court assumes all facts supporting the judgment are true and determines whether the juvenile court abused its discretion, or made a decision outside the bounds of reason. Generally, issues that the appellate court will consider under the abuse of discretion standard are child placement, the denial of the exceptions to adoptability [for instance, beneficial relationship with parent or beneficial relationship with sibling], and the denial of the petition for modification after a hearing.

The second standard of review is substantial evidence. The juvenile court again assumes that all facts supporting the judgment are true and then determines based on those facts whether substantial evidence supports the juvenile court findings and orders. It may disregard the evidence that does not support the decision, such as the testimony of the parents regarding why it would be detrimental to their child to terminate parental rights. This standard is not as difficult to meet and is generally used for the appellate court to evaluate whether there was clear and convincing evidence that it was likely a child would be adopted or whether there was substantial evidence to support the granting of a petition for modification.

The third standard of review is independent review. The juvenile court independently reviews issues that apply the law to uncontested facts. This standard of review is used where the juvenile court misunderstood or misapplied the law and is often used when the department failed to comply with the Indian Child Welfare Act. Some courts use it to review the denial of a hearing on a petition for modification.

These standards of review are difficult to understand, even by legal scholars, but I just wanted to give you a basic review of appellate principles so you might better understand the proceedings. Do not be concerned if you do not fully understand the different standards of review or how they apply to your case, because these are concepts that legal scholars have been debating since the beginnings of our legal system. Just be aware that an appeal is not the opportunity for a new trial—it involves trying to find legal error, the burden is difficult to meet, and we must effectively present our case to convince the appellate court that the juvenile court was wrong.

CONCLUSION

Do not be concerned if you do not completely understand the standards of proof explained above, or the general rules of appellate procedure explained below. They are difficult concepts for anyone, even attorneys and trial judges, to understand.

Please contact me if you have any questions.