

## Termination of Parental Rights

### *Manifest Best Interest, Due Process*

**In re C.J., 987 So.2d 828 (Fla. 2d DCA 2008)**

The mother appealed the termination of her parental rights which was based on abandonment.

Both the Department of Children and Family Services (the department) and Guardian ad Litem Program (GAL) concede that the evidence did not support that termination was in the child's manifest best interest. In addition, the GAL concedes that the evidence did not support mother's abandonment of the child. The Second District Court of Appeal (Second DCA) reversed the termination.

When reviewing the record, the Second DCA noted that the mother's due process rights may have been violated when she was "not properly advised of her right to counsel at all appropriate stages. See § 39.013(1), Fla. Stat. (2005)"; "significant orders and pleadings may not have been copied to the mother"; "the Mother was not given the opportunity to work on a case plan and was not provided with any meaningful assistance in completing a case plan upon reactivation of the proceeding. The record does not reflect that permitting the Mother to attempt to complete a case plan would have been a useless effort. See *Padgett v. Dep't of Health & Rehabilitative Servs.*, 577 So.2d 565, 571 (Fla.1991)."



### Read the Opinion

#### *Relative Placement*

**Guardian ad Litem Program v. T.R., 987 So.2d 1269 (Fla. 1st DCA 2008)**

When the Department of Children and Families' (the department) petition to terminate parental rights was denied by the trial court, the department and the Guardian ad Litem Program appealed.

The petition alleged that the two children sustained severe injuries (untreated broken ribs, broken arm, bruises, bleeding in the brain and back of the throat) while in the custody of their mother and one of the child's stepfather. The trial court terminated parental rights as to one of the children based on the parent's "egregious conduct that threatened the children's life, safety, well-being, or physical, mental, or emotional health pursuant to §39.806(1)(f), Fla. Stat. (2007)." However, the trial court did not terminate parental rights as to the other child because a "suitable relative placement" existed with the child's maternal grandmother and therefore, the trial court held that termination of parental rights was not in the child's best interests.

The First District Court of Appeals (First DCA) reversed and remanded the trial court's decision as the trial court based its "finding that termination of parental rights was not in [the child's] best interests solely on the availability of a relative placement. The trial

court's ruling was in "in direct contravention of section 39.810(1)."

"[T]he availability of a nonadoptive placement with a relative may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor weighing against termination of parental rights." § 39.810(1).

The First DCA has ruled similarly in other cases. "[T]he possibility of a relative placement is plainly not a reason to delay a decision to terminate parental rights if termination is otherwise in the manifest best interest of the child." *K.W.*, 959 So.2d at 402; see also *A.J. v. K.A.O.*, 951 So.2d 30 (Fla. 5th DCA 2007) (concluding that the existence of a long-term relative placement does not preclude termination of parental rights)."

The First DCA reversed and remanded.



## Read the Opinion

### *Availability of a Nonadoptive Placement with a Relative*

*M.M. v. Department of Children and Family Services*, 987 So.2d 1267 (Fla. 1st DCA 2008)

"[T]he availability of a nonadoptive placement with a relative may not ... be considered as a factor weighing against termination of parental rights." § 39.810(1), Fla. Stat. (2006). Since the child's mother's parental rights were terminated earlier, the "child will not be reunited with a parent, [and] adoption, under chapter 63, is the primary permanency option." § 39.621(6), Fla. Stat. (2006). As the Department of Children and Family Services acknowledges, "the trial court here has not precluded the paternal great grandmother from being among that number seeking to adopt L.K."



## Read the Opinion

### *Dependency*

#### *Failure to Protect*

*H.B. v. Department of Children and Families*, 987 So.2d 808 (Fla. 5th DCA 2008)

The father appealed the trial court's dependency adjudication of his daughter. When the father returned home, his live-in girlfriend (who he had been living with since she was 17) stated that his daughter had fallen down the stairs. The father took the child to the hospital. The treating physician found that it was very unlikely that the injuries occurred from falling down the stairs. The trial court adjudicated the child dependent "finding that the father's judgment was "impaired" as reflected by his decision to leave the child, after midnight, "in the care of the very girl the father previously admitted to molesting when she was 17." The trial court also faulted the father for not cooperating with law enforcement in pursuing the prosecution of his paramour."

The Fifth District Court of Appeal (Fifth DCA) reversed the dependency adjudication as the father was not present at the time of the physical abuse, and there was no evidence girlfriend had previously abused daughter or any other child, or that father knew or should have known girlfriend was a threat to harm daughter.



## Read the Opinion

### *Nexus, Prospective Abuse, Failure to Protect*

*T.R. v. Department of Children and Families*, 2008 WL 4095515 (Fla. 5th DCA)

The mother appealed the trial court's dependency adjudication of her child and the order terminating jurisdiction before the mother could substantially comply with her reunification case plan.

The Department of Children and Families (the department) filed its dependency petition after receiving a report that the mother's paramour frequently sexually assaulted the child when the mother was not home. The department argued that the mother was on notice that the child was being sexually abused because the child did not want to visit the paramour. The department also argued that the mother believed that the child lied about the sexual abuse. The trial court adjudicated the child dependent as to the mother finding that the mother abused, neglected, or abandoned the child, or that the child was at imminent risk of abuse or neglect. The trial court also placed the child with her father and terminated jurisdiction.

The Fifth District Court of Appeal (Fifth DCA) reversed the trial court's dependency adjudication, holding that there was no evidence that the mother knew or should have known of the alleged abuse. There was no evidence to establish a nexus between the mother's actions and any prospective abuse of the child and no evidence that the mother allowed or would have allowed the paramour to care for the child after the alleged abuse.

Terminating jurisdiction after the trial court awarded temporary custody to the father without addressing visitation or child support effectively awarded permanent custody to the father in Texas. The Fifth DCA also instructed that the child be returned to her mother.



## Read the Opinion

### *Child's Competency to Testify*

**In re G.S.**, 2008 WL 4182740 (Fla. 2d DCA)

The mother and father appealed the trial court's dependency adjudication of their child. The dependency petition was based on the mother's failure to protect the child from the father's alleged sexual abuse and the father's alleged sexual abuse of the child.

The seven-year-old child was interviewed in camera to determine her competency to testify. The trial court "found the seven-year-old child competent to testify and stated that the questioning demonstrated that the child 'could perceive facts and relate them correctly, and understand the nature and obligation of an oath, and the obligation to be truthful.' The court stated that 'when a child has knowledge of what is a lie and agrees not to do so, the competency obligation is met.' The court stated that whether the child testified with veracity went to the weight of the testimony and not its admissibility."

"[A] child may testify without taking the oath if the court determines the child understands the duty to tell the truth or the duty not to lie." § 90.605(2), Fla. Stat. (2006). The trial court should consider the following when determining the competency of a child to testify: "(1) whether the child is capable of observing and recollecting facts, (2) whether the child is capable of narrating those facts to the court or to a jury, and (3) whether the child has a moral sense of the obligation to tell the truth. *Griffin v. State*, 526 So.2d 752, 753 (Fla. 1st DCA 1988) (citing *Lloyd v. State*, 524 So.2d 396, 400 (Fla.1988)); see also *Z.P. v. State*, 651 So.2d 213, 213-14 (Fla. 2d DCA 1995)."

The Second District Court of Appeal (Second DCA) reversed and remanded for a new competency exam before allowing the child to testify because "the child was not questioned regarding her understanding of the moral sense of duty to tell the truth," "the fantastic nature of her later testimony and the lack of corroborating evidence of the actual abuse."



## Read the Opinion

## Failure to Comply with Case Plan

### *Permanent Guardianship*

**C.A. v. Department of Children and Families, 2008 WL 3914895 (Fla. 4th DCA)**

The mother appealed the trial court's order terminating protective supervision and placing her child in a permanent guardianship with the child's grandparents.

The trial court concluded that because the mother failed to complete her case plan tasks, reunification was not in her child's best interest. The Fourth District Court of Appeal (Fourth DCA) reversed the trial court's order. The Fourth DCA held that the mother, through no fault of her own, was financially unable to complete her case plan tasks. "A parent's failure to substantially comply with a case plan may serve as a ground for termination of parental rights, unless the failure to comply is due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. § 39.806(1)(e), Fla. Stat. (2007), *amended by* Ch. 2008-245, § 16, at 18-19, Laws of Fla.; *see K.J. v. Dep't of Children & Family Servs.*, 906 So.2d 1183, 1184 (Fla. 4th DCA 2005)."

Further, "[u]nder the permanent guardianship statute, a parent's failure to comply with a case plan is not a stated ground for placing the child in a permanent guardianship; however, it may be relevant to the trial court's inquiry regarding the fitness of the parents to care for the child and whether reunification is possible."

The Fourth DCA reversed.



Read the Opinion

## Website Resources

### *American Bar Association Permanency Project*

[www.abanet.org/child/permanency.shtml](http://www.abanet.org/child/permanency.shtml)

The Project achieves positive permanency outcomes for children in foster care through system change. An ABA Project Director visits a county or region monthly for two years to develop procedures, tools, and skills, and deliver lasting solutions.

### *Zero to Three*

[www.zerotothree.org](http://www.zerotothree.org)

Zero to Three is a national nonprofit multidisciplinary organization that informs, educates and supports adults who influence the lives of infants and toddlers.

### *National Resource Center for Family-Centered Practice and Permanency Planning, Hunter College of Social Work*

[www.hunter.cuny.edu/socwork/nrcfcpp/information.html#hottopics](http://www.hunter.cuny.edu/socwork/nrcfcpp/information.html#hottopics)

Extremely thorough, go-to-website for issues relating to permanency for children in the dependency system. Topics include Kinship Care, Concurrent Planning, Adoption, Education, Siblings, and Youth Voice.

### *Dependent Youth Aging out of Foster Care: A Guidebook for Judges*

<http://www.jlc.org/publications/8/>

This guidebook from the Juvenile Law Center in Philadelphia outlines questions judges should answer when ruling on permanency or discharge plans for youth in foster care. Both national and Pennsylvania guides are available.

### *Permanency Pact*

[www.fosterclub.com/pdfs/PermPact.pdf](http://www.fosterclub.com/pdfs/PermPact.pdf)

This free tool from Foster Club for Grownups creates a formalized, facilitated process to connect youth in foster care with a supportive adult in a life-long, kinlike relationship. This process has proved successful in clarifying relationships and identifying mutual expectations.

comments or suggestions - [elizabeth.damski@gal.fl.gov](mailto:elizabeth.damski@gal.fl.gov)

