Florida Guardian ad Litem

Legal Briefs Newsletter

In this edition of the Legal Briefs Newsletter, we want to highlight cases of stellar advocacy by two of our teams. We have great advocacy teams throughout the State; teams comprised of a GAL Volunteer, a Child Advocate Manager (CAM) and a Best Interest Attorney (BIA). The two stories selected for this newsletter are great examples of the creative thinking and persistence demonstrated every day in every office, courtroom, home and school throughout the State.

We have the story of a young child who we were able to keep from placement in a residential facility by arranging for a therapy dog to be present at the hearing on placement. The Justice's Best Friend Act, recently signed by Governor Scott, allows for the use of therapy and facility dogs and our team utilized that legislation to the benefit of this child. In his press release regarding the Act, Governor Scott said, "I cannot imagine the emotional toll these terrible circumstances place on our state's most vulnerable populations. The comfort and support provided by therapy animals can make a profound difference in someone's life and I'm proud to sign HB 151 today." According to Representative Brodeur, it was an easy decision to sponsor the Guardian ad Litem championed measure after seeing evidence that therapy animals and facility dogs had measureable clinical benefits such as reducing stress hormones and blood pressure. "Having the dogs available for kids creates a more trauma-sensitive courtroom, which not only helps

people who have experienced traumatic things, but enables victims and witnesses to better recollect facts and recount them to judges. Everybody wins." Thank you Governor Scott and Representative Brodeur, we agree-everyone wins!

We also have the story of a group of four siblings who were placed in separate foster homes. As you will see from the story, our team, with support and advice from local and regional leadership, successfully advocated for the children to be placed with family members in Georgia, in spite of a denied ICPC home study. The team refused to take no for an answer, broke down the barriers and engaged and worked with the family in order to do what was best for these kids. I don't want to spoil the story so I won't divulge any more facts.

Please enjoy reading the case law summaries, legislative updates and two of the many successes of our dedicated advocates. There will be more to come!

I hope you had a Happy and Safe Independence Day!

Video Recordings of all of the Disabilities Training Conference Workshops and General Sessions will be available on the Guardian ad Litem website soon.

Paternity: Biological Father of Child Born to Intact Marriage Has Extremely Limited Rights and a "Casual Interest in Fatherhood" Found Insufficient To Trigger Constitutional Protection

M.L. v. Department of Children and Families, 2017WL1718807 (Fla. 4th DCA)

The putative father filed a motion to intervene in a TPR proceeding where child was born into an existing marriage. Although the putative father was named on the child's birth certificate and he was present at the shelter hearing, he waited 18 months to file a motion to intervene, after the

Department already filed a TPR petition against the mother and her husband, the legal father. The putative father had not obtained DNA testing. The Fourth DCA held that putative father may seek to establish paternity, but to gain constitutional protection of parental rights, he must act quickly and demonstrate "a full commitment to the responsibilities of parenthood by coming forward to participate in raising his child." Because the putative father's "casual interest in fatherhood" was insufficient to trigger constitutional protection, the trial court did not abuse its discretion in denying his motion to intervene.

Practice Tip: In order to expedite permanency for children in the dependency system, it is incumbent upon all parties to address issues of paternity as early in the process as possible.

Read the Opinion

ICPC: Juvenile Court Not Authorized to Relinquish Jurisdiction over Children Prior to Complying with ICPC Home Study Requirement

State Department of Children and Families v. M.A., 215 So.3d 1276 (2017)

The children were adjudicated dependent and placed with the maternal grandmother. The father was not a party to the dependency action. In seeking to obtain custody of his children and relocate them to his home in Indiana, the father requested a home study of his residence in Indiana. Following Department's two failed attempts to obtain the ICPC home study and approval from Indiana officials and upon father's assertion that the difficulty in gaining approval from Indiana was due to coordination and communication problems rather than problems with his home, the court dismissed the dependency action as to the children without retaining jurisdiction. Department appealed.

The First DCA held the circuit court committed error in dismissing the dependency proceedings, thereby making a de facto placement with the out-of-state father. The trial court was not authorized to relinquish its jurisdiction without complying with the ICPC study and positive report from Indiana officials. Additionally, even without the ICPC requirement, section 39.522(1), required compliance with "the home study criteria," and that requirement had not been met.

Practice Tip: ICPC requirements can be challenging and frustrating but must be adhered to in all applicable cases-placement without the required home study is reversible error, which delays permanency and could result in lost placement opportunities. However, as the Court noted, if the children are already in an out of state placement, case law does not require that the children be removed from the out of state placement pending the completion of the ICPC process, if it is in their best interest to remain in that placement.

Read the Opinion

Statute Of Limitations For Negligence Claims: Appointment of GAL in Dependency Case Should Not Extinguish Children's Causes of Action

D.H. by and through R.H. v. Adept Community Services, Inc., 2017 WL 1277741 (Fla. 2d DCA)

The children were born to a developmentally disabled mother. The mother received in-home support under a Medicaid program. The services were intended to help her live on her own and care for the children. The services failed to meet their objectives and the children were found dependent and placed with their maternal grandparents. After the mother failed to comply with her case plan, the court appointed the grandparents as permanent guardians for the children.

Three and a half years after entry of the permanent guardianship, the grandparents filed a claim of negligence against the mother's in-home support providers claiming they knew the mother required 24 hour assistance to safely care for the children but allowed her to be alone with them. The mother's lack of appropriate care caused the physical, mental and emotional injuries to the children.

The Defendants' motion for summary judgment was granted because the lawsuit was initiated outside the four year statute of limitations and the grandparents appealed. The Second DCA affirmed the summary judgement in favor of the Defendant's based on the following.

The Second DCA examined two questions to determine whether the suit was timely: 1) whether the claims accrued more than four years before the complaint was filed, and 2) if they accrued earlier, whether the limitation period was tolled. To begin, the court held that the children's cause of action accrued when the last injury to the children occurred. The court held the action was outside of the statute of limitations as the last injury to the
children occurred more than four years before the suit was filed. The court noted that the grandparents could have sued on behalf of the children as next friend, pursuant to Fl.R.Civ.P. 1.210(b), as early as the date the children were sheltered since they were aware at that time of the children's injuries.

Next, the grandparents argued that the statute of limitations was tolled pursuant to section 95.051(1)(h), F.S., (which provides for tolling during any period of time in which a parent, guardian, or guardian ad litem does not exist, has an interest adverse to the minor or incapacitated person, or is adjudicated to be incapacitated to sue) until they were appointed permanent guardians. They contended that the children's mother had adverse interests to them by virtue of the dependency court proceedings through which her parental rights were in jeopardy and the fact that the twins' negligence claims are based on her inability to care for them; that they had no guardian until the grandparents were appointed; and that the guardian ad litem was unaware of the twins' injuries and therefore did not request services to address those needs. The court held that the fact that the GAL did not know of the injuries was irrelevant to whether the statute applies; the limitations period is not tolled when a GAL exists, except when the GAL has interests adverse to the minor or has been adjudicated incapacitated. As such, tolling in this case was not afforded by the statute.

PRACTICE TIP: Although not specifically ruled on in the opinion because the issue was not raised, the concurring opinion stated "The guardian ad litem in this case was appointed by the dependency court to represent the best interests of the twins in the dependency case. The guardian ad litem did not have plenary powers over the twins for any other matter. Cf. § 39.820(1), Fla. Stat. (2006) (providing for the guardian ad litem to be appointed to represent the best interests of the child in that proceeding)." The implication is that the appointment of a GAL should not prohibit tolling of the statute of limitations. (Even though this is contrary to the statute) The litigation for GAL in dependency is specific to dependency proceedings.

Read the Opinion

Admission of Evidence: No Abuse of Discretion in Denying Untimely Request for Expert Witness Testimony

K.A. v. Department of Children and Families, 2017WL1494002 (Fla. 3d DCA)

The mother appealed from the trial court's order terminating her parental rights. She argued the court erred in denying her right to present expert testimony regarding her psychological issues and returning children to the father, despite alleged domestic violence incidents. The Third DCA affirmed.

On the second day of the TPR trial, the mother sought to call a witness, whom she had never listed, as required by Florida Rule of Juvenile Procedure 8.245(b)(2)(A) and (b)(3). The Department was unaware of the witness's existence or the mother's intent to call the witness. The Department had never spoken with the witness or had an opportunity to depose the witness or to prepare for the proffered testimony.

The Department, the Guardian ad Litem Program, and the attorney ad litem for the child all objected, arguing unfair surprise and prejudice. The trial court agreed and prohibited the mother from calling the witness. Mother appealed and the Third DCA held the trial court did not abuse its discretion, citing S.S. v. Dep't of Children & Fam. Servs., 784 So. 2d 479 (Fla. 4th DCA 2001).

Read the Opinion

Modification of Visitation Order: Requires Proper Notice and a Proof of a Substantial Change in Material Circumstances and that Modification is Required to Protect The Child's Best Interests.

Florida Department of Children and Families, v. P.I., the Mother, and M.H., the Father, 2017 WL 2265372 (Fla. 3d DCA)

At the shelter hearing, the court ordered no contact with the parents based on explicit findings of "egregious physical abuse" by the mother and "failure to protect" by the father. The children were placed in the care of a great aunt. Thereafter, a "dependency petition filing hearing" was held at which the parents were to be served with the petition for dependency, confer with their respective attorneys, and determine if they wished to plead to the petition or try to resolve it at another hearing. The transcript of the hearing showed that the judge acknowledged this was the sole purpose of the hearing, that any denial of the petition was premature as arraignment was set for the following week.

During this pre-arraignment hearing, the parents asked to discuss visitation. The Department objected to addressing the issue of visitation because the hearing was merely to serve the dependency petition, the parents had not filed any motion for modification of visitation, and no notice was provided to DCF that visitation would be challenged. Over the Department's objection, the trial court granted both parents supervised visitation. The Department filed a Petition for Writ of Certiorari asking the appellate court to quash the visitation order.

In granting the Department's Petition, the Third DCA held that the trial court erred by entertaining modification of visitation without proper notice to DCF, without any proof of substantial change in circumstances in the two weeks since the shelter hearing to justify granting visitation, and without argument that a contravening visitation order would be in the best interests of the children.

Practice Tip: In a footnote, the court noted, "In light of the statutory obligations and clear case law on the issue of modification of visitation, it was inappropriate of counsel to tell the judge that "I don't have to file a motion for every little thing," in response to DCF's objection that it had not been properly noticed.

Read the Opinion

Trial Court Order Remanded for Additional Findings

L.J. a/k/a/ M.L. v. Department of Children and Families, 2017 WL 2605106 (Fla 5th DCA)

The trial court entered a final judgment terminating Father's parental rights to his child, A.J., on the basis that father had rights to two other children terminated. The trial court's order included findings as to each statutory factor under section 39.806(1), discussed A.J.'s manifest best interests, and explained that termination was the least restrictive means of protecting A.J. from harm. Father appealed the order, raising only the argument that the trial court improperly failed to include a finding that reunification posed a substantial risk of harm to A.J.

The Fifth DCA affirmed the trial court's finding that the evidence warranted termination of father's parental rights but remanded for the trial court to include findings concerning whether reunification posed a substantial risk of harm to the child. The Court explained that although section 39.806(1)(i) of the Florida Statutes provides that a trial court may terminate parental rights where the parental rights of the parent to a sibling of the child have been involuntarily terminated, in order to pass constitutional muster, the Department must also establish that reunification would be a substantial risk to the child and that termination is the least restrictive way to protect the child.

Practice Tip: The trial court must make specific findings addressing all relevant factors necessary for termination of parental rights. Failure to do so, requires remand for a proper order and necessarily delays permanency for the child.

Read the Opinion

Added Training to GuardianadLitem.org

Availble on the Florida Statewide Guardian ad Litem website now are the following new additions:

- **GAL Ethics Training Scenario**

Legislative Updates

CHAPTER 2017-151 makes a number of revisions to current law to improve the care of children in the child welfare system. Most of these changes are recommended by DCF and seek to better ensure child safety. In part, the bill:

- Requires the state to identify a child's father earlier in the legal process to allow for more placement options and family involvement when a child is removed from his or her family by DCF.
- Allows DCF to return an abused or neglected child to his or her home with an in-home safety plan when the conditions that caused the child to be removed are resolved rather than when the parents have substantially completed their case plan.
- Requires DCF to consider the safety of any new children added to the home of a family after a child abuse investigation has begun.
- Requires a parent to be assessed for substance abuse and complete treatment when there is evidence of harm to a child as a result of substance abuse.
- Allows DCF to terminate parental rights when a child has been placed in out-of-home care in any jurisdiction three or more times.
- Requires DCF to develop, in collaboration with the Florida Institute for Child Welfare, service providers, and other community stakeholders, a statewide quality accountability system for providers of residential group care that promotes high quality in services and accommodations. CBCs must implement the quality accountability system by July 1, 2022. DCF must submit a report to the Governor and Legislature on October 1, 2017, and by October 1 of each year thereafter.
- Requires DCF to convene a workgroup on increasing the number of high-quality foster homes and report to the Governor and Legislature by November 15, 2017.
- Allows the dependency court to order a case plan with a permanency goal of "maintain and strengthen" in the child's home by adding "maintain and strengthen" to the list of permanency options that a court may order and revises the definition of "permanency goal" by removing language duplicated in substantive law.
- Extends the jurisdiction of the dependency court over young adults with a disability until the age of 22, requires that a child's transition plan must be approved by the court before a child's 18th birthday regardless of whether the child is leaving care at 18 and requires that the transition plan must be attached to the case plan and updated before each judicial review.
- Requires the appropriate CBC or subcontracted agency to establish a multi-disciplinary team to determine appropriate placement of a child after gathering customized data and information on the child.
- Requires DCF to collect data on out-of-home placements, post the data on its website, and update the website twice a year.
- Establishes a shared family care residential services pilot program to facilitate the temporary placement of substance-exposed newborns and their families in the home of trained volunteer families for the purpose of mentoring and receiving treatment and services.

- Makes additional changes such as prohibiting payments under the Relative Caregiver Program when the parent is living with the relative along with the dependent child, allowing the release of medical records by hospitals and physicians for child abuse cases, and using child abuse records to screen employees of group homes for foster children.

Summary prepared by: Children, Families, and Elder Affairs Committee (CF).
HB 1121 - Chapter No. 2017-151, takes effect July 1, 2017, except for the provisions relating to the assessment of a child removed from his or her home and placed in out-of-home care, which takes effect January 1, 2018.
Note: only provisions related to Chapter 39, Fla. Stat. 2017 are included here.

Highlights

Family Matters

This is the story of Jashawn, Kamren, Thomas and Lacy, ages 14, 10, 9 and 6 years old respectively and their tenacious Guardian ad Litem team, whose commitment to these children is unwavering. These children came into care in Feb 2013 due to the mother's mental health and substance abuse issues. The fathers had abandoned the children. The parents' rights were terminated in June 2015.

The children were placed in foster care, but were not placed together. Thomas was in a specialized therapeutic group home, Kamren and Lacy were in a shelter together and Jashawn was in a group home. Their only hope of a permanent placement was with the paternal grandmother of 3 of the children, but she resided in Georgia. The Agency and Department were unsure about placement with the PGM, stating that she had previously changed her mind. However, after speaking with the PGM, the GAL advocacy team realized that she was steadfast in her drive to obtain custody but that there had been many miscommunications between the paternal family in Georgia and the caseworkers assigned to the case in Miami. The PGM also explained that she had a relationship with them as the children lived with her when she resided in Florida. Based on this, the GAL program advocated for a home study on the PGM and was successful in having the court order an ICPC; however, the ICPC on the PGM was negative due to financial reasons. The negative home study led to a team meeting, with the assigned attorney (Meliza Frias), Lead Attorney (Sharon Hornett), Supervising Attorney (Susan Somers), and our then Regional Counsel (Kanisha Taylor). We then contacted the ICPC personnel in Florida who were able to push Georgia for reconsideration. This again returned a negative ICPC as Georgia refused to consider the adoption subsidy the children would receive and again refused to approve the home.

By this time, the judge had also taken an interest in these children and together we made sure that each child's birthday was recognized and celebrated with cake and presents. During one of those meetings, Ms. Taylor suggested we contact our local CASA program in Georgia to conduct a visit in the home and be able to obtain more information on the family. In May 2016, CASA went out and completed a thorough Home Assessment on the PGM who resided with her daughter and granddaughter. They had no concerns with the placement and found the PGM to be a warm and caring person who genuinely wanted to assume responsibility for the well-being of her grandchildren.

With this assessment, the Court and all the parties were much more inclined to grant visits to Georgia for the children. The Agency paid to transport the children to Georgia and for the first time in many years they spent the holidays together as a family. They visited for summer, for Thanksgiving, for Christmas, for Spring Break. But still, there was the arduous process of getting an approved Home Study on the PGM. To accomplish the final goal and get these children home for good, we held a meeting with our entire team and also the

Department. Following that meeting the Department decided to hire and procure a private agency to complete the Home Study. After numerous conference calls with the private agency and the PGM, a positive Home Study was completed and filed with the court on March 6, 2017. On March 23, 2017, through the untiring efforts of the GAL team, and conjunction with the Department and the Agency, these children flew to live with their grandmother and the adoption was completed.

"This case will forever remind me that teamwork is the key to our success. When great minds come together we can reach the impossible by having the willingness to think outside the box and the determination to persevere for the best interest of the children, no matter the odds. Congratulations to the entire team that worked on this case, I feel honored to have been a part of it!"
- Meliza Frias, Child's Best Interest Attorney

Justice's Best Friend

This is a story about M.B., a nine year old boy whose parents' rights have been terminated. M.B. has been in out of home care for 23 months, during which time he has had 16 placements. He is currently placed in a South Florida behavioral group home, where he has been since April 2017, and he is relatively stable. He is currently separated from all his siblings, however all children are doing well, and should remain in their currents homes.

While M.B. has had several Baker Acts, including one while in his current home, his caregivers reported that he did not have all his medication and they struggled to get his prescriptions filled due to insurance issues. M.B.'s therapist believes that consistency in taking his medications will help M.B. with his behaviors. M.B.'s current group home has not asked for him to be moved, and instead, wishes to keep working with him. The group home is providing therapy, and is willing to provide trauma related therapy services.

However, M.B. was evaluated and found suitable for residential treatment in April, 2017 (He was also found suitable in August 2015, but stabilized and remained in the community for one year.) The GAL team was opposed to residential treatment for M.B., and instead felt he needed to be in a stable home, possibly a therapeutic home, that works on the reasons why he has triggers and behavior issues. He has a significant trauma history and has flashbacks to the abuse. The GAL recommended that M.B. remain in his current behavioral group home, where he is experiencing normalcy by attending outings, attending school and building social relationships.

A contested hearing on the Motion for Residential Treatment was held, and the child was brought from South Florida for the hearing. GAL strongly opposed the Motion. To ease the child's anxiety, the GAL Office made arrangements for a therapy dog, a beautiful Harlequin Great Dane, to be present with M.B. at the hearing. The therapy dog was a great comfort for the child and helped him get through a really rough hearing.

At the conclusion of the hearing, the Juvenile Judge denied the State's Motion for Placement in Residential Treatment, and the child was ordered to remain in his behavioral group home. This is a great outcome for M.B. and the GAL!

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welfare advocates.

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