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## Dependency

### *Due Process*

Florida Department of Children and Families v. R.A., 2008 WL 1832458 (Fla. 3d DCA)

In a dependency proceeding (based upon the mother attempting suicide in the children's presence) the trial court sua sponte ordered the children returned to the mother's custody. The Department of Children and Families (the department) was joined by the Guardian ad Litem Program in petitioning for writ of certiorari.

The Third District Court of Appeal (Third DCA) held that the trial court could not return the children to the mother's custody without giving the department proper notice and opportunity to be heard (due process). The department must have the opportunity to be heard on the determinative issue of whether mother's mental illness had been remedied, as required by statute, in order for the children to be returned home. See § 39.402(7), Fla. Stat. (2007).

Secondly, the Third DCA held that there was no "competent substantial evidence-by way of reliable expert testimony, compliance with a case plan (which had not yet been formulated) or anything other than the trial court's own plainly insufficient observation and assessment of the mother during her testimony-to support her finding that the mother was "stable" and thus (presumably) that the danger to the children presented by her mental illness had dissipated."

The Third DCA quashed the trial court's order and granted certiorari.



## Read the Opinion

### *Inadequate Findings of Fact*

In re T.S., 2008 WL 1830108 (Fla. 2d DCA)

The mother appealed the trial court's dependency adjudication of her three children. The Department of Children and Family Services (the department) alleged that the mother had abused, abandoned, or neglected the children § 39.01(14)(a), Fla. Stat. (2006), and that each child was at risk of imminent abuse, abandonment, or neglect. § 39.01(14)(f).

The department based its allegations upon two factors. The mother failed to adequately supervise her children in that they were allowed to live in a home where a recent rape and beating had occurred (an incident of which the mother was unaware). Secondly, the 8 year-old child had been found by an officer walking along the side of a road while going to meet his mother. The officer tried to contact the mother, but was unsuccessful and the youngest child ended up spending the night in care.

The trial court's findings of fact stated, "The Mother failed to adequately supervise her children."

The Second District Court of Appeal reversed the dependency, as there was no evidence before the court regarding the mother's failure to supervise. The "findings are defective in that they fail to particularize how the Mother's conduct constituted a failure to supervise."



## Read the Opinion

### *Sufficiency of Evidence*

**K.S. v. Department of Children & Families, 2008 WL 1806127 (Fla. 4th DCA)**

The trial court adjudicated the child dependent based upon the mother's failure to protect the child from her paramour who burned the child's hand in an oven. The trial court found the child dependent because "the mother neglected the [child] and the child is presently at substantial risk of imminent threat of harm § 39.01(31); or imminent threat of physical/emotional abuse § 39.01(2); or imminent neglect § 39.01(43)." The mother appealed.

The Fourth District Court of Appeal (Fourth DCA) reversed the trial court's order and held that "the record is insufficient to show that the mother abused or neglected (the child) or that abuse or neglect is imminent." The mother had no reason to know that the paramour would abuse the child (this was a single incident) and there was nothing on the record to support the mother's participation in the incident.

The Department of Children and Families (the department) also argued that the dependency adjudication should be affirmed because the child faced "imminent risk of harm" based upon the mother's failure to act *after* the incident. The Fourth DCA held that the child was not at risk of imminent harm as the paramour was no longer a part of the mother's life, and "the department did not offer competent evidence on how the mother's inaction places (the child's) health at substantial risk of imminent abuse or neglect."

The Fourth DCA reversed and remanded the case.



## Read the Opinion

### *Default – Failure to Appear*

**O.R. v. Department of Children & Family Services, 2008 WL 942615 (Fla. 3d DCA)**

When the parents failed to appear on day three of the dependency trial, the trial court granted the Department of Children and Family Services (the department) motion for a default. The trial court's order stated that the ruling was without prejudice and the parents could provide proof of the emergency that prevented their appearance at trial, in which case the order would be set aside. The trial court denied the mother's motion to set aside the dependency order and the mother appealed.

The Third District Court of Appeal (Third DCA) reversed and remanded the trial court's order. There are two situations in which it can be deemed that the parents consented to default dependency adjudication.

- "[f]ailure of a person served with notice to personally appear at the arraignment hearing constitutes the person's consent to a dependency adjudication." Fla. R. Juv. P. 8.225(c)(1).
- "if a person appears at the arraignment hearing and the court orders that person to appear personally at the adjudicatory hearing for dependency (giving

the date, time, and place), “then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to a dependency adjudication.” § 39.506(3), Fla. Stat. (2006); see also Fla. R. Juv. P. 8.330(c).”

Neither situation happened in this case. The department argued that a summons was issued for the parents to appear on the third day of trial. The Third DCA did not expand the statutory language to include the parent’s failure to obey a summons on the third day of trial when the parents had attended the first two days.

Florida's long standing public policy favors adjudication of disputes on the merits, see *T.B. v. Dep't of Children & Family Servs.*, 920 So.2d 170, 173 (Fla. 2d DCA 2006).

The trial court has two choices when a parent fails to appear “(1) to proceed with the hearing by accepting testimony and evidence from those present, as well as argument of counsel, or (2) to continue the hearing.” *Quoting In re A.L.*, 711 So.2d 600 (Fla. 2d DCA 1998).

The Third District Court of Appeal (Third DCA) reversed and remanded the trial court’s order.



## Read the Opinion

### *Domestic Violence*

***D.E. v. Department of Children and Families*, 2008 WL 1806229 (Fla. 4th DCA)**

The father appealed his child’s dependency adjudication, which was based upon the child witnessing a domestic violence incident between the mother, the father, and the mother’s 14 year-old son, in which mother’s son was injured.

The Fourth District Court of Appeal (Fourth DCA) affirmed the trial court’s dependency adjudication. “[D]omestic violence in the presence of the children can support a finding of dependency or a continuance of dependency.” *Dep’t of Children and Families v. L.T.*, 799 So.2d 445 (Fla. 5th DCA 2001).”

The Fourth DCA considered: testimony that a prior abuse report had been filed against the father; the violence involved in the altercation; the fact that the mother’s son was injured; and the child witnessed the entire incident.

The Fourth DCA held that the trial court’s dependency finding was supported by the evidence.



## Read the Opinion

### **Non Offending Parent**

#### *Treatment Must be Justified*

***In re J.H.*, 979 So.2d 363 (Fla. 2d DCA 2008)**

The father (a non-offending parent) petitioned for writ of certiorari after the trial court, sua sponte, restricted him to supervised visitation with his children. The trial court based the supervised visitation on the father not participating in a psychological evaluation. The Second District Court of Appeal (Second DCA) held that the trial court could not order a non offending parent to participate in treatment where it is not “justified by competent substantial evidence. See *C.K. v. Dep’t of Children & Families*, 949 So.2d 336 (Fla. 4th DCA 2007).” The Second DCA found that there was no competent substantial evidence to justify a psychological evaluation.

The Second DCA granted the father’s petition and quashed the trial court’s order.



## Read the Opinion

## Termination of Parental Rights

### *Failure to Appear – Consent*

In re H.S., 2008 WL 1757235 (Fla. 2d DCA)

The mother appealed the trial court's order terminating her parental rights based on her failure to appear at termination proceeding. The mother's counsel appeared and instructed the trial court that the mother could appear telephonically but was unable to appear because of financial hardship.

The Second District Court of Appeal (Second DCA) held that the trial court erred in terminating the mother's parental rights based upon consent for her failure to appear. "[C]ourts should ordinarily refrain from determining a termination of parental rights by default where an absent parent is making reasonable effort to be present at the scheduled hearing and is delayed by forces or circumstances beyond the parent's control." *R.P. v. Dep't of Children & Families*, 835 So.2d 1212, 1214 (Fla. 4th DCA 2003); see also *V.M. v. Dep't of Children & Family Servs.*, 941 So.2d 1255, 1256 (Fla. 2d DCA 2006) (citing *R.P.*); *B.H. v. Dep't of Children & Families*, 882 So.2d 1099, 1100-01 (Fla. 4th DCA 2004).

The Second DCA reversed and remanded the case.



Read the Opinion

### *Failure to State Statutory Ground TPR Petition – Violation of Due Process*

Z.M. v. State, 2008 WL 2116099 (Fla. 1st DCA)

The mother appealed the trial court's order terminating her parental rights. She based her appeal on the Department of Children and Family Services' (the department) failure to plead the ground upon which her parental rights were terminated. The department based its petition for terminating the mother's parental rights on the ground that she abused or neglected her children by "engag[ing] in conduct toward the children ... that demonstrates that the continuing involvement of the mother in the parent-child relationship ... threatens the life or well-being of the children" within the meaning of § 39.806(1)(c), Fla. Stat. (2006). In the petition, the department did say that as evidence, the mother did not complete her case plan tasks but never alleged case plan non-compliance. § 39.806(1)(e). During trial, the department expressly declined to seek an amendment of the petition to include case plan non-compliance. However, the trial court's order terminated parental rights under both § 39.806(1)(c) and § 39.806(1)(e).

The First District Court of Appeal (First DCA) held that the termination was a violation of due process rights of notice and fair hearing.

The First DCA also held that the wrong evidentiary standard was applied to this case. Specifically, the trial court judge stated "if you looked at the Department's case and viewed all the facts and inferences in their favor, I think there will be sufficient evidence *from which you could argue* that the termination grounds *or at least one of them* has been established." (emphasis supplied)."

The First DCA cited the trial court's "failure to make pertinent findings supporting termination on ground that mother's continued involvement in parent-child relationships would threaten the life, safety, well-being, or physical, mental or emotional health of the children. § 39.806(1)(c).

The First DCA reversed and remanded the case.



## Read the Opinion

### Reunification

§ 39.621(10), Fla. Stat. (2007)

**E.I. v. Department of Children and Families, 979 So.2d 378 (Fla. 4th DCA 2008)**

The mother appealed the trial court's denial of her motion for reunification. The Fourth District Court of Appeal (Fourth DCA) held that there are two factors that must be considered when ruling on a motion for reunification: compliance with the case plan; and if the reunification would be detrimental to the child. The court must address the factors listed in § 39.621(10), Fla. Stat. (2007):

- (a) The compliance or noncompliance of the parent with the case plan;
- (b) The circumstances which caused the child's dependency and whether those circumstances have been resolved;
- (c) The stability and longevity of the child's placement;
- (d) The preferences of the child, if the child is of sufficient age and understanding to express a preference;
- (e) The recommendation of the current custodian; and
- (f) The recommendation of the guardian ad litem....

The Fourth DCA affirmed the trial court's denial of the mother's motion for reunification, but remanded for entry of a corrected order in compliance with the statute.



## Read the Opinion

### Visitation

*Drug Use*

**B.M. v. Department of Children & Families, 2008 WL 2038385 (Fla. 4th DCA)**

The mother appealed the trial court's order terminating supervision of her child and providing that the mother was to have no visitation until she had a negative hair follicle test. Once she provided a negative hair follicle test she could regain supervised visitation. The Fourth District Court of Appeal (Fourth DCA) held that the trial court's decision to deny the mother supervised visitation was an abuse of discretion.

The Fourth DCA compared the instant case to *A.B. v. Dep't of Children & Families*, 834 So.2d 350, 351 (Fla. 4th DCA 2003) where the Fourth DCA reversed a no contact order because the record showed that the order "was not entered in the interest of the child's welfare but to sanction the mother for not attending the review hearing or complying with the court's directives."

The Fourth DCA also held that "drug use alone does not establish that a child's safety is threatened *W.N. v. Dep't of Children & Family Servs.*, 919 So.2d 589, 591 (Fla. 3d DCA 2006). Even where a parent's illegal drug use might pose a safety threat to the child, that threat can usually be ameliorated by requiring that visitation with the child be supervised. See *In re Marriage of Oertel*, 576 N.E.2d 435, 443-44 (Ill.App.Ct.1991); *Cooper v. Cooper*, 579 So.2d 1159, 1164 (La.Ct.App.1991)." Further, the Fourth DCA held and that "even sporadic visitation is better for a child than no visitation at all."

The Fourth DCA reversed the trial court's order.



## Read the Opinion

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### Placement

#### *Child's Best Interest*

Florida Department of Children & Families v. S.D., 2008 WL 2066612 (Fla. 3d DCA)

The Third District Court of Appeal granted the Department of Children and Families writ of certiorari requesting that they quash the trial court's order placing the child with the maternal grandmother where the trial court rejected an unfavorable home study (although the initial home study was positive) and failed to place in its order the statutorily required finding that the trial court determine such placement to be in the child's best interest.



## Read the Opinion

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### Website Resources

#### *Explore Adoption – Finding Families for Florida's Kids*

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

Florida Governor Charlie Christ's "**Explore Adoption**" initiative aims to find homes for the thousands of Florida children who are waiting to be adopted. Through public education, expanded partnerships, Web-based outreach and a mass media campaign, the initiative invites Floridians to find out more about the children immediately available for adoption right in their home state. The website contains resources including: links to adoption resources, Heart Galleries, local information, family stories, and child search.

#### *AdoptUsKids*

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

AdoptUsKids.org is a tool for connecting foster and adoptive families with waiting children throughout the United States. Registration and participation on the site is free for homestudied families and foster adoption professionals.

#### *Florida's Adoption Information Center*

[www.adoptflorida.com](http://www.adoptflorida.com)

As a free service, the Adoption Information Center provides adoption information and referral services to adoptive parents, adult adoptees, birth relatives, pregnant women and professionals.

#### *Child Welfare Information Gateway*

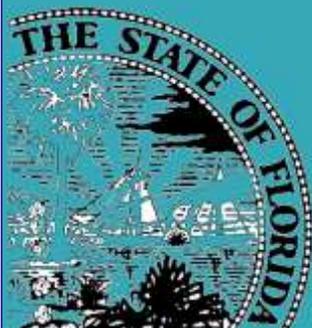
[www.childwelfare.gov/adoption/index.cfm](http://www.childwelfare.gov/adoption/index.cfm)

The Child Welfare Information Gateway provides resources regarding domestic, intercountry and adoption from foster care. The website provides information for prospective and adoptive parents, resources for professionals on recruiting adoptive families, supporting birth parents and providing post adoption services. The site also has a state statute search function.

#### *Dave Thomas Foundation for Adoption*

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

Dave Thomas Foundation for Adoption is a nonprofit public charity dedicated to dramatically increasing the adoptions of the more than 150,000 children in North America's foster care systems waiting to be adopted.



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