

Consent

TPR by Default

In re C.M., 2006 WL 3331910 (Fla. 2d DCA)

The trial court terminated the father's parental rights. The father appealed. The Second District Court of Appeal (Second DCA) held that the father's failure to timely appear for adjudicatory hearing did not constitute consent to terminate his parental rights. The father had continually appeared at hearings, but was late to the adjudicatory hearing because of his job on a cruise ship – his bus was late. The Second DCA stated that courts 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.

The Second DCA further held that "nothing in the record suggests that a short continuance of the proceeding would have resulted in adverse consequences to the children. See G.A. v. Dep't of Children & Family Servs. (In re I.A.), 857 So.2d 310, 312 (Fla. 2d DCA 2003)." The Second DCA reversed the trial court's final judgment terminating the father's parental rights and remanded the case for further proceedings. ⚖️



[Read the Opinion](#)

Domestic Violence

Presence of Child -- Harm

In re K.V., 939 So.2d 200 (Fla. 2d DCA 2006)

The father appealed the trial court's finding of dependency based on an incident of domestic violence. The Second District Court of Appeal (Second DCA) reversed the trial court's dependency adjudication. The Second DCA held that although there was competent evidence that the incident of domestic violence occurred in front of the child, there was no evidence that the child was aware that the violence occurred. The Second DCA further held that there was no evidence presented that child suffered any physical or mental injury – harm-- as a result of witnessing the incident, or that father posed any current threat of harm to the child.

The Second DCA reversed the trial court's dependency adjudication. ⚖️



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Presence of Child -- Harm

Y.P. v. Department of Children and Family Services, 2006 WL 2819583 (Fla. 3d DCA)

Father appealed the trial court's adjudication of dependency of his children. The Third

District Court of Appeal (Third DCA) upheld the trial court's adjudication. The Third DCA held that evidence that the father broke items during violent outbursts, and that the children were present during incidents of domestic violence, was enough to uphold the trial court's finding of dependency. The Third DCA held that the "children were in substantial risk of imminent threat of harm, abuse, or neglect, as would support adjudication of children as dependent."

The Third DCA affirmed. 



Read the Opinion

Prospective Abuse

In re S.T., 2006 WL 3040744 (Fla. 2d DCA)

After an incident between mother and one of her children left a bruise on the child's head, the trial court found the child dependent, and the child's siblings dependent based on prospective abuse. §39.01(14)(f) Fla. Stat. (2006). The mother appealed the dependency adjudication.

The Second District Court of Appeal (Second DCA) held that corporal punishment leading to bruising alone does not constitute abuse sufficient to uphold a dependency adjudication. The Second DCA discussed the "harm" and "physical injury" elements necessary to show abuse. The courts have held that bruising does not meet the requirements of "harm" or "physical injury" (except in the case of bruises that lasted more than six weeks after a paddling).

The Second DCA also noted that there was no evidence showing that this was a typical form of punishment in this family. The Second DCA further held that although dependency can be found in the context of prospective abuse, there must be a nexus between the abuse and prospective abuse of the other children. "Generally, this nexus is established when the parent has a mental or emotional condition that will continue, such as mental illness, drug addiction, or pedophilia, and which will make it highly probable that in the future the parent will abuse or neglect another child. See Gaines v. Dep't of Children & Families, 711 So.2d 190 (Fla. 5th DCA 1998) (stating that to establish nexus the Department must produce evidence that the parent's behavior was beyond his control, was likely to continue, and placed the children at risk)." In this case, the nexus was not shown and the Second DCA reversed the trial court's dependency adjudication. 



Read the Opinion

Prospective Abuse & Failure to Protect

In re C.R., 937 So.2d 1257 (Fla. 2d DCA 2006)

The mother and stepfather appealed the trial court's dependency finding as to their children. The father's stepchild was adjudicated dependent because of a spiral fracture to the child's leg that occurred when the stepfather checked on the stepchild in his room. The mother was not in the room when the abuse happened. The trial court found the stepchild dependent. The trial court also found the mother's other children dependent under the theory of *prospective abuse* and *failure to protect*.

The Second District Court of Appeal (Second DCA) held that the stepchild was dependent as to the stepfather based on the child's spiral fracture. On the other hand, the Second DCA held that the other children were not dependent on the basis of prospective abuse or mother's failure to protect. The Department of Children and Family Services (the department) must demonstrate that the parent who allegedly failed to protect the child knew or should have known that the abusive person was engaging in the abuse. In re J.A.H., 876 So. 2d 647, 648 (Fla. 2d DCA 2004). There was no

evidence that the mother knew or should have known of the possibility of abuse. The mother was not in the room when the incident occurred, and there were no signs or testimony that there had been previous abuse.

Finally, the Second DCA reversed the dependency as to the other children based on prospective abuse. To find dependency based on prospective abuse the court must find that there is a nexus between the abuse that occurred and the likelihood it would happen again. "There was no evidence that the behavior of the stepfather was beyond his control, that the behavior was likely to continue, and that the single incident of abuse ... placed the other child at risk. The department presented no evidence on any psychological condition that the [stepfather] might have that would indicate a likelihood of ongoing abuse. Indeed, as noted previously, and there was no evidence of any other incidents of abuse to any of the children."

The Second DCA reversed the trial court's findings. 



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Egregious abuse

T.P. v. Department of Children and Family Services, 935 So.2d 621 (Fla. 3d DCA 2006)

Father appealed trial court's order terminating parental rights (TPR) as to his daughter. The Third District Court of Appeal (Third DCA) upheld the trial court's TPR.

The father's twin children suffered "severe child abuse" by the father. As a result of the abuse, one twin suffered profound developmental delay and cortical blindness. The twins also suffered other injuries including fractures to multiple ribs, femurs, liver and lung damage, and facial bruising.

The Third DCA stated that the "statute permitting the trial court to terminate parental rights to a child who has suffered egregious abuse, and to any siblings of such child, represents a legislative expression that parents who have committed egregious acts of abuse against one child pose an unacceptable risk that they will abuse their remaining children. The statute does not require additional proof to establish a likelihood that an abused child's sibling will also be abused. § 39.806(1)(f), Fla. Stat. (2006). "

The Third DCA affirmed. 



Read the Opinion

Egregious abuse, Failure to comply, implied consent

K.S. v. Department of Children and Families, 2006 WL 3077475 (Fla. 5th DCA)

The mother appealed the trial court's termination of her parental rights (TPR) to her children. The Fifth District Court of Appeal (Fifth DCA) affirmed.

The trial court terminated the mother's parental rights based on egregious conduct, failure to substantially comply with the case plan, and that the parent-child relationship threatens the life, safety, well-being, or health of the children. The mother argued that there was no evidence presented regarding egregious conduct. The Fifth DCA agreed. The mother also argued that her rights could not be terminated as to one of her children for failure to substantially comply because that child was not adjudicated dependent. The Fifth DCA agreed with the mother.

However, the Fifth DCA did not agree with the mother's argument that her rights could not be terminated on the basis of §39.806(1)(c), as it was not alleged in the original petition. The Fifth DCA held that, extensive evidence was introduced during the three-day hearing implicating § 39.806(1)(c), and the attorneys discussed this ground in closing. The mother's counsel did not object, and the issue was tried by implied consent. Cf. *J.K. v. Dep't of Children*, 925 So.2d 1138, 1140 (Fla. 5th DCA 2006) (reversing where abandonment was not pled, argued, or tried by consent); *T.M. v. Dep't of Children & Families*, 905 So.2d 993, 996 (Fla. 4th DCA 2005).

The Fifth DCA affirmed. 



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Jurisdiction

Default – Service of Process- Diligent Search

J.M. v. Department of Children and Families, 938 So.2d 620 (Fla. 5th DCA 2006)

Mother filed a motion to set aside the default judgment terminating her parental rights (TPR) based upon insufficient service of process. The Fifth District Court of Appeal (Fifth DCA) reversed the trial court's TPR based on the Department of Children and Families (the department) failure to conduct a diligent search for mother in an effort to effect actual service of process of termination of parental rights petition.

"In a proceeding to terminate parental rights, personal service of the petition and summons on each parent is required, unless personal service "cannot be had" after diligent search and inquiry, in which case constructive service is authorized. Fla. Stat. § 49.021, Fla. Stat. (2005). When constructive service is authorized, there are strict requirements the department must follow. In this case, the department did not allege any attempt to contact mother at the address she had provided to the court in writing, nor did it attempt to contact her at her place of employment." The Fifth DCA held that the trial court's judgment based on insufficient service is void or voidable in accordance with § 49.021 Fla. Stat. (2005).

The Fifth DCA reversed. 



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Presence of parent at advisory hearing

Irreparable harm to keep father incarcerated to secure his appearance at advisory hearing

L.H. v. Department of Children and Family Services, 2006 WL 3375389 (Fla. 3d DCA)

The father sought certiorari review of the trial court's order in which the court directed the Department of Corrections to keep him incarcerated in order to secure his appearance at his upcoming advisory hearing and trial on the Department of Children and Family Services' (the department) petition for termination of parental rights (TPR).

The Third District Court of Appeal (Third DCA) granted the father's petition. The Third DCA held that the trial court's order "departs from the essential requirements of the law" as the statute does not require presence of parent at either advisory hearing or trial. Additionally, the father would suffer "irreparable harm" because father cannot receive incentive gain time for time held in county jail.

The Third DCA reversed. 



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Evidence

Involuntary commitment to a residential treatment facility

G.T. v. Department of Children and Family Services, 935 So.2d 1245 (Fla. 1st DCA 2006)

The child appealed the trial court's order to involuntarily place the child in a residential treatment facility. The First District Court of Appeal (First DCA) reversed the trial courts holding. The Department of Children and Family Services (the department) introduced a report from a mental health professional recommending placement in a residential treatment facility. The First DCA held that because the department did not call the mental health professional as a witness, and the mental health professional was not subject to cross-examination both as to qualifications as an expert and as to any opinions offered as an expert, the evidence was not competent. The report was hearsay.

The First DCA reversed. 🏛️



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Normalization

§ 409.1451(3)(a)3, Fla. Stat. (2006); Normalcy for Adolescents and Teenagers in the Custody of the Department 65C-30.007(10) F.A.C.

What is Normalization?

Normalization means that children in foster care should be permitted to engage in the same age-appropriate activities in which their peers participate. § 409.1451(3)(a), Fla. Stat. (2006). Foster children should be allowed and encouraged by the licensed out of home caregiver, and service worker to engage in appropriate social and extra curricular activities to promote the child's social development, independence, self-esteem, and maturity. It is required that a written plan be developed that includes specific goals and objectives to promote the child's participation in activities similar to those of non-foster care children. The written plan should be reviewed no less than quarterly.

What are examples of some activities to promote normalcy?

- Drivers education program
- Efforts shall be made to obtain car insurance
- Obtain employment
- If appropriate, have contact with family members
- Access to the phone
- Reasonable curfews
- Travel with other youth and adults
- Participation in school or community events
- Having his or her picture taken for publication in the yearbook

What if the child wants to attend overnight or planned outings?

The out-of-home caregiver must determine if the outing is safe and appropriate. The caregiver should base their decision on their familiarity with the individual or group with which the child wishes to spend time, should consider the child's age, maturity level, and whether or not there will be adult supervision. Criminal, delinquency and abuse/neglect history checks are not necessary for participation in normal school or

community activities.

Confidentiality requirements for department records shall not restrict the child's participation in customary activities appropriate for the child's age and developmental level. 

Website Resources

Psychotropic Medication

[American Academy of Child and Adolescent Psychiatry](#)

The latest information on children and Psychiatric Medication

[The Center for the Advancement of Children's Mental Health](#)

Links for information on various medication and therapeutic treatment options.

[Child and Adolescent Services Research Center](#)

CASRC focuses on mental health care issues for vulnerable children, including children in public service sectors. In addition, CASRC specializes in longitudinal studies of children at risk for development of mental disorders and other problems in psychosocial functioning, and the effectiveness of early preventive interventions.

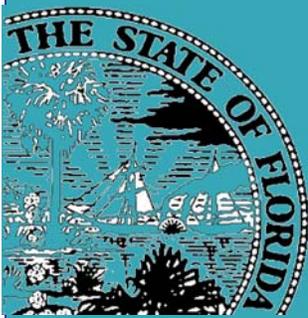
[National Alliance for the Mentally Ill \(NAMI\) - Child and Adolescent Network](#)

[National Institute of Mental Health](#)

Information on specific mental disorders, diagnosis and treatment, "Mental Illness in America", Consensus Conference proceedings, NIMH long range plans & research reports, publications order forms, QuickTime videos, information on the DEPRESSION Awareness, Recognition, & Treatment (D/ART) and the Anxiety Disorders Education Program, and other resources.

[Physicians Desk Reference](#)

On this site, you can enter the name of a drug and find information written in lay terms based on the FDA-approved drug information found in the PDR. It gives plain-English explanations for the safe and effective use of prescription and nonprescription drugs—explanations that are consistent with the information professionals are referencing in the PDR.



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