



Legal Briefs Newsletter

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Single Parent Terminations

This edition of the Legal Briefs Newsletter is dedicated to the issue of single parent terminations. You will find a summary of Florida's relevant statutes, case summaries and an article written by Wendie Cooper, Appellate Counsel, Statewide Guardian ad Litem Office.

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Single Parent Termination Requirements

Fla. Stat. § 39.811(6) (2006)

The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:

1. the child has only one surviving parent
2. the identity of prospective parent unknown
3. the parent whose rights are being terminated became a parent through single-parent adoption.
4. the protection of the child demands termination of one parent, or
5. the parent whose rights are being terminated meet any of the criteria in §39.806(d) and (f)-(i), Fla. Stat.(2006):
 - Incarceration for a substantial period of time before the child reaches 18; violent career criminal, habitual violent felony offender, sexual predator, convicted of first or second degree murder, or convicted in another jurisdiction of an offense substantially similar; or the court determines by clear and convincing evidence that a continuing relationship with the child would be harmful and termination is in the best interests of the child.
 - Egregious conduct or knowingly failed to prevent egregious conduct against child or child's sibling.
 - Aggravated child abuse, sexual battery, sexual abuse or chronic abuse.
 - Murder or voluntary manslaughter of another child, or a felony assault that results in serious bodily injury to the child or another child, or aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter or felony assault.
 - Involuntary termination of child's sibling. 

Single Parent Termination Proceedings

Wendie Cooper, Appellate Counsel, Statewide Guardian ad Litem Office

Parental rights may not be terminated unless three elements are proven by clear and convincing evidence:

1. There must be a statutory ground under § 39.806, Fla. Stat.(2006);
2. Termination must be in the best interests of the child as defined by § 39.810; and
3. Termination must be the least restrictive means of protecting the child from serious harm.

However, when the parental rights of one parent are terminated without terminating the rights of the other parent, an additional requirement must be met. Section 39.811(6) specifies that the parental rights of one parent may be severed only under certain circumstances.

In recent cases, the Second District Court of Appeals (Second DCA) has specifically considered § 39.811(6). The Second DCA has held that if there are no findings in the termination order that meet the circumstances laid out in § 39.811(6) regarding single parent terminations, or if the circumstances are not apparent on the face of the order, the appellate court will reverse the case and remand it to the trial court to make the required findings. Even if the termination order includes two parents, if there is insufficient evidence in the record to support the termination of both parents (making a single parent termination) the Second DCA has reversed the termination of parental rights (TPR) order and remanded the case to the trial court to make the requisite findings under § 39.811(6).

In the case, *In re L.C.*, 908 So.2d 568 (Fla. 2d DCA 2005), the Second DCA found that while there was sufficient competent evidence to support the termination of the father's parental rights, since it reversed the termination of the mother's rights, the father's termination had to meet the requirements of § 39.811(6) as a single parent termination. The court stated that the reversal of the mother's TPR order subjected the father's order to special requirements not material at the time the trial court made its findings. The Second DCA reversed the now one-parent termination order, as a matter of law, because the judgment and the record did not contain the required findings of fact.

Both parents must be terminated concurrently or the trial court must make specific findings justifying a single parent termination as required by § 39.811(6) Fla. Stat. (2004). Reversal of a termination order as to one parent, makes the termination as to the other parent a single parent termination that requires a finding under § 39.811(6). To ensure timely permanence, it is important to identify, locate or deem unknown all parents before the termination trial. Additionally, if the evidence is not sufficient to terminate both parents on the grounds alleged, then findings of fact under §39.811(6), should be made. It is crucial to understand the requirements of § 39.811(6) when dealing with the issue of single parent terminations. 

Single Parent Termination Case Summaries

In re L.C. 908 So.2d 568 (Fla. 2d DCA 2005)

The trial court terminated parental rights (TPR) as to mother's five children. The children have four fathers. The trial court terminated two of the fathers' parental rights to three of the children. The Second District Court of Appeal (Second DCA) affirmed the mother's and father's TPR as to one child. However, the Second DCA reversed the termination of mother's rights to the remaining four children. As a result, the Second DCA held that the fathers' terminations must be dealt with as single-parent terminations in accordance with § 39.811(6), Florida Statutes (2002).

The Second DCA held that the trial court properly terminated mother's parental rights as one of the children who had suffered at least two instances of severe abuse and who required extraordinary care because of his medical condition. One father's parental rights to one child were properly terminated based on abandonment.

The Department of Children and Family Services (the Department) failed to present clear and convincing evidence that the mother posed substantial risk of significant future harm to other four children, as would justify termination of mother's parental rights to remaining children.

The Second DCA held that because of the reversal of the mother's parental rights, the termination of the fathers' parental right must be justified as single-parent terminations. The Department failed to present clear and convincing evidence that the first father egregiously abandoned his other child, as would justify termination of father's parental rights. The record did not support termination of either fathers' parental rights as single-parent terminations under statutory section listing circumstances under which parental rights of one parent could be terminated without severing rights of the other parent §39.811(6) Florida Statutes. The only ground for termination cited by trial court, which would have permitted single-parent termination, was section of statute listing incarceration as ground for termination of parental rights, which had separately been rejected on appeal.



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A.G. v. Department of Children and Family Services, 2006 WL 197310 (Fla. 2d DCA)

This case was dismissed because the court found that the issues brought by A.G. were moot. However, the Second District Court of Appeal, in a footnote, provided the following:

"The failure to address whether one of the circumstances in § 39.811(6), Florida Statutes exists has been the sole basis for reversal in several termination cases and would have been in this case had the prospective fathers' rights not been terminated. We emphasize to trial courts, and to all parties participating in termination proceedings, the importance of heeding this statutory provision in cases where only one parent's rights are terminated. Even in cases in which the rights of both parents are terminated, trial courts may find it appropriate to address whether any of these circumstances are present as a precaution against the possibility that one parent's termination is reversed on appeal. See, e.g., J.T. v. Dep't of Children & Family Servs. (In re L.C.), 908 So.2d 568 (Fla. 2d DCA 2005); N.M. v. Dep't of Children & Family Servs. (In re V.M.), 893 So.2d 595 (Fla. 2d DCA 2005)." 



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In re E.D., 884 So.2d 291 (Fla. 2d DCA 2004)

The Department of Children and Families filed a termination petition alleging abandonment and that the continuation of a relationship with the parents threatened the children's health irrespective of the provision of services. The father voluntarily surrendered his parental rights to three of the children, but denied paternity of the child. The parental rights of the child's father were never terminated. The trial court terminated the mother's parental rights to all of the children. The mother appealed the terminations.

The Second District Court of Appeal (Second DCA) held that because the paternal rights of the child's father were never terminated, the action to terminate the mother's rights proceeded as a single parent termination. Section 39.811(6) lists the only circumstances in which terminating one parents parental rights is proper. Neither the termination petition nor the evidence produced at trial alleged any of the circumstances described in § 39.811(6). The Second DCA reversed the termination as to the child.

The Second DCA held that the trial court's finding that the mother had abandoned her children was clearly erroneous. Termination was appropriate pursuant to § 39.806(1)(c). The mother's breach of two case plans, her incarceration, mental illness and drug use demonstrated that her continuing involvement with the children would result in harm

regardless of the provision of services. The Second DCA affirmed the termination of parental rights order as to the other children. ¶



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In re V.M., 893 So.2d 595 (Fla. 2d DCA 2005)

The Second District Court of Appeal (Second DCA) reversed the order terminating parent's parental rights to their three children. The children had been placed with the father. The father was making progress on a case plan in 2002 when a bruise was found on one of the children. The children were removed from the father and a termination of parental rights petition (TPR) was filed.

The TPR petition alleged grounds for termination under § 39.806(1)(c)(e). The Department of Children and Family Services (the department) claimed the children's lives, safety or health would be threatened irrespective of services provided. The Second DCA held that the trial court erred in termination the father's parental rights. However, even though the evidence supported the termination of the mother's parental rights, the Second DCA's reversal of the father's termination invoked the requirements of § 39.811(6), Florida Statutes (2003).

The order terminating parental rights was reversed and the case was remanded to determine if there were grounds for a one-parent termination of parental rights under § 39.811(6), Florida Statutes. ¶



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In re D.A.D. II, 903 So.2d 1034 (Fla. 2d DCA 2005)

The father appealed the single-parent termination of his rights (TPR) to two of his children. The Second District Court of Appeal (Second DCA) affirmed the termination order. The TPR petition was based on § 39.806(1)(f), Florida Statutes (2003). To terminate parental rights on the ground of egregious conduct, "there must be a nexus between the conduct and the abuse, neglect, or specific harm to the child." *C.B. v. Department of Children and Families*, 874 So.2d 1246, 1254 (Fla. 4th DCA 2004).

The Second DCA held that the trial court did not find that the fathers murder of someone in the family home while the mother and children were in another state, and alleged participation in a murder-for-hire plot, was connected to any specific harm to the children. The trial court made only a generalized finding of harm. A "generalized finding of harm was not enough to establish a sufficient nexus between the conduct and the specific harm to the children to support a finding of egregious conduct within the meaning of § 39.806(1)(f)." However, the Second DCA did find that the fathers other conduct, which comprised an "unrelenting pattern of abuse, abandonment, and neglect was egregious conduct sufficient to terminate parental rights." The trial court found that the father committed chronic abuse under § 39.806(1)(g). The father's abuse began shortly after child's birth and continued through the next five years, interrupted only by the father's incarcerations, which only contributed to his abandonment of the children. The Second DCA agreed. The trial court found that the Department proved grounds for termination under § 39.806(1)(f) and (g), which fall squarely within the scope of § 39.811(6)(e). Therefore, the trial court's statutory power to terminate as to one parent was evident on the face of the order. The trial court was not required to make a specific finding under § 39.811(6)(e).

The order terminating the father's parental rights was affirmed. ¶



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