Florida Guardian ad Litem

Legal Briefs Newsletter

April 2016

Note from Alan Abramowitz

Executive Director of the Florida Statewide Guardian ad Litem Office

April was an exiting month for the GAL Program. Over 450 attorneys, judges and child welfare professionals shared their advocacy expertise at our Third Annual GAL Disabilities Training Conference. Conference videos from all of the workshops and keynote presentations will be posted soon on the GAL website and are available for CLE credit. Thank you to all who joined us - I look forward to seeing you all next year!

First District Court of Appeal

Department of Children and Families v. S.A.E., 184 So.3rd 615 (Fla. 1st DCA 2016)

The Department of Children and Families appealed an order adjudicating A.A.A.-E . dependent, asserting the trial court misapplied § 39.01(15)(a). The First District Court of Appeal (First DCA) reversed the dependency adjudication.

Mother filed a petition for dependency regarding her son, A.A.A.-E., based on abandonment by Father 12 years prior in Honduras. Mother moved to the United States and left her son with his grandparents. Father assisted the child with illegally entering the United States when his grandparents could not continue to care for him. A.A.A.-E. was detained by immigration and then placed by immigration with his mother in Florida. Mother was willing and able to safely care for A.A.A.-E. The only risk of any harm to the child was the possibility of deportation.

The First DCA found that abandonment by Father 12 years ago did not pose a current threat to the child. Without any allegation of abuse, neglect or prospective abandonment, the First DCA

court held A.A.A.-E. should not have been adjudicated dependent. Risk of deportation alone "is not a danger Florida's child protective services system is intended or designed to address."

Read the Opinion

Department of Children and Families v. B.C., 2016 WL 635072 (Fla. 1st DCA)

The Department of Children and Families and the Guardian ad Litem Program appealed denial of a petition for termination of parental rights. The First District Court of Appeal (First DCA) reversed denial and remanded for further proceedings.

Although the trial court found the termination of parental rights was statutorily warranted and in the manifest best interests of the children, the trial court denied termination finding that termination was not the least restrictive means to protect the children from harm. Specifically, the trial court found the children were safe from harm in telephonic contact and supervised visitation with Mother. Despite clear and convincing evidence that the parental bond was beyond reunification and should be terminated, the trial court relied on three recent cases (G.H. v. Department of Children and Families, 145 So.3d 884 (Fla. 1st DCA 2014); A.H. v. Department of Children and Families, 144 So.3d 662 (Fla. 1st DCA 2014); C.D. v. Department of Children and Families, 164 So. 3d 40 (Fla 1st DCA 2015)) that suggested minimal and controlled supervised visitation automatically stops termination.

The First DCA distinguished all three cases from the facts at hand and noted "the uniformity of judicial precedent rejecting the notion that termination is impossible under the least restrictive means test simply because some limited and highly restricted contact with a parent may pose no harm." The "least restrictive means test does not stand as an impenetrable barrier to achieving what is ultimately in the child's best interest" when clear and convicting evidence establishes both grounds for termination and that termination is in the best interest of the child.

Read the Opinion

Department of Children and Families v. Statewide Guardian ad Litem Program, 2016 WL 869317 (Fla. 1st DCA)

The Department of Children and Families sought certiorari review of a trial court order limiting the Department's consideration of prospective adoptive homes to one particular family for a sibling group of five children. The First District Court of Appeal (First DCA) agreed that the order violated the separation of powers doctrine and granted certiorari.

At the time of termination of parental rights, the children were in three separate foster homes. Two other families had expressed interest in adopting all five children. One family, located in Ohio, had fostered the children for a period of almost two years, three years previously. The second family, located in Florida, responded to a statewide website recruitment effort and had an approved home study. The trial court directed the Department to pursue adoption solely with the Florida family and directed the Department to discontinue all efforts to place the children with the family in Ohio.

Citing a number of cases, the First DCA held the trial court does not have the authority to interfere with the Department's selection of a prospective adoptive family provided its selection "was appropriate, consonant with its policies, and made in an expeditious manner." The First

DCA further held that the Department's consent to an adoption is not required if the trial court finds that the Department unreasonably withheld such consent.

In the instant case, the Department was still considering both families and had not yet selected one as its prospective adoptive family. The Department had not withheld consent as no adoption petition had been filed. The First DCA did note that the trial court's concern about the delay in establishing permanency was legitimate but found that the trial court could have compelled the Department to make an expeditious determination. By limiting the Department to one specific family without any best interest findings, the trial court exceeded its jurisdiction.

Third District Court of Appeal

M.C. v. Department of Children and Families, 2016 WL 717694 (Fla. 3rd DCA)

Mother appealed termination of her parental rights under § 39.806(1)(f). The Third District Court of Appeal (Third DCA) reversed termination.

The underlying petition for termination of Mother's rights alleged that Mother took E.C. to the hospital with "second degree, caustic, liquid burns" on his back, buttocks, right shoulder and right side of his body. Mother reported she believed her other child caused the injuries but was not able to provide a "cohesive explanation" for how the injuries occurred.

The Third DCA examined whether the record contained substantial evidence to support finding the Department established by clear and convincing evidence that mother either engaged in egregious conduct or had the opportunity and capability to prevent egregious conduct and knowingly failed to do so. As to the trial court's finding that mother engaged in egregious conduct, the Third DCA found that finding to be based in speculation. No evidence was presented as to how the injury occurred, who caused the injury, or what caused the injury. Two other individuals were in the residence at the time E.C. was injured. The Third DCA noted that Mother took E.C. to urgent care immediately after discovering the injury. As to whether Mother failed to prevent egregious conduct, the Third DCA found the record was devoid of any evidence that mother had the opportunity and capability to prevent the conduct or "to even suggest" that she knowingly failed to prevent the conduct.

Read the Opinion

R.W. v. Department of Children and Families, 2016 WL 1239878 (Fla. 3rd DCA)

Mother appealed termination of her parental rights. The Third District Court of Appeal (Third DCA) affirmed termination.

The Third DCA found merit in only one of the issues mother raised on appeal, her claim that the trial court's participation in the questioning of witnesses at the adjudication hearing constituted an abandonment of neutrality and impartiality. Although the Third DCA found no error or denial of due process, the Third DCA did caution the trial court as to the importance of impartiality. Pursuant to § 90.615(2), the trial court may question witnesses "when required by the interests of justice." The Third DCA held in R.O. v. State, 46 So.3d 124 (2010) that such inquiries are appropriate to seek clarification and ascertain the truth. However, trial judges must ensure that

they do not become advocates and instead maintain an appearance of neutrality in their words and actions. Riddle v. State, 755 So.2d 771, 773 (Fla. 4th DCA 2000).

Read the Opinion

Fourth District Court of Appeal

Guardian ad Litem Program v. M.H., 184 So.3d 1253 (Fla. 4th DCA 2016)

The Guardian ad Litem program appealed denial of termination of parental rights. The Fourth District Court of Appeal (Fourth DCA) reversed and remanded for further proceedings.

The specific question at issue before the Fourth DCA was whether proof of a guilty plea or conviction in a criminal proceeding was required for termination of parental rights under §39.806(1)(m). Florida Statute §39.806(1)(m) provides for termination when "the court determines by clear and convincing evidence that the child was conceived as a result of an act of sexual battery . . . The court must accept a guilty plea or conviction of unlawful sexual battery . . . as conclusive proof . . . "

Father admitted to having sexual intercourse with Mother (his step-daughter) when she was 16 years old and that she became pregnant thereafter. The trial court found by clear and convincing evidence that Father committed sexual battery but the trial court was "unwilling to make a finding that a sexual battery on a minor was committed as defined by the criminal code." As a result, the trial court denied termination under the sexual battery subsection.

The Fourth DCA found nothing in the statute requires a criminal determination of guilt to support termination of parental rights. The Fourth DCA held the trial court misinterpreted §39.806(1)(m) and erred in denying termination.

Read the Opinion

D.V. v Department of Children and Families, 2016 WL 805306 (Fla. 4th DCA)

Father appealed termination of his parental rights. The Fourth District Court of Appeal (Fourth DCA) agreed with Father that the trial court erred in failing to advise Father of his right to counsel at the manifest best interests hearing. The Fourth DCA reversed and remanded for further proceedings.

Father had counsel who represented him in several hearings. Counsel e-mailed the court and other parties prior to the manifest best interests hearing, informing them he had nothing further to contribute and asking for his appearance to be waived. The evidentiary hearing went forward without father or his counsel. Father was not questioned as to whether he waived counsel.

Pursuant to §39.013(9)(a), the court shall advise the parents of the right to counsel at each stage of proceedings. Subsection 9(b) requires that once counsel has entered an appearance, counsel must continue to represent the parent throughout the proceedings.

Because the trial court did not advise Father of his right to counsel at the manifest best

interests hearing or inquire as to whether he waived counsel, the Fourth DCA reversed and remanded for further proceedings.

Read the Opinion

R.J. v Florida Department of Children and Families, 2016 WL 1039178 (Fla. 4th DCA)

R.J., the child at issue, appealed the trial court's order granting his petition for dependency but denying placement in licensed care. The Fourth District Court of Appeal (Fourth DCA) reversed and remanded.

R.J. filed a petition for dependency after his parents refused to allow him to return home following discharge from a residential psychiatric center. The Department of Children and Families entered a limited appearance and objected to the request that it be joined as a party or be required to place R.J. in custody. The trial court adjudicated R.J, dependent but determined it could not compel the Department to participate or to place R.J. in custody without its consent.

Section 39.501(1) permits the Department, **or any other person**, to file a dependency petition. The Fourth DCA noted that nothing in Chapter 39 requires the Department to participate in the dependency process. However, Section 39.521 provides that once a child is adjudicated dependent, the court may require placement in the custody of the Department.

Because the trial court properly adjudicated R.J. dependent, the Fourth DCA found the court had the authority to place R.J. in the Department's custody

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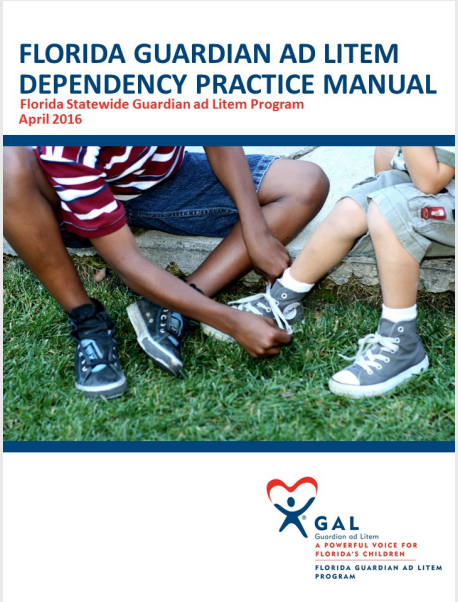

2016 Florida Guardian ad Litem Dependency Practice Manual

The Guardian ad Litem Program has updated the Dependency Practice Manual

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