Florida Guardian ad Litem

Legal Briefs Newsletter

As most of you know, April is child abuse prevention awareness month. During this month, child welfare agencies typically plant blue pinwheels, which are the national symbol for child abuse prevention. It is also during the month of April that agencies recognize child advocates with awards for outstanding work in child abuse prevention. I would like to take a moment to thank each and every Child's Best Interest Attorney who works for the Guardian ad Litem Program and those who volunteer their time for our kids through our Pro Bono initiative. These unsung, and sometimes criticized, heroes are in courtrooms, conference rooms, mediation rooms or tied to their computers drafting pleadings and briefs every single day. They do it not for recognition, not to get wealthy, but because they care about every child for whom they advocate. These attorneys work tirelessly, oftentimes overnight, frequently sacrificing time they would be spending with their own families; all because they want to make things better for every child. Not all superheroes wear capes. Some of them wear suits and carry briefcases

with well-worn copies of Florida Statutes and Rules of Juvenile and/or Appellate Procedure.

The 5th Annual GAL Disabilities Training Conference was a great success. We had over 400 attendees. Please stay tuned for the next Legal Briefs Newsletter to view workshops from the conference. The GAL Program was able to recognize some pretty outstanding SuperHeroes at the conference. Twenty-one attorneys on the registry were recognized for their Excellence in Advocacy, 5 GAL Program attorneys were recognized for the GAL Program's 5 Core Values, and we had two special awards that are given out each year - I am for the child Award and the Akerman IMPACT Award. Click below to see our SuperHeroes!

Excellence in Advocacy Award Winners
5 Core Values Award Winners
I am for the child Award Winner
Akerman IMPACT Award Winner

Expedited TPR Pursuant to §39.806(1)(m) and Least Restrictive Means-Least restrictive means analysis does not require a reunification case plan for biological father of child conceived by sexual battery.

In Interest of X.W., 2018 WL 793733 (Fla. 2d DCA 2018)

The GAL filed an expedited petition to terminate biological father's parental rights based on his sexual battery of mother when he was twenty-six and she was just eleven years old, and which resulted in the conception of the child, X.W. Despite finding the GAL proved grounds for termination under sections 30.806(1)(d) and (m), the trial court denied the petition concluding that termination would not be in X.W.'s best interests and was not the least restrictive means of protecting him from harm.

The GAL appealed and the Second DCA found the trial court's findings regarding the manifest best interest and least restrictive means were legally and factually incorrect and reversed and remanded the case with directions. Significantly, the appellate court agreed with the GAL that this is not an ordinary case in which the law requires an opportunity to comply with a case plan, but rather a case of "extraordinary circumstances" where termination of parental rights without the use of case plans is the least restrictive means. The appellate court further explained that even if this were an "ordinary" case that required a case plan, one would not be required here because

there was no parent-child bond to reestablish through the provision of a case plan. The appellate court also found that the trial court's conclusion that termination of parental rights was not in X.M.'s manifest best interest was not supported by the evidence; and that the facts, as found by the trial court, showed the opposite.

Practice Tip: Even in "ordinary" cases, the least restrictive means test only requires an opportunity to comply with a case plan to permit the safe re-establishment of the parent-child bond when there is a parent-child bond to reestablish.

Read the Opinion

Expedited TPR Pursuant to §39.806(1)(c), (i), (j) and (l) and Least Restrictive Means-Least restrictive mean analysis does not require a reunification case plan in extraordinary cases enumerated in §39.806(2), Fla.Stat. (2017).

K.D. V. Department of Children And Families, 2018 WL 1769747 (Fla. 1st DCA 2018)

The Department filed an expedited petition to terminate mother's parental rights under sections 39.806(1)(c), (i), (j) and (l). Despite a decade of involvement with the Department due to mother's chronic substance abuse, including the removal of seven other children since 2008, the child, C.D., tested positive for cocaine and marijuana at birth. The trial court found all four grounds were proved by clear and convincing evidence and that termination of parental rights was the least restrictive means of protecting the child from harm.

Mother appealed only the finding regarding the least restrictive means because the Department did not offer her a case plan. The First DCA affirmed, noting that in "extraordinary circumstances" such as mother's decade-long substance abuse and involvement with the Department, the Department was not obligated to offer her a case plan and that termination was the least restrictive means of protecting the child from harm.

A Special Thanks to Jesse Ryan Butler, who handled this appeal pro bono for the GAL program through the Defending Best Interest Project's partnership with The Florida Bar's Appellate Practice Section.

Read the Opinion

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§39.811(1) and Order of Disposition-Dependency trial court's findings in support of its decision to not adjudicate a child dependent, after declining to terminate parental rights of child's father, were insufficient to permit the District Court of Appeal to conduct meaningful review, warranting reversal

and remand of dependency determination.

In Interest of K.W., 234 So.3d 835 (2018)
The GAL filed a petition to terminate parental rights of mother and father as to their two children, K.W.(1) and K.W.(2). The trial court terminated mother's parental rights as to both children, but only terminated father's parental rights to the child, K.W. (1), not to the child, K.W. (2). The trial court further concluded that no grounds were proven to sustain a finding of dependency as to K.W.(2).

The GAL appealed and the Second DCA found that while the record contained evidence that could support an adjudication of dependency as to the child, K.W.(2), nothing in the record or in the final judgment indicated why the trial court decided not to adjudicate child dependent. Finding that it could not conduct a meaningful review of the trial court's conclusion regarding the dependency, the DCA reversed and remanded the portion of the final judgment that determined there were no grounds to adjudicate the K.W.(2) dependent.

Read the Opinion

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§39.806(1)(b)-Abandonment and Termination of Parental Rights of Incarcerated Parent. Trial court erred in terminating father's parental rights on the ground of abandonment due to incarceration.

B.F. v. State, Department of Children and Families, --- So.3d ---- (2018)

Child was sheltered at 4 months of age. When child was two years old, the Department filed a petition to terminate father's parental rights based upon several grounds. Father was in and out of jail for a significant portion of the dependency and termination proceedings. The trial court terminated father's parental rights based on sections 39.806(1)(b) and (1)(e)(1) and (2), for abandonment and case plan non-compliance.

Father appealed, arguing that the Department failed to sufficiently prove abandonment. The Fourth DCA agreed and reversed the portion of the order terminating the father's parental rights based on abandonment. In doing so, the DCA offered a detailed explanation regarding the qualifying phrase "while being able" in statutory definition of abandonment, and noted that it does not include involuntary abandonment, such as incarceration. Although a parent's incarceration can be a factor the court considers for terminating parental rights based on abandonment, incarceration alone is insufficient.

A Special Thanks to Heather Sayfie, who handled this appeal pro bono for the GAL program through the Defending Best Interest Project's partnership with The Florida Bar's Appellate Practice Section.

Practice Tip: See below for a new law, Incarcerated Parents, effective July 1, 2018.

Read the Opinion

Case Plan Goals-Due process requires notice of proposed change to permanency goal and strict

adherence to statutory requirements.

In Interest of T.C., --- So.3d ---- (2018)

Mother sought certiorari review of the trial court's order that placed two of her children in a permanent guardianship with their paternal grandparents and gave the father permanent custody of a third child. Mother argued that the trial court departed from the essential requirements of the law because the Department filed a case plan with the changed permanency goals less than twenty-four hours prior to the judicial review hearing, and the mother was not informed prior to the judicial review that the Department and the Guardian ad Litem Program were seeking to change the permanency goals, nor that an evidentiary hearing would be conducted at the judicial review.

The Second DCA granted the petition and quashed the order, finding that the failure to notify mother of the proposed goal changes was contrary to statutory requirements, and denied the mother of procedural due process to present witnesses and cross-examine.

Practice Tip: Failing to adhere to the strict statutory guidelines and procedures may result in unnecessary delays to permanency.

Read the Opinion

Proposed Final Order-Trial Court's adoption of a proposed final judgment terminating parental rights is not per se reversible; rather, reversal is required only where the circumstances create an appearance that the judgment does not reflect the judge's independent decision-making.

D.R. v. Department of Children and Families, --- So.3d ---- (2018), 44 Fla. L. Weekly D253

Department submitted a proposed order at the beginning of TPR trial. After the trial ended, the court adopted the proposed order in full, but added approximately one page of additional findings. Mother appealed, arguing the court failed to conduct an independent analysis of the facts and law in adopting the order.

The First DCA held that the trial court's adoption of the proposed order did not warrant reversal in this case, specifically noting the inclusion of substantive changes by the trial judge, indicating the court exercised independent judgment based on the evidence presented at the trial. Further, the DCA noted that further review of additional factors was precluded because of deficiencies in the record. Even in a termination of parental rights proceeding, the lack of a transcript mandates affirmance unless fundamental error appears on the face of the order.

Practice Tip: Despite finding no error in this case, the DCA noted that the timing of the submission of the proposed order and issuance of the final order raised a legitimate concern. The better practice would be to prepare a proposed order in advance, while maintaining the ability to make changes to comport with the evidence and findings of

the court at the conclusion of the trial.

Read the Opinion

Added Training to GuardianadLitem.org

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

- Master Trust & Social Security
- Case Law Review
- Developmental Disabilities

Notable Updates

New requirements regarding incarcerated parents in dependency cases, creating Section 39.6021, Fla. Stat. (2018)

A new law, creating §39.6021 of the Florida Statutes, goes into effect on July 1, 2018. This bill further defines the role of incarcerated parents in the development and execution of case plans associated with their children. Currently, Section 39.6011 requires DCF to engage incarcerated parents in the dependency case process, including case plan development. The new provision adds additional responsibilities for the Department and for incarcerated parents as case plans are developed, implemented, and modified.

The bill requires DCF to:

- Engage incarcerated parents in case planning and develop case plans that give some consideration to limitations faced by incarcerated persons;
- Coordinate efforts with relevant correctional facilities to identify those services and resources available to incarcerated parents; and
- Amend case plans as individuals become incarcerated or are released from incarceration.

The bill also makes incarcerated parents responsible for complying with case plan requirements and the requirements of relevant correctional facilities.

See the language of the new provision here:
New Requirements regarding Incarcerated Parents

The Rules of Juvenile Procedure have been amended to reflect recent changes to Chapter 39, effective February 1, 2018 (immediately upon the release of opinion).

In re Amendments to Florida Rules of Juvenile..., 235 So.3d 322 (Mem), 43 Fla. L. Weekly S59

Click to view the Rule: **Amendments to Rules of Juvenile Procedure 2017**

Highlights

Congratulations to Frances Fienberg! The Dade County Bar Association has named Frances Feinberg, director of the program that represents child victims and witnesses in Miami-Dade criminal court, as one of its Women of Distinction for 2018. Feinberg, who oversees Guardian ad Litem's Criminal Court Project for the 11th Judicial Circuit, won the Dade Bar's Women of Distinction Public Interest Award.

Press Release: **Dade County Bar Honors GAL Attorney**

WFSU Presents: 'Series Of Child Welfare Bills Continue Moving In Florida Legislature'

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