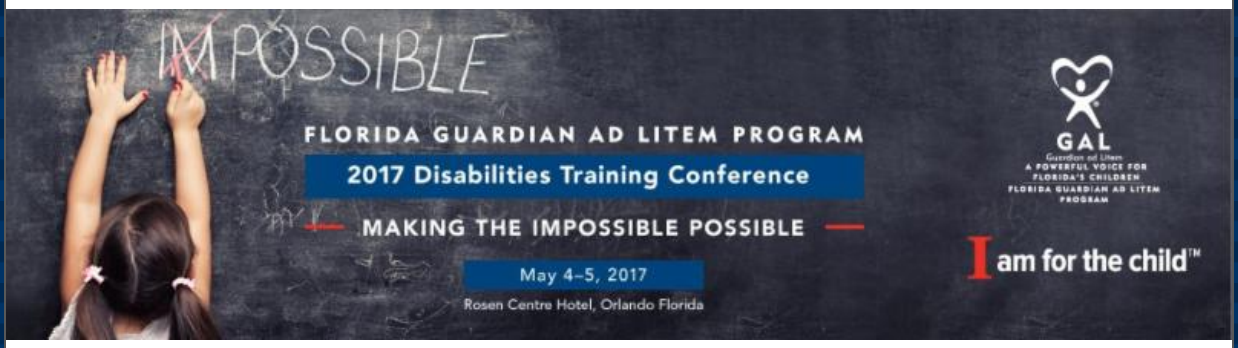
Florida Guardian ad Litem

Legal Briefs Newsletter
December 2016



Now Accepting Workshop Proposals for the
2017 Florida GAL Disabilities Training Conference
Submit a Workshop Proposal **Online**
Submission Deadline: January 31, 2017
Conference will be held in Orlando May 4-5, 2017.

Second District Court of Appeal

In re D.O., 210 So.3d 1242 (Fla. 2nd DCA 2016)

Father appealed the trial court's order terminating supervision and jurisdiction over his child. The Department of Children and Families (Department) and the Guardian ad Litem conceded error, specifically that Father was not given notice that the Department's motion to terminate protective supervision would be heard at a previously scheduled review hearing.

Three days before the scheduled review hearing, the Department filed a motion to terminate protective supervision and jurisdiction. Over Father's objection, the court terminated supervision finding that mother complied with her case plan. The court noted any issues between the parents could be addressed in family court.

Citing to C.K. v. Department of Children and Families, 88 So. 3d 975 (Fla. 2d DCA 2012) and J.S. v. Dep't of Children and Families, 75 So. 3d 808 (Fla. 1st DCA 2011),

the Second District Court of Appeal (Second DCA) held that terminating supervision without prior notice to father was in error. The Second DCA reversed and remanded.

Read the Opinion

In re N.L., 210 So. 3d 1288 (Fla. 2nd DCA 2016)

Father appealed an order adjudicating his child dependent. The Second District Court of Appeal reversed.

The trial court found the child to be dependent as to Father solely based on Father's failure to comply with a case plan for older children previously found dependent. No evidence was presented that the child was at "substantial risk of imminent abuse, abandonment or neglect" by Father pursuant to Florida Statute § 39.01(15)(f).

Failure to comply with a case plan for other children alone was not sufficient to find a child dependent.

Read the Opinion

In re J.H., 2016 WL 6777133 (Fla. 2nd DCA)

The Guardian ad Litem Program (GAL) appealed an order dismissing a dependency petition for two siblings while adjudicating the third sibling. The Second District Court of Appeal (Second DCA) reversed dismissal of the two petitions finding the trial court failed to recognize the nexus between the severe abuse of Le.H. and the substantial risk of significant harm to his siblings.

The Second DCA dealt with this case previously on the GAL's petition for a writ of certiorari to review an order sheltering one child but not the two siblings. N.H. v. Dep't of Children and Families, 192 So. 3d 592 (Fla. 2d DCA 2016). While the certiorari was pending, an adjudication hearing was held in the trial court. A number of witnesses testified regarding injuries to Le.H. At two months of age, he was taken to the hospital for a fever and a cough. X-rays showed multiple fractures at different stages of healing. The doctor testified that he believed the factures happened on four different occasions and were indicative of physical abuse. Neither parent could explain Le.H.'s injuries. Le.H. has a twin brother and a toddler aged sister. All three children were only cared for by mother, father and maternal grandmother.

In its previous opinion quashing the shelter order, the Second DCA held the connection between the unexplained abuse of one child and the substantial risk of significant harm to a sibling can warrant removal of both children. To determine whether such a nexus exists, the Department must show whether there is a substantial risk of harm to a sibling stemming from the abuse of the child. In this case, the Second DCA held that the Department proved such a nexus. The children were "identically situated to Le.H. based on age, vulnerability and proximity."

Read the Opinion

Third District Court of Appeal

K.B. v. Florida Department of Children and Families, 2016 WL 5804144 (Fla. 3rd DCA)

K.B., 17 year old dependent child, sought insurance of a writ of certiorari to quash an order directing K.B. to submit to an assessment by the Juvenile Addiction Receiving Facility (JARF) and to be transported by secure transport to the assessment. The Department of Children and Families (Department) concedes the order was issued without a proper petition and in violation of K.B.'s due process. The Third District Court of Appeal (Third DCA) granted the petition and quashed the order.

K.B. appeared for a dependency hearing scheduled to quash a pick up order. Prior to getting the child's attorney on the phone, the court ordered the child to submit to a drug test. K.B. left the courtroom for a drug test while the court called her attorney. The GAL asked for the child to be sent to JARF for an assessment. The court responded that it would grant the request if K.B.'s test was positive. K.B. screened positive for marijuana and benzodiazepines. The court granted the GAL's motion and directed K.B. to be transported securely for assessment. K.B.'s attorney objected.

The Marchman Act, Florida Statues §§ 397.675, 397.6811-397.6818, requires that a petition must be filed to request involuntary assessment and stabilization. The petition must include the petitioner's basis for believing the respondent is substance abuse impaired and has lost the power of self-control. No such petition was filed in the instant case which violated K.B.'s due process.

Read the Opinion

M.C. v. Department of Children and Families, 2016 WL 6612173 (Fla. 3rd DCA)

This case was previously brought before the Third District Court of Appeal (Third DCA) and the court reversed termination of the Mother's rights and directed the court to determine whether the evidence supported adjudication of dependency rather than termination. M.C. v. Department of Children and Families, 186 So. 3d 74 (Fla. 3d DCA 2016). On remand, without hearing any additional evidence, the trial court adjudicated the children dependent pursuant to Florida Statues § 39.01(41) and 39.01(44). Mother appealed adjudication. The Third DCA affirmed as to E.C. but reversed as to G.C.

Florida Statute § 39.01(41) provides for a finding of dependency based upon medical neglect. Section 39.01(44) provides for a finding of dependency based on neglect, defined as a situation when a child is living in an "environment [which] causes the child's physical, mental or emotional health to be significantly impaired or to be in danger of being significantly impaired."

The Third DCA found that Mother's failure to examine and attend to E.C.'s serious injuries supported a finding of medical and general neglect. The Third DCA did not find sufficient evidence to support a finding of neglect as to G.C. G.C. suffers from mental health and behavioral challenges. He was a frequent runaway and was Baker Acted two days prior to E.C.'s injury. A child psychiatrist had been working with G.C. for the six months prior to E.C.'s injury. He prescribed G.C. Adderall but felt Mother was "a bit overwhelmed by the situation because the child was very difficult." The trial court did not find Mother's testimony that she ensured G.C. took his medication to be credible.

Read the Opinion

S.D. v. Department of Children and Families, 2016 WL 6992649 (Fla. 3rd DCA)

Father appealed termination of his parental rights based on his lack of consent to a witness testifying by Skype, the failure of a notary to administer the oath prior to the witness's testimony and violation of his right to confront a witness. The Third District Court of Appeal (Third DCA) affirmed.

Father's adult daughter testified via Skype at trial. Father originally consented to his daughter testifying by telephone or Skyke but revoked his consent three days prior to trial. The trial court heard argument on the revocation of consent and determined Father failed to show good cause to revoke consent so close to trial, that he waived his right to object to her Skype testimony and that testimony via Skype protected his right to confrontation.

The Third DCA agreed with the trial court that Father waived his right to object to his daughter's telephonic testimony. Citing to Somervell v. State, 883 So. 2d 836 (Fla. 5th DCA 2004), the Third DCA held that testimony by Skype meets the right to confront a witness because the witness is both visible and available for cross examination. As to the issue of the notary, the Department corrected this by reopening the case to swear in the witness.

Read the Opinion

Fourth District Court of Appeal

R.M. v. State, Dept. of Children and Families, 2016 WL 6476935 (Fla. 4th DCA)

Mother and Father appealed an order adjudicating their children dependent based on neglect, abuse and imminent risk of neglect and/or abuse. The Fourth District Court of Appeal (Fourth DCA) affirmed adjudication based on neglect but reversed as to all other findings.

The Fourth DCA found substantial evidence was presented as to an ongoing rat infestation that caused the children's physical health to be in danger of significant impairment to support an adjudication of dependency based on neglect. There was no evidence however, that the parents willfully endangered the children, which is needed for a finding of abuse.

The Fourth DCA found no evidence that the children were at imminent risk of neglect of abuse. Although the Fourth DCA noted the children were in the care of a negligent and potentially abusive caregiver at the time of removal, there was no evidence presented that the parents planned to utilize that caregiver in the future. There was also no evidence that the conditions of the home remained dangerous at the time of the dependency hearing.

Read the Opinion

B.S. v. Department of Children and Families, 2016 WL 6781614 (Fla. 4th DCA)

Mother and Father moved for rehearing and a written opinion. The Fourth District Court of Appeal (Fourth DCA) denied the request for a rehearing but granted the request for a written opinion. The Fourth DCA affirmed termination of the parents' rights.

Evidence was presented at the trial court that an infant child of the parents was found buried in the parents' backyard. The medical examiner testified the child was a victim of homicide. There was conflicting evidence as to which parent had physical care of the child at the time of the child's death. Mother did not report the child's absence for over a year. The court found that neither parent was credible, that they acted in concert in the child's death and cover-up.

Mother cited to M.C. v. Department of Children and Families, 186 So. 3d 74 (Fla. 3rd DCA 2016) for support of her request for a rehearing. The Fourth DCA distinguished the case from the facts at issue. In M.C. there was no direct evidence of whom or what caused injury to the child and the mother immediately sought care for the child's injuries. In this case, the medical examiner testified that the child's death was by violent means and not an accident. Even if there was no direct evidence that Mother murdered her child, she hid his disappearance for over a year. The failure to account for her child's safety constituted egregious conduct that threatened the safety of her other children.

Read the Opinion

Save the Date

The 2017 Disabilities Training Conference will be held in Orlando on May 4-5, 2017.

Make plans to join child welfare professionals from across the state to share ideas and best practices in representing dependent children with special needs.

Florida Statewide Guardian ad Litem Program | Questions or Comments Email Liz Damski | Guardian ad Litem Website

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