



Florida Guardian ad Litem

Legal Briefs Newsletter

GAL Joins the National Pro Bono Celebration by Saluting the Defending Best Interest Project and Pro Bono Matters Volunteers

The American Bar Association annually sponsors a special week honoring pro bono service - the National Pro Bono Celebration -- recognizing the outstanding contributions made by pro bono attorneys. The Guardian ad Litem (GAL) Program joins in celebrating these individuals by honoring its Defending Best Interest Project and Pro Bono Matters to Special Needs Children volunteers during the week of October 22-28, 2017.

Sometimes referred to as "chicken soup for the lawyer's soul" the Defending Best Interests Project allows Florida attorneys to use their skills to advance the best interests of dependent children when challenged on appeal. The GAL Program has partnered with The Florida Bar's Appellate Practice Section to match volunteers with cases. The results have been phenomenal: the Defending Best Interests project has out-performed all expectations and early goals. With the best and the brightest attorneys volunteering, more than 40 briefs have been assigned in

just a few months with volunteers contributing in excess of \$150,000 in donated services.

The Pro Bono Matters to Special Needs Children initiative matches pro bono attorneys with dependent children who have been victims of human trafficking, those who do not consent to psychotropic medications, children in or being placed in nursing homes or residential treatment centers, and children who have a developmental disability. Born from a partnership between the Florida Bar and the Guardian ad Litem Program, the project helps the GAL Program respond to 2014 legislation found in section 39.01305, F.S., requiring that a pro bono attorney be sought before a registry attorney is appointed for children with special needs. To aid GAL Programs statewide in identifying potential pro bono attorneys, the GAL Program works through The Florida Bar Foundation's new website, FloridaProBonoMatters.org. Through use of the website the Program has already boosted participation from pro bono attorneys.

The GAL Program honors and thanks all of these incredible volunteers for their hard work on behalf of Florida's most vulnerable children!



The Disabilities Training Conference Workshops and General Sessions are now available on the Guardian ad Litem website, click here: [GAL Disabilities Training Conference Workshops](#)

Postdisposition Change of Custody: Order effectively granting reunification quashed where dependency court failed to apply proper statutory provisions, misconstrued the evidence and findings were not supported by competent substantial evidence.

In the Interest of I.N., a child. E.N., Petitioner, v...., --- So.3d ---- (2017)

The Second DCA reversed a trial court's order which "effectively reunified" a child with a father who is alleged to have sexually abused the child. The DCA found that the trial court departed from the essential requirements of law by failing to apply the applicable standard of law, misconstruing the evidence and that the court's findings as to the child's best interests were not supported by competent and substantial evidence.

In finding the trial court failed to apply the proper standard of law, the Court discussed section 39.522(3), which addresses the proper standard when determining whether a child who has been placed in the custody of a parent should be reunified with the other parent. Prior July 1, 2013, courts were required to grant reunification absent a finding of endangerment, so long as the parent seeking reunification had substantially complied with his case plan. However, in 2013 the section was amended at the urging of the GAL program, to add the important requirement that the court must also find that reunification would be in the best interest of the child.

Although not in effect at the time of this decision, section 39.522(3) was again amended effective July 1, 2017; however, the new language does not alter the requirement that the court must find that reunification would be in the best interest of the child. Thus, a trial court may deny reunification if it is not in the child's best interest, even if the court does not find that reunification would endanger the child.

The DCA also determined that the trial court erred in its best interest findings under section 39.621(10) by misconstruing the evidence and incorrectly discredited the testimony of the mother and the GAL.

Practice Tips: At the time of the hearing on this case there was a pending motion to amend the case plan to address the alleged sexual abuse of the child. It is critical that we ensure that the case plan tasks are designed to address the issues that brought the children into care. Amendments must be timely addressed.

The court noted that although the allegations in this case triggered the rebuttable presumption and other protections of the Keeping Children Safe Act, the provisions of the act were not followed. For a comprehensive review of the KCSA and Dynamics of Child Sexual Abuse, see <http://guardianadlitem.org/training-advocacy-resources/training-materials/>

[Read the Opinion](#)

Single Parent TPR: Reversal of order terminating father's parental rights on appeal requires reversal of order terminating mother's parental rights as

A.M.B. v. Department of Children and Families, --- So.3d ---- (2017)

Both parent's rights were terminated below, but order terminating father's parental rights was reversed on appeal based on concession of error by Department of Children and Families. Following precedent set by the Second DCA, the First DCA held that order terminating mother's rights must also be reversed because reversal of father's order created a single parent termination as to mother, and Department had not established grounds for single parent termination pursuant to 39.811(6)(a)-(d).

Although an appellate court can still affirm a single-parent termination if the actual ground for termination as to that parent is one of the grounds described in section 39.811(6)(e) and that portion of the judgment is otherwise affirmable, mother's rights in this case were terminated pursuant to 39.801(e) for case plan non-compliance, which is not listed ground under 39.811(6)(e).

Practice Tip: In all cases where rights of both rights are terminated, it is best practice for the petitioner to plead and prove factors for single parent termination under 39.811(6) if applicable, and for the trial court to make specific findings of fact addressing 39.811(6) as a precaution against the possibility that one parent's termination is reversed on appeal.

Remember: Recent amendments to Chapter 39 added sections 39.806(1)(c) and (n) to 39.811(6)(e).

[Read the Opinion](#)

Error for trial court to modify permanency as to father who was not present at the hearing.

T.B. v. Department of Children and Families, --- So.3d ---- (2017)

After the parents substantially complied with their case plans, the trial court reunified as to both parents and set a judicial review hearing for six months later as required by section 39.701(1)(b), Fla. Stat. (2016). Shortly after reunification, but before the hearing, the father was arrested for burglary and larceny.

Father was not present at the judicial review hearing due to his incarceration, and there was no evidence that father was intentionally absent, waived his right to appear or that an order was entered directing that he be transported to the hearing.

At the hearing, the trial court terminated both supervision and jurisdiction but also modified permanency as to the father, ordering that the father's visitation would be at the discretion of the mother. The father's attorney objected to the order, arguing that the father was incarcerated and had a right to be present. The trial court disagreed and entered the order.

The appellate court found that the trial court violated father's due process rights when it modified permanency during his involuntary absence and reversed and remanded the case.

Practice Tip: If a parent is incarcerated, steps must be taken to assure they are present at all hearings. If it is not possible because the parties were not aware of the incarceration, the hearing should be continued for the shortest amount of time possible to allow for the parent's presence. To do otherwise may constitute reversible error and

therefore, delayed permanency.

[Read the Opinion](#)

Case Plan Amendment: Trial court departed from the essential requirements of law when it changed case plan goal from reunification to permanent guardianship without an adequate evidentiary basis.

S.C.P. v. Department of Children and Families, 220 So.3d 1290 (2017)

Only a few months after accepting a reunification case plan, the court changed the goal of mother's case plan from reunification to permanent guardianship, despite finding the mother in compliance with her case plan. Noting that the rules and statutes contemplate an evidentiary basis to support a case plan amendment, and that the case plan goal amendment here could prevent the mother from eventually reunifying with her children, the Third DCA granted the mother's petition for writ of certiorari and quashed the order.

Practice Tip:

The governing rules and statutes contemplate an evidentiary basis to support a case plan amendment.

[Read the Opinion](#)

Section 39.806(1)(i) and Required Findings in Court Order: Case remanded to the trial court to make required findings that reunification would be a substantial risk to the child.

L.J. v. Department of Children and Families, 220 So.3d 557 (2017)

The trial court entered a final judgment terminating father's parental rights to the child pursuant to 39.806(1)(i) on the basis that he had rights to two other children terminated. The trial court's order included findings as to each statutory factor, discussed the manifest best interests, and explained that termination was the least restrictive means of protecting the child from harm, but failed to include a finding that reunification posed a substantial risk of harm to the child.

The appellate court affirmed the trial court's finding that the evidence warranted termination of Father's parental rights but remand for the trial court to include findings concerning whether reunification poses a substantial risk of harm to the child.

Practice Tip: Court orders are subject to remand where statutorily required findings

are missing, causing undue delay to permanency.

[Read the Opinion](#)

Implied Consent to Termination Petition: Trial court erred in denying motion to vacate implied consent on unique facts of the case.

T.H. v. Department of Children and Families, 2017WL2960589, 3D17-727 (Fla. 3d DCA Jul. 12, 2017)

At the outset of the TPR trial, the Department moved for a continuance, which the court granted. The Department then asked the court to enter an implied consent against the father because of his failure to appear after proper notice. The court granted the request, and the father filed a motion to vacate.

At the motion hearing, the father testified he had been hospitalized on the day of trial. He presented argument as to each of the statutory TPR grounds alleged by the Department. The court concluded the father failed to present a meritorious defense and denied the motion.

On concessions of error by both the Department and the GAL, the Third DCA reversed, noting the unique circumstances of the case including the fact that the Department had requested a continuance of the trial, the father was hospitalized at the time of the trial, and the father presented argument as to each ground for termination. On that record, the Court held the trial court erred in denying the motion to vacate and reversed the order entering the implied consent.

Practice Tip: This case reiterates that courts in Florida should ordinarily refrain from determining a termination of parental rights by default when an absent parent makes a reasonable effort to be present at a hearing but is prevented or delayed by circumstances beyond the parent's control. Public policy favors an adjudication on the merits over the entry of a default, and thus a properly filed motion to vacate a consent by default should be liberally granted, especially in cases involving a parent's fundamental right to the care, custody, and control of a child.

[Read the Opinion](#)

Motion for Reunification Requires an Evidentiary Hearing: Mother was entitled to an evidentiary hearing on her motion for reunification with dependent child before court granted Department of Children and Families' motion to terminate protective services

J.G. v. Department of Children and Families, 220 So.3d 555 (2017)

The Department of Children and Families filed motion to terminate protective

supervision as to child, who was in the custody of her non-offending father, and the Mother filed a motion for reunification, asserting that she had completed her case plan services. Without conducting a hearing on the Mother's motion for reunification, and over the mother's objection, the trial court entered an order granting the Department's motion to terminate protective supervision and stated that the trial court was not retaining jurisdiction.

On appeal, the Department conceded that the Mother was entitled to an evidentiary hearing on her motion for reunification. The Third DCA agreed and reversed the order and remanded the case for an evidentiary hearing on mother's motion.

[Read the Opinion](#)

Competency: No violation of due process in conducting TPR trial against incompetent parent.

[A.M. v. Department of Children and Families](#), 2017WL3085350 (Fla. 4th DCA)

In this appeal of an order terminating mother's parental rights, the Fourth DCA extended its previous holding that conducting a dependency adjudication against an incompetent parent does not violate due process, to a termination trial where the mother's mental health was the core issue and there was no assurance she would regain competence.

The DCA found that in termination of parental rights cases, the child's interests in stability and safety must be considered in addition to the parent's fundamental right in raising his or her child. The risk of error in conducting a TPR trial against an incompetent parent is diminished because the parent has a right to counsel (unlike most other civil cases) and there is a heightened burden of proof. The government has not only a fiscal/administrative interest but also a *parens patriae* interest in preserving and promoting the child's welfare.

The Court declined to analogize TPR to criminal cases, noting TPR does not involve a deprivation of physical liberty, and TPR has different procedures and goals from criminal cases. The government's interest in finality is greater in TPR cases than in criminal cases, because of the harm to a child when permanency is unduly delayed. Aligning itself with the majority of jurisdictions, the Court held due process does not require a parent to be competent at the time of a termination proceeding.

[Read the Opinion](#)

Added Training to [GuardianadLitem.org](#)

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

- GAL Ethics Training Scenario
- Child Hearsay Exception
- Special Needs Attorney ad Litem



This is a story about love, determination and a system that is working! Thanks to the GAL office in the Nineteenth Circuit for sharing and to all involved in making this reunification happen!

Baby A.

In January, four-month-old Baby A. was removed from her mother due to domestic violence and drug abuse. Although Mom had been abusing drugs since a young age, losing her child was the wake-up call she needed! With the help of her sister, the GAL program and others, Mom went right to work to get her baby back. Mom's sister was very supportive, volunteered to care for the baby, and continued to take her to medical appointments and facilitate visits with Mom in St Lucie County, although she lived in Pinellas County. Out-of-county GAL staff were also very helpful in visiting the child.

At a team staffing, it was determined that Mom probably had untreated mental health issues in addition to her addiction. The Best Interest Attorney successfully argued for mental health tasks to be added to the case plan and the goal date was extended for three months in order to realistically have time for the new tasks to be completed.

Despite setbacks, including time spent in jail and no bed at the residential treatment center that Mom needed to get and stay clean and sober upon release from jail, Mom stayed focused and determined to work her case plan. She attended out-patient treatment services while waiting for a bed to open. She called her sister and baby every other day and kept in contact with her case manager and GAL. By October, just ten months after shelter, this young, single mother had served her time in jail on two charges, completed her case plan and was working full time as a waitress. The GAL Program advocated for Mom moving in with the Aunt and baby after the Aunt rented a home in St Lucie County to help Mom re-bond with her child. They were able to spend Thanksgiving together in the new house and the GAL even supplied the family with a Thanksgiving basket!

Because of the mother's love for her child, her commitment to getting well, and the efforts of the GAL Team, Baby A. was reunified with her mother in time for Christmas. Everyone is very proud of this mother and the tremendous obstacles she strived so hard to overcome. Three months later the GAL enjoyed a wonderful breakfast with a very happy little girl and her mother.

This is the type of success we hope to see in every case! Keep up the good work!

Prospective Board Certified Attorneys in Juvenile Law:

The GAL Program wants to encourage as many lawyers as possible to become Board Certified in Juvenile Law. I am pleased to announce that at my request, the Florida Guardian ad Litem Foundation will pay the application fee for 8 people taking the next test for certification!

We are excited to offer this opportunity to the top 2 applicants each from GAL, DCF, OCCRC/parents attorneys, and those attorneys who accept appointments under section 39.01305 (those on the registry and those serving pro bono). To be considered, simply write one paragraph on why Board Certification in Juvenile Law can help improve practice in dependency court and send it to the people designated for your organization/group below with the subject line: "GAL Foundation Fee Payment Application." The only restriction on eligibility is that the applicant must be taking the test - those attempting to be grandfathered in are not eligible.

GAL Best Interest Attorneys:

Director of Legal Advocacy Kelly Swartz (Kelly.Swartz@gal.fl.gov) and General Counsel Dennis Moore (Dennis.Moore@gal.fl.gov)

Regional Counsel/Parents attorneys:

Regional Conflict Counsel Candice Brower (Candice.Brower@rc1myflorida.com)
Regional Conflict Counsel Ita M. Neymotin (ineymotin@flrc2.org)

DCF Attorneys:

Director of Legal Services Grainne O'Sullivan (Grainne.Osullivan@dcf.state.fl.us)
Director of Appeals Stephanie Zimmerman
(Stephanie.Zimmerman@myflfamilies.com)

Section 39.01305 attorneys:

Robert Latham (rlatham@law.miami.edu)
Meshon Rawls (rawls@law.ufl.edu)

Certification is the Florida Bar's highest level of evaluation of the competency and experience of attorneys by the Supreme Court of Florida, and board certified lawyers are evaluated for professionalism, tested for expertise, and have demonstrated reputations for ethics and professionalism. I believe all stakeholders in dependency court benefit when we increase expertise in juvenile court, and ultimately this will improve outcomes for children. This August, 94 attorneys became the first class of Board Certified attorneys in Juvenile Law. Hopefully next year we will have over 150, and the GAL Foundation would like to make this high honor a little bit easier to reach! The due date for the applications for certification must be postmarked no later than October 31st - it's a long application so start now, and good luck!

Here is the link to start the process: <https://www.floridabar.org/about/cert/cert-ij/>




Follow our YouTube Channel

The Guardian ad Litem Program has a YouTube channel filled with training videos, PSAs and additional information for Florida's child welfare advocates.

Click here to go to YouTube channel - become a subscriber.

Florida Statewide Guardian ad Litem Program | Questions or Comments Email Patty
Propheter | Guardian ad Litem Website

 **JOIN OUR MAILING LIST**

 Like us on Facebook