

Views from the Bench -- GAL Attorney Training Dependency and Termination Proceedings

Chris W. Altenbernd
Judge, Second District Court of Appeal
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1. Jurisdiction -- The Appellate Court

A. Non-Final Orders

1. An topic of consideration controversy and pending proposals.
2. Currently, most non-final orders cannot be appealed but can be reviewed by common law certiorari. See In re M.V.-B. ---So.3d---, 2009 WL 1606545 (Fla. 2DCA 2009); D.K.B. v. Dep't of Children & Family Servs., 890 So.2d 1288 (Fla. 2d DCA 2005).
3. Certiorari proceedings do not delay or stay proceedings in the trial court; non-final appeals generally prevent the entry of a final order. See FRAP 9.130(f).

B. Final Orders in Dependency

1. An Order of Adjudication is a final appealable order.
2. This is a little odd because in many ways it is an order beginning a judicial proceeding.
3. The trial court retains fairly broad jurisdiction during the appeal. See FRAP 9.146(d).

C. Final Orders in Termination

1. An Order terminating parental rights is appealable.
2. A subsequent, separate disposition order is also a final appealable order.

D. The time allowed to file a notice of appeal.

1. Generally, a party must appeal within 30 days of the filing of the order.

2. Query and Caveat: What if the trial court discharges trial counsel during the 30-period to appeal before a notice of appeal is filed?

2. Standards of Review

A. The Three Traditional Standards

1. Competent Substantial Evidence--for issues of fact
2. De Novo -- for issues of law
3. Discretion--for issues where a judge has a range of options permitted by the law.

B. The Burden of proof in the trial court is generally "clear and convincing." That heightened burden does not change the competent substantial evidence test directly, but it probably causes a more cautious examination of the evidence.

C. Structural Deference. The trial court sees and hears the witnesses, especially the parents. The appellate court does not. This causes the appellate courts to give considerable deference to the judgments of the trial courts. If you are challenging a trial court ruling, it is important to try to overcome the impediments that result in structural deference.

3. The Decision-Making Process

A. Unlike the trial court, we make collegial decisions. The record is usually reviewed closely by one judge and one staff attorney. The briefing is reviewed by at least three judges.

B. When the parties do not request oral argument, these cases are usually considered in the Second District by three judges sitting in one room and assisted by as many as six staff attorneys.

C. We make every effort to expedite these cases at all stages of the appeal. When an opinion is required, it does take time to write and circulate the opinion prior to release.

4. Professionalism for the Trial Court Advocate.

A. A GAL attorney normally supports the best interests of the child by facilitating a full and fair hearing in the trial court.

B. The record is filled with forms in these cases. What can you do to individualize a case?

- C. Some trial judges are better than others in preparing timely, well-structured orders in these cases. What can you do to help the judge prepare an order with the necessary findings in a structure that clearly addresses each ground for termination, the separate issue of "least restrictive means," and the issue of best interests?
- D. Especially in our world of digital reporting, records are often confusing. Take steps to make certain that the person talking can be indentified and to avoid multiple parties talking at the same time.

5. Pet Peeves

- a. Unnecessary delay in the trial court--especially delay in the preparation of the order to be appealed.
- b. The failure of the system to provide GALs for all cases in which they are mandated.
- c. The failure of current law to delineate with greater specificity the role of the GAL in the courtroom and in the court file, especially when it comes to providing opinions and relaying hearsay information.

6. Suggestions

- a. Structure your presentations to the trial court to help it create orders that address each ground for termination separately and with a distinct separate analysis of least restrictive means and best interests.
- b. Consider treating every close two-parent termination as if it were a single-parent termination.
- c. Assist the appellate court by providing the information needed to expedite the appeals and by assuring that two-parent cases result in appeals that are on track together.
- d. If DCF and GAL both agree that a case needs to be reversed on appeal, if timing affects children, file a motion or stipulation seeking an expedited, summary reversal.
- e. Help us devise a case management system that addresses the separate needs and priorities of infants awaiting adoption, children in long-term relative placement, teenagers in foster homes, etc.