LEGAL BRIEFS NEWSLETTER

GAL
Guardian ad Litem
A POWERFUL VOICE FOR FLORIDA'S CHILDREN
FLORIDA GUARDIAN AD LITEM PROGRAM

GuardianadLitem.org **April 2011**

A Note to Guardian ad Litem Volunteers and Staff from Alan Abramowitz, Executive Director, Florida Guardian ad Litem Program:

First I want to thank all of you for the wonderful work and time you provide to children every day in Florida. Without your efforts, Florida's abused and neglected children would not have a voice. You are the voice that allows a child to be safe, to be heard, to be understood, to experience all that we take for granted in childhood. I am honored to be a part of the work you do.

As you take on the important task of representing the best interests of children, I want to make sure that you are supported and heard by the statewide office. I want to be able to communicate with you regularly and get your input on important issues facing our program and the children we represent. In an effort to facilitate that direct communication, we now have a Facebook page! I will be posting important information on our Facebook page regularly and asking for your input through the comments section of our page. You can still email me directly on any idea or feedback, but the Facebook page will give me another way to communicate.

Please "like" our page and become part of the conversation.

To access the Facebook page click here Find us on Facebook or go to http://www.facebook.com/pages/The-Florida-Statewide-Guardian-ad-Litem-Program/164070170277062

I look forward to hearing your ideas soon!

Alan Abramowitz
Executive Director
Florida Guardian ad Litem Program

First District Court of Appeal

Hearing Officer Order not "Final" in the Case of RTI Scholarship

Wade v. Florida Dept. of Children and Families, 2011 WL 362412 (Fla. 1st DCA)

A young adult, who had exited foster care, appealed the hearing officer's "final order" terminating her scholarship under the Road-to-Independence (RTI) Program. The Department of Children and Families (the department) notified the young adult of the termination of her RTI scholarship in November 2009. The department informed her of her right to request a fair hearing in order to contest the department's decision. In April 2010, the hearing officer entered a "final order" affirming the department's decision to terminate the RTI scholarship. The "final order" included a notice of right to

appeal and young adult filed a notice of appeal seeking review of the hearing officer's order.

The First District Court of Appeal (First DCA) held that the order was not a "final order." "Section 409.1451(5)(e)2 provides that the procedure "must be readily available to young adults, must provide timely decisions, and *must provide an appeal to the Secretary of Children and Family Services* " (emphasis added). The statute also expressly states that "[t]he decision of the secretary constitutes final agency action and is reviewable by the court as provided in §120.68." § 409.1451(5)(e)2., Fla. Stat." In this case, the hearing officer's order was not a final agency action (the administrative process for RTI cases was not complete) and therefore the First DCA lacked jurisdiction to consider the appeal.

The First DCA dismissed the appeal without prejudice to allow an appeal of a final order entered by the Secretary of the department.

Read the Opinion

Second District Court of Appeal

Permanent Guardianship – Clearly Defined Visitation

In re A.N., 55 So.3d 685 (Fla. 2d DCA 2011)

The father appealed the trial court's order placing his daughter in permanent guardianship with the stepfather. The Second District Court (Second DCA) affirmed the trial court's order placing the child in permanent guardianship with the stepfather. However, the Second DCA remanded the order in part, because the order only required the parties to set up an agreed upon visitation schedule. The Second DCA held that given the animosity between the parties this may be difficult and the court should determine a clear visitation and contact schedule.

Read the Opinion

Permanent Guardianship – Clearly Defined Visitation

In re J.R.C., 2011 WL 96512 (Fla. 2d DCA)

The mother appealed the trial court's order placing her children in permanent guardianship. The Second District Court of Appeal upheld the trial court's order but stated that the trial court's order is required to "[s]pecify the frequency and nature of visitation or contact between" the children and their mother, as mandated by statute. See § 39.6221(2)(c).

Read the Opinion

GAL Not to be Appointed to Criminal Cases

Statewide Guardian Ad Litem Office v. Office of State Attorney Twentieth Judicial Circuit, 55 So.3d 747(Fla. 2d DCA 2011)

The Statewide Guardian ad Litem Office (GAL) sought certiorari review of numerous orders denying motions to discharge the GAL in the Twentieth Judicial Circuit (20th) as guardians ad litem in certain criminal proceedings. The 20th appointed these guardians under §914.17(1) Fla. Stat. (1990) which "mandates the appointment of a 'guardian ad litem or other advocate' in any criminal proceeding in which a child is a victim or witness of such abuse. The circuit court enters these orders without a hearing because the appointment of the guardian ad litem is mandatory and there has been no

practical need for a hearing." When the 20th began appointing guardians ad litem in these cases, the program was under the jurisdiction of the judiciary. However, when the GAL was created in 2003, the Legislature expressly concluded that judicial supervision of the program created a "perceived conflict of interest."

The Second District Court of Appeal (Second DCA) held that the newly created GAL was no longer under the judiciary branch but acted under the executive branch and therefore the "circuit court can no longer compel the Statewide GAL to appear and assist children in the absence of a statute that gives the court such authority over an agency in another branch of government. *See* art. II, § 3, Fla. Const".

The Second DCA granted the petition for writ of certiorari.

Read the Opinion

Third District Court of Appeal

Parents Must Have Notice Regarding Constructive Consent

B.S. v. Department of Children & Family Services, 2011 WL 1135325 (Fla. 3d DCA)

The mother appealed the trial court's order terminating her parental rights by "constructive consent" or failure to appear which was ordered pursuant to § 39.801(3)(d), Fla. Stat. (2010). The Third District Court of Appeal reversed the trial court's order terminating the mother's parental rights because the trial court did not warn the mother that her failure to appear would result in the termination of parental rights as required by statute. § 39.801(3)(d).

Read the Opinion

Fourth District Court of Appeal

Surrender Documents Must be Filed with the Court

T.H. v. Department of Children and Families, 2011 WL 1004620 (Fla. 4th DCA)

The mother appealed the trial court's order denying her motion to set aside her consent to termination of parental rights. The mother intended to file consent to voluntarily surrender her children if the children were placed with her aunt in Tennessee. The mother argued she should be able to withdraw her consent because the children were not placed with her aunt and the surrender documents were never filed with the court. During the hearing the mother's attorney indicated that she had the surrender documents but was going to hold them until "everything has been approved and then I am supposed to file these with the Court." The surrender documents were never filed with the court.

The Fourth District Court of Appeal (Fourth DCA) held that "because the written surrenders were neither filed, nor examined, to determine if they comported with the statutory requirements" the trial court erred in terminating the mother's parental rights under § 39.806(1)(a)(1). "Without the surrender documents, there is no evidence as to what was contained within them or whether they were properly executed as required by section 39.806(1)(a)(1)."

The Fourth DCA reversed and remanded the case with directions.

Read the Opinion

Dependency Order Requirements

E.B. v. Department of Children & Families,54 So.3d 1090 (Fla. 4th DCA 2011)

The father appealed the trial court's order finding the child dependent as to the mother based on her consent after mediation. The father argues that Florida Rule of Juvenile Procedure 8.332 requires that the trial court's order must "stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence." Because the trial court's order fails to comply with the rule, the Fourth District Court of Appeal reversed the trial court's order.

Read the Opinion

ICPC – Best Interest v. Technical Compliance

R.F. v. Department of Children and Families, 50 So.3d 1243 (Fla. 4th DCA 2011)

The child petitioned the court for writ of certiorari in response to the trial court's order granting the Department of Children and Families' (the department) motion to return the child to Florida because his continued stay in New York was in violation of the Interstate Compact on the Placement of Children (ICPC). § 409.401, Fla. Stat. (2010). The Fourth District Court of Appeal (Fourth DCA) granted the child's writ of certiorari and quashed the trial court's order requiring the child to return to Florida. The 17 year old child visited his uncle in New York and decided that he wanted to stay. Through a private adoption agency the uncle had a positive home study and expressed his desire for the child to stay with him. However, the ICPC process was not completed.

The Fourth DCA held that the dependency court must look at the best interests of the child and technical noncompliance with the ICPC cannot override the child's best interest. "Even if an out-of-state placement does not strictly comply with the ICPC, a court may allow the child to remain in the out-of-state placement during the ICPC process if it is in the child's best interest. See H.P. v. Dept. of Children and Families, 838 So.2d 583, 586–87 (Fla. 5th DCA 2003); see also Dept. of Children and Families v. T.T., 42 So.3d 962, 964 (Fla. 5th DCA 2010); In re J.D., 35 So.3d 145 (Fla. 2d DCA 2010)." When determining the best interest of the child the Fourth DCA looked at his age (17), his reasonable desire to stay with his family, testimony of the guardian ad litem, aunt and uncle that remaining in New York was the best possible placement for him.

Writ of Certiorari granted and trial court order quashed.

Read the Opinion

TPR – Abandonment, Failure to Comply with Case Plan

I.Z. v. B.H., 53 So.3d 406 (Fla. 4th DCA 2011)

The mother appealed the trial court's order granting the potential adoptive parent's petition to terminate the mother's parental rights (TPR). In 2007, the trial court granted the Department of Children and Families' (the department) petition to place the child in permanent guardianship with the potential adoptive parents and terminate the department's supervision of the case. In that order, contact was permitted but was supervised.

In 2009, the trial court granted the TPR petition that alleged the mother abandoned the child, the mother engaged in conduct toward the child which demonstrated her continuing involvement in the child's life was a threat to the child's well-being, and the mother continued to abandon or neglect the child despite a case plan having been filed. § 39.806(1)(b), (c), and (e).

The Fourth District Court of Appeal (Fourth DCA) reversed the trial court's order terminating parental rights. The Fourth DCA found that the mother had made a

"dedicated effort" to visit the child and only stopped visiting because of her incarceration and then when she was released, she was not permitted visitation with the child because the termination proceedings were pending. The mother had also sent the child a birthday card while she was incarcerated.

As to § 39.806(1)c, the Fourth DCA held "the statute clearly provides that termination of one's parental rights is warranted where the parent's conduct toward the child or toward other children demonstrates a threat to the child's well-being. Evidence of a parent's mental health issues, without evidence that those issues have manifested themselves in behavior that poses a risk to the child's well-being, is insufficient to justify termination of parental rights under this subsection."

Finally, the Fourth DCA held that failure to comply with a case plan, standing alone, is not enough to terminate parental rights. Colluci v. State Dep't of Health & Rehab. Servs., 664 So.2d 1142, 1144 (Fla. 4th DCA 1995) (citing In the Interest of R.W., 495 So.2d 133 (Fla.1986)).

Read the Opinion

Fifth District Court of Appeal

Dependency-Sufficiency of Evidence

A.N.B. v. Department of Children and Families, 54 So.3d 1049 (Fla. 5th DCA 2011)

The mother appealed the private dependency action filed by maternal grandparents finding her son dependent. The mother argued that "(1) that there was insufficient evidence to support the trial court's finding of dependency; (2) that the trial court improperly based its ruling on the child's preference; and (3) that the trial court improperly excluded her boyfriend as a witness."

The Fifth District Court of Appeal (Fifth DCA) upheld the trial court's dependency order. That the trial court's finding of neglect was fully supported by the record. The Fifth DCA agreed with the mother, finding that the child's preference does not matter but held that the dependency was otherwise supported by the record.

Finally, the Fifth DCA held "mother failed to proffer the proposed witness' testimony … or explain its potential significance on appeal.., she has failed to establish reversible error as to this point on appeal. "

The Fifth DCA affirmed the trial court's dependency order.

Read the Opinion

Website Resources

Child Welfare Information Gateway connects child welfare and related professionals to comprehensive information and resources to help protect children and strengthen families. We feature the latest on topics from prevention to permanency, including child abuse and neglect, foster care, and adoption.

Child Welfare Resource Center on Legal and Judicial Issues. This page is dedicated to the topic of educational needs of vulnerable children, including those in foster care or homeless. You can search by type of document and/or by states.

Legal Center for Foster Care and Education

The Legal Center FCE serves as a national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children in the foster care system. The Legal Center FCE provides expertise to states and constituents, facilitates networking to advance promising practices and reforms, and provides technical assistance and training to respond to the ever-growing

demands for legal support and guidance. It sponsors conference calls that focus on important and timely topics of interest to advocates working in the field of foster care and education.

Center for Child Welfare and Education. This center is a partnership between Northern Illinois University and the Department of Children & Family Services.

The National Evaluation and Technical Assistance Center for the Education of Children and Youth who are Neglected, Delinquent, or At-Risk. The overarching mission of NDTAC is to improve educational programming for neglected and delinquent youth.

Resources above from *The National Resource Center for Permanency and Family Connections at the Hunter College School of Social Work.* Their website is an absolute must for information, conference calls, studies and links to child welfare information across the web.