

First District Court of Appeal

Termination of Parental Rights – Substance Abuse

L.J. v. Florida Dept. of Children and Families, 33 So.3d 99 (Fla. 1st DCA 2010)

The mother appealed the trial court's order terminating her parental rights to her two children. The termination was based upon § 39.806(1)(e)1, Fla. Stat. (2009). The mother contends that the trial court erred in terminating her parental rights because the Department of Children and Families (the department) did not show that her drug and alcohol addiction would not improve.

The First District Court of Appeal (First DCA) upheld the trial court's order terminating the mother's parental rights. The mother cited *E.R. v. Department of Children & Family Services, 937 So.2d 1196, 1198 (Fla. 3d DCA 2006)*, in which the court found the record affirmatively demonstrated a likelihood the father's drinking problem would improve. The First DCA distinguishes *E.R.* from this case as that father had negative urine screens, had curbed his drinking, showed interest in completing alcohol treatment, and contacted the department to find alcohol abuse treatment closer to his job. In the instant case, the mother "continued to use drugs and alcohol despite availability of substance abuse services, tested positive for and admitted to using drugs and/or alcohol several times during case plan, consumed alcohol night before and morning of second day of hearing, appeared drunk at hearing, with slurred speech and inability to keep her eyes open, failed to submit to breathalyzer and urinalysis testing, missed substance abuse counseling, missed roughly half scheduled supervised visits with children, and failed to maintain stable housing and income, and testified she did not believe she had addiction problem, it took mother 10 months to complete three-month course of counseling, and there was no evidence in record that mother enrolled or was participating in after care."

The First DCA affirmed.



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Biological Father – Putative Father Registry

D.P. v. C.L.G., 2010 WL 1791911 (Fla. 1st DCA)

The prospective adoptive parents appealed the trial court's order dismissing their petition for termination of parental rights and ruled that the biological father was the father of the child. The mother and boyfriend placed the child for adoption after the child was born. Then the mother told the biological father that he may be the child's father. The biological father filed a claim with the Putative Father Registry within a week of being notified by the mother. Meanwhile the mother and the biological father were married and DNA tests proved that he was the child's father.

The Putative Father Registry requires that an *unmarried* biological father must register anytime before the filing of a termination petition to protect his parental rights. The First District Court of Appeal (First DCA) held that because the biological father was now married to the mother, the statute did not apply – he was no longer an *unmarried* biological father when the trial court ruled. "Once [the prospective adoptive parents] filed a petition for termination of parental rights ..., [the biological father] lost the statutory

right to file a claim of paternity under § 63.054(1). When he married [the mother], however, his failure to file a timely claim of paternity with the Registry became immaterial, because he was no longer subject to § 63.054(1) or 63.088(1). The parents' marriage conferred on the child the same status as a child born to a couple with an intact marriage. See § 742.091, Fla. Stat. (2007)."



Read the Opinion

Second District Court of Appeal

Procedure to Pursue Claim on Ineffective Assistance of Counsel

In re E.K., 33 So.3d 125 (Fla. 2d DCA 2010)

The father appealed the trial court's denial of his motion for relief from judgment alleging ineffective assistance of counsel. Fla. R. Juv. P. 8.270(b). The trial court entered the final judgment for adoption while the father's motion was pending. The trial court held that that rule 8.270(b) was "not a proper mechanism through which to raise a claim of ineffective assistance of counsel in a termination proceeding." The father argues that the trial court's ruling gives him no remedy for ineffective assistance of counsel.

Although the Second District Court of Appeal affirmed the trial court's denial of father's motion, it recognized the "unfairness inherent in the Father's having a right with no remedy." The Second DCA certified the following questions:

1. DOES FLORIDA RECOGNIZE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL ARISING FROM A LAWYER'S REPRESENTATION OF A PARENT IN A PROCEEDING FOR THE TERMINATION OF PARENTAL RIGHTS?
2. IF SO, WHAT PROCEDURE MUST BE FOLLOWED TO PURSUE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL?



Read the Opinion

Interstate Compact on the Placement of Children

In re J.D., 2010 WL 2079658 (Fla. 2d DCA)

The Department of Children and Family Services filed a writ of certiorari vacating a nonfinal order reunifying the children with their mother in Alabama. The Second District Court of Appeal (Second DCA) held that the trial court "violated the Interstate Compact on the Placement of Children Act, codified at § 409.401, Florida Statutes (2009), without first obtaining consent of the authorities in Alabama and completion of a home study. The Second DCA held that the opinion did not require removal of the children. But "the trial court must conduct a hearing as soon as possible to determine the status of the children and to ensure the conditions of their placement are in full accordance with the law."



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Consent – Least Restrictive Means

In re G.M., 2010 WL 2218597 (Fla. 2d DCA)

The Department of Children and Family Services (the department) and the Guardian ad Litem (GAL) appealed the trial court's order terminating the father's parental rights as to one child but not the other after he consented to the termination petition. The mother's parental rights were terminated. The father entered a consent to the termination petition during the termination hearing. The department's "petition alleged that the father had severely beaten the two-year-old child. The trial court granted the petition as to the

father in regard to the two-year-old child but denied the petition as to the father's rights to the younger child because declined to "the department failed to establish that termination is the least restrictive means of protecting the child from harm."

The Second District Court of Appeal (Second DCA) held that the father's consent was inclusive of the least restrictive means finding. "Because by his consent to the allegations in the Department's petition the Father acknowledged that grounds existed to support termination of his rights to both children and that such termination was the least restrictive means..." "Because by his consent to the allegations in the Department's petition the Father acknowledged that grounds existed to support termination of his rights to both children and that such termination was the least restrictive means..."

The Second DCA reversed and remanded to the trial court with instructions to enter a final judgment granting the termination petition against the father as to both children.



Read the Opinion

Third District Court of Appeal

Mother's Inability to Improve in Order to Care for Children

N.S. v. Department of Children and Families, 2010 WL 1875624 (Fla. 3d DCA)

The mother and father appealed the termination of their parental rights. The dependency petition alleged that the mother was mentally impaired, homeless and unable to care for her children. The father, who was incarcerated during the case, failed to protect the child from an inadequate custodian (the mother). The trial court found that the father failed to complete his case plan, "to financially support his child or provide adequate housing or medical care for that child, failed to consistently visit with the child, and lacks the disposition necessary to provide his child with food, clothing, medical or other remedial care. The Father did not express a desire to take on the responsibility of a full-time parent but would rather the elderly grandmother care for the child and siblings where it is apparent that she is an inappropriate caretaker."

The mother's rights were also terminated as two expert witnesses concluded that her very low IQ "prevents her from ever safely parenting the children on her own and, despite the provision of social services, there is no reasonable basis to believe that she will improve."

The Third District Court of Appeals (Third DCA) upheld the trial court's termination of both the mother and father's rights. The Third DCA went on to say that "the existence of possible placement with a relative is irrelevant to the least restrictive means test, where DCF made reasonable efforts to rehabilitate the Mother and provide services to her and her children with the goal of reuniting them as a functional family." See *R.L. v. Dep't of Children & Family Servs.*, 955 So.2d at 1240 (Fla. 5th DCA 2007) ("The existence of a long-term relative placement is not the 'dispositive constitutional consideration' in applying the least restrictive means test.").

The Third DCA affirmed the trial court's order terminating parental rights.



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Fifth District Court of Appeal

TPR Ground Must be Pled

C.B. v. Department of Children and Families, 32 So.3d 748 (Fla. 5th DCA 2010)

The mother appealed the termination of rights to her five children. The mother argued that one of the grounds the trial court terminated her right upon (multiple out-of-home care placements, as set forth in § 39.806(1)(I), Florida Statutes (2008)) was not pled as a basis for termination in the petition and the department failed to seek amendment of

the petition to include this statutory ground.

The Fifth District Court of Appeal upheld the trial courts order as the mother's rights were properly terminated under other grounds.



Read the Opinion

Website Resources – Domestic Violence

Little Eyes, Little Ears: How Violence Against a Mother Shapes Children as They Grow The Centre for Children and Families in the Justice System (Canada)
http://dsp-psd.pwgsc.gc.ca/collection_2007/phac-aspc/HP20-5-2007E.pdf

Domestic Violence and Its Role in Child Welfare by Jené Toussaint (April 2006) National Resource Center for Family-Centered Practice and Permanency Planning.
http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/information_packets/domestic_violence.pdf

Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice—The Greenbook Project

This document offers a set of principles and guidelines for designing comprehensive approaches to co-occurring domestic violence and child abuse.

<http://www.thegreenbook.info>

Violence Against Women Online Resources

VAWOR is a collaborative project between the Minnesota Center Against Violence and Abuse (MINCAVA), a center within the School of Social Work at the University of Minnesota, and the Office on Violence Against Women (OVW), U.S. Department of Justice. This resource provides materials on domestic violence, sexual assault, and stalking. <http://www.vaw.umn.edu/>

Domestic Violence

This section of the Child Welfare Information Gateway website focuses on the delivery of services to children and families affected by domestic violence.

http://www.childwelfare.gov/systemwide/service_array/domviolence/

Florida Guardian ad Litem Website – Offers statutes, website, studies, practice aids and other information regarding domestic violence and child welfare.

http://guardianadlitem.org/resources_dom_violence_quick_reference.aspx

Florida Coalition Against Domestic Violence

FCADV works towards ending violence through public awareness, policy development, and support for Florida's domestic violence centers. Serving Florida's 41 domestic violence centers, FCADV runs Florida's toll-free domestic violence hotline, maintains a resource library, and develops posters, brochures, safety plans, and other resources.

<http://www.fcadv.org/>

Department of Children and Families Office of Domestic Violence Program <http://www.dcf.state.fl.us/programs/domesticviolence/>

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