

The Statewide Guardian ad Litem Program has added two resources our website at www.guardianadlitem.org.

Resources by Topic. *In the Resources by Topic section, you will find a variety of information organized by topic. Each topic includes relevant websites, studies and books, statutes and cases, practice aids and media coverage. Currently, the topics we have developed are adoption subsidies, education, independent living, mental health, domestic violence, the Adoption and Safe Families Act, legal research and writing, and psychotropic medication.*

Program Attorney Conference Calls (Audio Files). *In Conferences and Training in the Legal Resources section, you will find audio files of Program Attorney conference calls. Program Attorney conference calls are held monthly and provide up-to-date information on topics related to legal advocacy. In addition to the audio files of the conference calls, there are practice aids and materials provided by the lecturer. If you are an attorney, you can receive CLE credit for listening to the training audio file.*

Consent to Adoption – Putative Father Registry

Section 63.062, Fla. Stat. (2004)

In re Baby R.P.S., 2006 WL 2683776 (Fla. 2d DCA)

The trial court terminated the unmarried father's parental rights pending the child's adoption. The father appealed.

The Second District Court of Appeal (Second DCA) upheld the trial court's decision holding that an unmarried biological father, who had not registered with the Florida Putative Father Registry, was not a person required to consent to adoption for termination purposes as required by § 63.062 Fla. Stat. (2004). Because the father had not registered, he was not a parent, as defined by § 39.01(49) Fla. Stat. (2004).

The trial court terminated the unmarried biological father's parental rights pursuant to § 63.089(3), Fla. Stat. (2004). The Second DCA held that it was error to rule on alleged unmarried biological father's pending paternity action before addressing termination and adoption proceedings. Section 63.089(3), Fla. Stat. (2004), cannot apply because the father's consent was not required and he was not a parent.

The Second DCA reversed and remanded the case.



Read the Opinion

[Person required to consent to adoption – court proceeding](#)

B.B. v. P.J.M., 933 So.2d 57 (Fla. 1st DCA 2006)

The trial court held that an unmarried biological father was not a person required to consent to the adoption of mother's child. Section 63.062, Fla. Stat. (2004).

The First District Court of Appeal (First DCA) held that the father was in fact a party whose consent was required under section 63.062(1), Fla. Stat. (2004). The statute states that the father's consent is required if "the minor has been established by court proceeding to be his child." In a previous dependency proceeding (which the First DCA held, is a court proceeding for purposes of § 63.062) all interested parties established him as the father and therefore, the trial court erred in holding that the father had no legal basis to object.

Because the father was a person whose consent to adoption was required, the First DCA held that the trial court violated the father's due process rights.

The First DCA reversed and remanded the case.



Read the Opinion

A.F.L., Jr. v. Department of Children and Families, 927 So.2d 101 (Fla. 5th DCA 2006)

The trial court denied the unmarried biological father's motion to establish parental rights and contest the child's adoption when the Department of Children and Families (the department) pursued termination of parental rights of mother and legal father.

The Fifth District Court of Appeal (Fifth DCA) upheld the trial court's decision as the father had not preserved his claim for parental rights by registering with the Putative Father Registry prior to the department's search of the registry. Section 63.062, Fla. Stat. (2004). In addition, the unmarried biological father did not establish a relationship with the child or financially support the child, even after he learned he was the biological father.

The Fifth DCA affirmed the trial court's decision.



Read the Opinion

Failure to Substantially Comply

Section 39.806(1)(e), Fla. Stat. (2003)

E.R. v. Department of Children and Family Services, 2006 WL 2613513 (Fla. 3d DCA)

The Third District Court of Appeal (Third DCA) reversed the trial court's termination of a father's parental rights (TPR) for failure to substantially comply with his case plan. The Third DCA held that the TPR was not supported by clear and convincing evidence, was not in the children's manifest best interest, and was not the least restrictive means to protect the children.

The father completed all but one of his case plan requirements – alcohol treatment. He was unable to attend the treatment classes. He had a valid reason for not completing treatment (his job) as the father needed his job to continue to provide the children with financial support to continue to make regular child support payments to the children's temporary custodian.

In order to terminate father's parental rights, there must be no reasonable basis to believe the father will improve. Here the father completed all but the substance abuse treatment. He indicated that he would complete the treatment if he could find something closer to home. The custodian of the children said that the father had curbed his drinking and father indicated that the parenting classes had benefited him a great deal. Additionally, the Third DCA held that the TPR was not in the children's manifest best interest.

The Third DCA reversed the trial court's opinion.



Read the Opinion

Adoption

By relative after termination of parental rights

Department of Children and Family Services v. P.S., 932 So.2d 1195 (Fla. 1st DCA 2006)

The children were placed with their grandparents before the three children's parents signed voluntary surrenders, and their parental rights were terminated. Section 39.811, Fla. Stat. (2003). The grandparents moved to Georgia. Georgia caseworkers had serious concerns about the children's safety and as a result, the Florida Department of Children and Family Services (the department) requested that the children be removed. The trial court denied the request to remove the children, terminated the department's protective supervision of them, and left the children in the long-term custody of the paternal grandmother in Georgia. The grandmother filed a petition to adopt the three children without obtaining a favorable preliminary adoptive home study. The trial court granted the adoption.

The First District Court of Appeal (First DCA) held that the trial court erred in permitting the adoption. The First DCA held that for the adoption to be upheld the trial court would have to find that the department unreasonably withheld its consent to adoption. In addition, the grandmother would have had to file a favorable preliminary adoptive home study with the court. Sections 63.062(7) and 39.812(5), Fla. Stat. (2003).

The First DCA reversed and remanded the trial court's decision.



Read the Opinion

Dependency

Corporal punishment, VPS, drug use

T.G. v. Department of Children and Families, 927 So.2d 104 (Fla. 1st DCA 2006)

The trial court adjudicated the parent's five children dependent. The First District Court of Appeal (First DCA) held that there was not competent substantial evidence to support the adjudication of dependency.

Corporal Punishment: One instance of corporal punishment for which there was no evidence introduced that it was "excessively harsh" was not enough to uphold a finding of dependency. Even if it were, one instance of corporal punishment on one of the five children was not sufficient evidence to show the other children were at substantial risk of imminent abuse.

Drug use: "A parent's use of controlled substances is harmful to a child if it is "chronic and severe" and the child is "demonstrably adversely affected" by the use. § 39.01(30)(g)2., Fla. Stat. (2005); see *P.C. v. Dep't of Children & Family Servs.*, 898 So. 2d 195, 198 (Fla. 2d DCA 2005)." One positive drug test does not constitute competent substantial evidence to support a finding of dependency.

Prior Voluntary Protective Services Agreement (VPS): A prior VPS, which was discharged by the department was insufficient to adjudicate the children dependent. The VPS resulted from an accident in which a child drank from father's alcoholic beverage that the father had left out.

The First DCA held that "when viewed from the totality of the circumstances, the trial court's findings are insufficient to support the dependency adjudications and subsequent removal of the five children from their parents."



Read the Opinion

Nexus between abuse and prospective abuse

In re B.C., 936 So.2d 764 (Fla. 2d DCA 2006)

The father appeals the trial court's dependency adjudication. The Second District Court of Appeal (Second DCA) held that "the evidence concerning father's [sexual] abuse of stepchild was legally insufficient to warrant adjudication of his biological child as dependent." "Children who have not been abused may be adjudicated dependent based on abuse inflicted upon their siblings; however, the evidence must demonstrate a nexus between the abuse and any prospective abuse of another sibling." In this case, the department's expert witness testified that he had no opinion regarding the father's diagnosis as a sociopath or pedophile. Further, the expert stated that the risk of harm to the father's biological child (based on the sexual abuse of his stepchild) was "minimal" and "not imminent."

The Second DCA reversed the trial court's adjudication of dependency.



Read the Opinion

Environment provided to children

J.C. v. Florida Dept. of Children and Family Services, 2006 WL 2422818 (Fla. 3d DCA)

The trial court held that the parent's children were dependent based on the environment that the children were permitted to live in shown by the father selling drugs throughout the day, the mother being aware of the drug transactions, and the presence of firearms in the house.

The Third District Court of Appeal (Third DCA) upheld the trial court's dependency adjudication. The Third DCA held that "the father's actions in creating such an environment fall within the definition of abuse, as such an environment is likely to cause substantial impairment to the physical, mental and/or emotional health of these children." This was true even though the children were not aware of the drug transactions, and there was no violence. The Third DCA stated: "based upon the ages of the children (ten and a half, and seven years of age), the proximity of the drugs, the number of transactions, the fact that the transactions occurred throughout the day and evening, and the presence of an unsecured firearm within the home, we conclude that there was sufficient evidence to support the trial court's finding that the children's physical and mental health were at substantial risk of imminent harm."

Shepherd, J. dissenting.



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Deprivation of visitation

D.E. v. R.D.B., 929 So.2d 1164 (Fla. 5th DCA 2006)

The mother withheld contact between her daughter and the mother's former female partner. In an attempt to gain visitation rights to the child, the partner filed a dependency petition against the mother stating that the mother abused and/or neglected the minor child by cutting off all contact, causing the child significant harm.

The Fifth District Court of Appeal (Fifth DCA) held that the mother's decision to deprive child of contact with mother's former partner was an inadequate ground on which to base adjudication of dependency.

The Third DCA reversed the trial court's opinion.



Read the Opinion

Domestic Violence

Incident not in child's presence

C.C. v. Department of Children and Families, 2006 WL 2516495 (Fla. 5th DCA)

The Fifth District Court of Appeal reversed the trial court's adjudication of dependency based on domestic violence. The Fifth DCA held that because there was no evidence that the domestic violence occurred in the child's presence, the trial court's dependency adjudication could not be affirmed. Section 39.01(3)(i), Fla. Stat. (2005).

The Fifth DCA reversed the trial court's dependency adjudication.



Read the Opinion

Physical and mental injury to children not shown

In re K.B., 2006 WL 2381952 (Fla. 2d DCA)

The father appeals the trial court's dependency adjudication based on an incident of domestic violence. The Second District Court of Appeal (Second DCA) reversed the trial court's adjudication of dependency.

The Second DCA held that "some courts have held that domestic violence may constitute "harm" if it occurs in the presence of the child. ...[F]or "harm" resulting from witnessing domestic violence to constitute "abuse," the domestic violence witnessed by the child must result in some physical, mental, or sexual injury to the child." The Second DCA stated, "the Department presented no evidence that the children suffered any physical or mental injury as a result of witnessing the altercation or that the Father posed any current threat of harm to them. In the absence of such evidence, the trial court's finding of dependency cannot stand."

The parent's were no longer living together and were in relationships with other people. As such, the "situation that gave rise to domestic violence no longer existed." Additionally, the department did not present evidence that the children's safety and well-being would be threatened if they were placed in their father's care.

The Second DCA reversed the trial court's dependency adjudication.



Read the Opinion

Expert testimony – cycle of violence

Morcroft v. J.H., 935 So.2d 588 (Fla. 5th DCA 2006)

The children's Guardian ad Litem (GAL) appealed the trial court's dismissal of a dependency petition based on an incident of domestic violence – the father's attack of mother with a hammer in front of the children. The Fifth District Court of Appeal (Fifth DCA) held that trial court erred in its dismissal of the dependency petition.

One of the reasons the trial court dismissed the dependency petition was because the department did not offer any expert testimony regarding the psychological harm to the children as a result of the incident. The Fifth DCA held that, "[n]o expert witness is required to bolster evidence regarding the detrimental effect of witnessing domestic violence on children in order to support a finding of dependency. *D.D. v. Dept. of*

Children & Families, 773 So. 2d 615, 618 (Fla. 5th DCA 2000).”

The trial court also dismissed the petition because the department did not show a cycle of violence. The Fifth DCA held that a cycle of violence does not need to be shown in every case based on domestic violence to find dependency. “A single act of domestic violence in front of the children, if it is sufficiently horrific, as here, is adequate.”

The Fifth DCA reversed and remanded the case.



Read the Opinion

Shelter Hearing

Probable cause – parent’s right to present evidence

L.M.C. v. Department of Children and Families, 935 So.2d 47 (Fla. 5th DCA 2006)

The Fifth District Court of Appeal held that the trial court erred in not allowing the child’s parents to present evidence regarding probable cause at shelter hearing.



Read the Opinion

Florida Supreme Court Decision

Court’s authority to subpoena agency personnel

F.G. v. Agency For Persons With Disabilities, 2006 WL 2771533 (Fla.)

The Third District Court of Appeal (Third DCA) held that “[t]he trial court lacks constitutional or statutory authority to subpoena duces tecum ... officers of state government, concerning a matter that is within their executive authority.” It prohibited the circuit court “from requiring the appearance of [the APD officers] to testify and/or produce” any records.”

The Florida Supreme Court (the Court) disagreed and held that the circuit court had authority to subpoena information and testimony from officers (or as the subpoena stated, APD could at its discretion, substitute another official with knowledge) from the Agency for Persons with Disabilities (APD). The Court upheld the reasoning by the First District Court of Appeal in *State Dep’t of Health Rehab. Servs. v. Brooke*, 573 So.2d 363 (Fla. 1st DCA 1991).

The Court also stated that their decision in this case was “narrow as the subpoena under review is limited. It neither orders an agency to perform particular services nor requires the presence of specific high-level officials. We therefore decide only whether the subpoena issued in this case was proper.”



Read the Opinion

Website Resources

Domestic Violence

[National Council of Juvenile and Family Court Judges, Family Violence Department](#)

The Family Violence Department (FVD) of the National Council of Juvenile and Family Court Judges (NCJFCJ) has advanced social change in courts and communities across the country by providing cutting-edge training, technical assistance, and policy development on issues of family violence

[Minnesota Center Against Violence and Abuse](#)

Provides current information, research and intervention best practices with families experiencing both child maltreatment, domestic violence, stalking, dating violence and

youth violence. The intent is to link research and practice to develop collaborative multidisciplinary models for working with families experiencing both forms of abuse.

[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.

[Department of Children and Families Office of Domestic Violence Program](#)

[Domestic Violence, Case Law Summary-Civil Cases \(December 2005\)](#)

Presented by the Publications Committee of the Florida Court Educational Council. Cases are from 1996 to present.

