

The Statewide Guardian ad Litem Program has added many new resources to our website at www.GuardianadLitem.org.

Since the last edition of the Legal Briefs Newsletter, the Program has added three new teleconferences to the Legal Resources/ Conferences and Training section of the website. Each training opportunity has valuable practice aids, examples, resources and is available for CLE credit.

- MASTER TRUST TRAINING PART I, William Booth, Esq., Juvenile Advocacy Project; John Walsh, Esq., Foster Children's Project; Jim Walsh, Esq., Foster Children's Project (VIDEO)
- UNDERSTANDING THE INDIAN CHILD WELFARE ACT (ICWA), Jennifer Staley, Esq., KidsVoice
- PROVING NEXUS, Thomas W. Young, Appellate Counsel, Statewide Guardian ad Litem Office

Be sure to review our other 17 additional audio trainings.

The Statewide Guardian ad Litem Program has also added five training videos to the Pro-Bono Attorney / Fostering Independence section of the website.

- UNDERSTANDING CHILDREN, Daniel P. Tressler, Psy.D.
- INDEPENDENT LIVING, Gerry Glynn, Barry University School of Law
- EDUCATIONAL ADVOCACY, Andrea Moore, Executive Director, Florida Children First
- REPRESENTING YOUTH IN THE DEPENDENCY SYSTEM, Mary K. Wimsett, Special Counsel Statewide Guardian ad Litem Program
- EHTICS, Susan Miller-Jones, Supervising Attorney, Florida Guardian ad Litem Program

Termination of Parental Rights

Failure to Appear

S.S. v. Department of Children and Family Services, 2008 WL 239023 (Fla. 3d DCA)

The mother appealed the trial court's order terminating her parental rights (TPR) following her failure to appear at an advisory hearing. § 39.808, Fla. Stat. (2006). The mother based her appeal on two issues: that the trial court abused its discretion in denying her motion to set aside the default as a result of the mother's failure to attend the advisory hearing and second that the "implied consent" resulting from her failure to appear --without an evidentiary hearing -- is inadequate to support a final judgment.

The Third District Court of Appeal (Third DCA) reversed and remanded the case and quoted *Department of Children & Families v. A.S.*, 927 So.2d 204 (Fla. 5th DCA 2006) in holding that the "consent under section 39.801(3)(d) does not end the judicial labor of the trial court; it must then proceed to receive evidence to support the grounds alleged in the petition for termination." The trial court must still hold an evidentiary hearing where the Department of Children and Family Services proves though competent substantial evidence, the allegations in the TPR petition.



Read the Opinion

Prospective Abuse

T.M. v. Department of Children and Families, 2008 WL 110185 (Fla. 4th DCA)

The mother appealed the trial court's order terminating her parental rights (TPR). The TPR petition was based on prospective future abuse. The mother's older child was determined to be dependent and placed outside of her care as a result of the domestic violence between the mother and father of the baby.

The baby in this case was placed under the protective supervision of the Department of Children and Families (the department) as a result of domestic violence between the father and mother. While under protective supervision the baby suffered a fractured femur for which the mother's explanation was expressly rejected.

The Fourth District Court of Appeal (Fourth DCA) upheld the trial court's order holding that there was sufficient evidence to uphold the trial court's finding of prospective future abuse. The Fourth DCA cited the continuing domestic violence between the mother and father, the fact that the mother failed to take the baby to the hospital for 24 hours, the severity of the fracture that the mother's explanation regarding the fracture was scientifically unlikely, and the mother lied about the continuing relationship of the father and mother.

The Fourth DCA affirmed the trial court's TPR order.



Read the Opinion

Egregious Abuse

D.O. v. S.M., 2007 WL 4409708 (Fla. 4th DCA)

The mother appealed the trial court's termination of parental rights (TPR) to her infant son. The Department of Children and Family Services (the department) appealed the trial court's order denying their petition to terminate the mother's parental rights to the older child.

The infant was found to have suffered Shaken Baby Syndrome and was sheltered at a facility for medically fragile children. The mother's older child was examined and found to be a healthy child. The department sheltered both children and sought an expedited termination of parental rights based on the egregious abuse suffered by the infant. The trial court terminated the mother's parental rights based on egregious abuse. § 39.806(1)(f) Fla. Stat.(2006). However, did not terminate as to the older child and held that the department failed to show by clear and convincing evidence that termination of the mother's parental rights was the least restrictive means of protecting the older child.

As to the infant son, the Fourth District Court of Appeal (Fourth DCA) affirmed the trial court's termination of parental rights. Evidence established that the mother engaged in egregious conduct or knowingly failed to prevent egregious conduct by the child suffering from Shaken Baby Syndrome, "without question, shaking a baby until his bones break constitutes egregious conduct threatening the life of the child. See *In re K.A.*, 880 So.2d 705, 708 (Fla. 2d DCA 2004) (citing *N.L. v. Dep't of Children & Family Services*, 843 So.2d 996, 1001 (Fla. 1st DCA 2003)", the child was always in the care of the mother or father, and the doctors who testified at trial said that the parents should have been aware that something was wrong as the child. § 39.806(1)(f).

The Fourth DCA also affirmed the trial court's ruling as to the older child. "Under § 39.806(1)(f), Fla. Stat. (2006), egregious abuse of one child provides a sufficient ground for termination of parental rights as to that child's siblings. See *K.A.*, 880 So.2d at 709; *T.P. v. Dep't of Children & Family Servs.*, 935 So.2d 621, 625 (Fla. 3d DCA 2006); *Dep't of Children & Families v. B.B.*, 824 So.2d 1000, 1007 (Fla. 5th DCA 2002." However, the Fourth DCA held that the department must still present clear and convincing evidence that termination is the least restrictive means to protect the child from serious harm. *K.A.*, 880 So.2d at 709 (citing *Padgett v. Dep't of Health & Rehab. Servs.*, 577 So.2d 565, 571 (Fla.1991). There was insufficient evidence as to the older child – there was no abuse of the child, the mother did not have any mental health issues that would prevent her from benefiting from services ordered for her, and she took steps to end the abusive relationship between her and the father.

The Fourth DCA affirmed the trial court's decision as to both the infant and the older child.



Read the Opinion

Medical Emergency

In re D.G., 970 So.2d 486 (Fla. 2d DCA 2007)

The mother sought certiorari review of the trial court's order which required chemotherapy and radiation treatment for her son. She argued that: the trial court lacked jurisdiction, there was no medical emergency, she was deprived of due process to present her evidence, the evidence presented did not justify the Department of Children and Family Services' (the department) intervention, and the department violated her son's privacy rights by releasing medical information without subpoena and notice to mother or son.

The Second District Court of Appeal (Second DCA) denied the mother's petition. The mother did not present to the trial court the issues she raised in her petition. "Except in cases of fundamental error, appellate courts will not consider any issue that has not been presented to the lower court in a manner which specifically addresses the contentions asserted." *State v. Hunton*, 699 So.2d 320, 321 (Fla. 2d DCA 1997) (quoting *Nevels v. State*, 685 So.2d 856, 857 (Fla. 2d DCA 1995)."

Regarding the "medical emergency", the Second DCA (quoting *M.N. v. S. Baptist Hosp. of Fla., Inc.*, 648 So.2d 769, 770 (Fla. 1st DCA 1994) citing *Padgett v. Dep't of Health and Rehab. Servs.*, 577 So.2d 565 (Fla. 1991) held that the court must balance competing interests. "It must consider the parent's interest in making fundamental decisions about a child's care, the State's interest in preserving human life, and the child's own welfare and best interests in light of the severity of the child's illness, the likelihood of effectiveness of the proposed treatment, the child's chances of survival with and without such treatment, and the invasiveness and nature of the treatments with regard to its effect on the child."

The Second DCA denied the mother's petition, holding that the trial court balanced these interests properly when faced with the child's medical situation.



Read the Opinion

Dependency

Sufficiency of Evidence – Prospective Abuse

In re J.E.B., 2007 WL 4553035 (Fla. 2d DCA)

The mother appealed the trial court's dependency adjudication order of her child which was based on imminent risk of prospective abuse. The Department of Children and Family Services (the department) sheltered the child at birth because the mother was facing criminal charges of the neglect (which resulted in death) of another one of her children two years earlier. "Children who have not been abused may be deemed to be at substantial risk of imminent abuse or neglect based on a parent's abuse or neglect of their siblings; however, the evidence must demonstrate a nexus between the past abuse and any prospective abuse to another sibling." *C.M. v. Dep't of Children & Family Servs. (In re C.M.)*, 844 So.2d 765, 766 (Fla. 2d DCA 2003)."

The Second District Court of Appeal (Second DCA) held that the department failed to prove that the mother abused or neglected her deceased child. The department only presented evidence that the mother had been arrested and accused of neglecting her deceased child. "The law does not recognize an arrest alone, without subsequent conviction, as probative evidence of wrongdoing. See, e.g., *David v. City of Jacksonville*, 534 So.2d 784, 787 (Fla. 1st DCA 1988)."

The Second DCA reversed and remanded for further proceedings.



Read the Opinion

Reunification

Sufficiency of Evidence

C.D. v. Department of Children and Families, 2008 WL 244912 (Fla. 1st DCA)

The mother appealed the trial court's order placing her three children in permanent guardianship and denying her Petition for Reunification, holding that even though she substantially complied with her case plan, reunification was not in her children's best interest. The mother contends that the trial court failed to "list adequate factual findings and that there was not competent substantial evidence to justify denying her request for reunification."

The First District Court of Appeal (First DCA) agreed with the mother and reversed the trial court's order. The First DCA held that the court must consider two factors when reviewing a motion to reunify. First the court must consider the parent's compliance with the case plan and second, whether reunification would be detrimental to the children. § 39.522(2), Fla. Stat. (2006), *B.D.E. v. Dep't of Children & Family Services*, 829 So.2d 359 (Fla. 1st DCA 2002). The First DCA further held, "when a parent has requested reunification and substantially complied with her case plan, there is a presumption that the children should be returned. This presumption may be overcome by a finding that returning the children would endanger them." The First DCA held that the trial court failed to consider § 39.621(10) which requires the court to specifically address six "sub- factors" and instead made a conclusory finding that reunification was not in the children's best interests. The six sub-factors in § 39.621(10) are:

- (a) The compliance or noncompliance of the parent with the case plan;
- (b) The circumstances which caused the child's dependency and whether those circumstances have been resolved;
- (c) The stability and longevity of the child's placement;
- (d) The preferences of the child, if the child is of sufficient age and understanding to express a preference;
- (e) The recommendation of the current custodian; and
- (f) The recommendation of the guardian ad litem....

Additionally, the First DCA held that the case was not merely procedurally flawed but also substantively flawed in that there was no competent substantial evidence in the record to support a determination that, at the time of the permanency hearing, reunification would have endangered the children's safety, well-being, and health. The First DCA held that a "trial court may not refuse to reunify children with a parent without finding, based on factors existing at the time of the request, that doing so would endanger their safety, well-being, and physical, mental and emotional health." § 39.522(2).

The First DCA reversed and remanded for reunification of the children with the mother and reinstatement of the Department of Children and Families' supervision.



Read the Opinion

Website Resources

The internet offers a vast array of information for anyone interested in the child welfare system. Many websites offer video conferences, handouts, practice aids and informational resources on important dependency issues. Below are a few examples of websites and what they offer – at no cost.

The National Children's Advocacy Center provides a wide range of video training available on-line. The courses are free after completing a simple registration form. Courses include:

- ✓ The Emotional Effects of Domestic Violence on Children - Sharon McGee, MS
- ✓ Child Development 101 - Allison DeFelice, PhD
- ✓ Trial Strategies in Child Protection Cases - Victor Vieth
- ✓ Child Sexual Abuse: A Judicial Perspective - Judge Charles B. Schudson

The Child Trauma Academy at www.childtraumaacademy.com also offers free on-line courses with topics that include:

- ✓ The Amazing Human Brain and Human Development
- ✓ Surviving Childhood: An Introduction to the Impact of Trauma
- ✓ Bonding and Attachment in Maltreated Children
- ✓ The Cost of Caring: Secondary Traumatic Stress and the Impact of Working with High-Risk Children

The National Resource Center for Family-Centered Practice and Permanency Planning and the Child Welfare League of America hosts a series of teleconferences for state program managers in foster care and adoption. At their site you can find a both a listing of upcoming teleconferences for 2008 and archived teleconferences with such topics as:

- ✓ Traumatic Stress in Children
- ✓ Youth Permanency
- ✓ Use of Psychotropic Medications for Children in the Child Welfare System
- ✓ Educational Stability for Children in Out-of-Home Care

The Legal Center for Foster Care and Education 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. Along with a variety of great information The Legal Center FCE sponsors conference calls that focus on important and timely topics of interest to advocates working in the field of foster care and education. All are welcome to participate in the calls. Each will be held at 3pm (EST).

Upcoming dates:

February 13, 2008 (Topic: Credit Transfers and Diplomas); May 14, 2008 (Topic: Data Collection); August 13, 2008 (Title I / NCLB); November 12, 2008 (Special Education)

Conference Dial-in Number: (641) 715-3300 **Participant Access Code:** 585463#

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