Florida Guardian ad Litem Program
The Voice for Florida's Abused & Neglected Children

Legal Briefs Newsletter

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Termination of Parental Rights

Incarceration, Abandonment, Threat Irrespective of Services, Material Breach

In re T.H., 2008 WL 900344 (Fla. 2d DCA)

The father appealed the trial court's termination of his parental rights. The Second District Court of Appeal (Second DCA) reversed the termination and held as follows:

Abandonment § 39.806(1)(b). Where the father visited the child in child's day care facility, had supervised visits while on house arrest, was unable to visit after his incarceration, sent letters to the Department of Children and Family Services (the department), sent two cards, without response to his three-year old child, and supported his child until he was incarcerated and lost his Social Security benefits, the Second DCA found that the trial court erred in finding the father had abandoned his child.

Threat Irrespective of Services under § 39.806(1)(c). To terminate parental rights under § 39.806(1)(c) "requires two separate findings: first, that continued interaction with the parent threatens the life, safety, or health of the child, and second, that this threat cannot be remedied by the provision of services. See *M.H. v. Dep't of Children & Families, 866 So.2d 220, 222-23 (Fla. 1st DCA 2004)*." The Second DCA held that there was no evidence presented that the child was ever threatened by interaction with his father. The only exception may have been an unsupervised visit with his mother (whose rights had been terminated) but there was no showing of harm to the child. Further, "the Department did not prove that the Father presented a threat irrespective of services, primarily because the Department did not establish that it had ever made a good faith effort to provide services to the Father." The department only made one referral for outpatient anger management and mailed it to him while he was in prison.

Continued Abandonment under § 39.806(1)(e)(1). Where the father was incarcerated for all but one week since the case plan was accepted by the trial court, the department mailed him a referral for outpatient services at a time when he could not take advantage of the referral due to his incarceration, and the department only responded to the father's letters with a single referral, termination is improper because the department "failed to make diligent efforts to assist the parent in meeting the goals of the case plan offered."

Material Breach under § 39.806(1)(e)(2). The Second DCA held that the father did not materially breach his case plan where the department failed to assist the father in complying with his case plan, there was only one week from case plan acceptance until his incarceration, and the department sent him only one referral.

Finally, the Second DCA stated the following: "we caution the trial court to ensure that indigent parents facing the possible termination of their parental rights are afforded counsel as required."

The Second DCA reversed and remanded.

Read the Opinion

Manifest Best Interest

M.B.T. v. Department of Children and Families, 2008 WL 536638 (Fla. 5th DCA)

The mother appealed the trial court's termination of her parental rights claiming that there was insufficient evidence to find that that termination of mother's parental rights was in manifest best

interests of her children. The Fifth District Court of Appeal (Fifth DCA) granted mother's motion to clarify the decision.

The Fifth DCA affirmed the trial court's order terminating the mother's parental rights. The Fifth DCA found that "during the two-year time period that the mother's children were in shelter care, the mother failed to make good faith efforts to comply with the terms of her case plan, failed to regularly visit or contact her children, failed to contact her case worker, and was incarcerated on four separate occasions based on four separate offenses."

The Fifth DCA held that the trial court did find that termination of parental rights was in the children's manifest best interest as required by § 39.810 Fla. Stat. (2005). "The trial court properly demonstrated its application of the provisions of the statute to the facts presented, noting that termination of the mother's parental rights was in the manifest best interests of the children because placement with a relative was not available and the mother is devoid of any ability or disposition to provide the children with food, clothing, medical care or to meet their physical, mental and emotional needs. The court further found that it was unlikely that the children would remain in foster care for a long time because they were all young in age. Additionally, the record demonstrates that the Guardian Ad Litem recommended that it was in the children's best interests for the court to terminate the mother's parental rights."

To see an in depth discussion of manifest best interest visit the Florida Statewide Guardian ad Litem website Conferences and Training section to review worksheets and practice aids concerning termination of parental rights. http://www.guardianadlitem.org/att_conf_train.asp

Read the Opinion

Trial Court's Independent Research – Harmless Error

D.M. v. Department of Children and Family Services, 2008 WL 509642 (Fla. 3d DCA)

The parents appealed the trial court's order terminating their parental rights. The parents argue that there was insufficient evidence to terminate their parental rights based upon the ground that "the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental or emotional health of the child irrespective of the provision of services. § 39.806(1)(c) Fla. Stat. (2005).

The Third District Court of Appeal (Third DCA) upheld the trial court's termination of parental rights. The parent's primary issue in this case was drug use and both failed to pursue drug treatment, and both were incarcerated for cocaine use.

The parents also argue that the "trial court performed independent research in legal periodicals regarding an issue in the case." The Third DCA stated that the trial court is permitted to do independent research in legal materials such as such as case reporters, statutes, treatises, and law reviews. However, the Third DCA agreed with the parents that trial court was not permitted to research "Wikipedia, the British Medical Journal, and other medical or scientific treatises." "The correct procedure would have been to request that the research be done by the parties, or by the court-appointed psychologist (with notice to the parties)."

The Third DCA found that the research was harmless error and affirmed the trial court's order terminating parental rights.

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Not Necessary to Prove Which Parent Injured the Child

S.E.G. v. Department of Children and Families, 2008 WL 817381 (Fla. 5th DCA)

Where "medical evidence proved that the injuries resulted from multiple episodes of abuse;" the parents were the sole caretakers at all relevant times and had no credible explanation for the child's injuries, the Fifth District Court of Appeal held that it is not necessary to prove which

parent injured the child in order to terminate either parent's parental rights.

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Children Testifying

T.W. v. Department of Children and Families, 2008 WL 584926 (Fla. 4th DCA)

The mother appealed the trial court's order terminating her parental rights. The Fourth District Court of Appeal (Fourth DCA) upheld the trial court's decision. The mother also objected to the trial court only allowing two of her four children to testify The Fourth DCA held that this was harmless error where the trial court acknowledged that the children loved their mother, that they wanted to remain with her and that she was a good mother (as testified to by her two other children).

The Fourth DCA upheld the trial court's ruling.

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Dependency

Grandparent's Rights – Party/Participant

In re K.M., 2008 WL 783291 (Fla. 2d DCA)

The trial court adjudicated the child dependent (as to the mother -- father's whereabouts were unknown) and placed the child in the care of the maternal grandmother and aunt. Later, the father requested custody of the child and the trial court ordered placement of the child with the father. The maternal grandmother appeals the trial court's order placing the child with the father.

The Second District Court of Appeal (Second DCA) dismissed the appeal holding that the grandmother did not have standing. The grandmother contends that as "legal custodian" of the child she is permitted to appeal. Fla. R.App. P. 9.146(b). However, The Second DCA stated that "§ 39.510(1) provides that "[a]ny party to the proceeding who is affected by an order of the court, or the [D]epartment [of Children and Families] may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure." The statutory definition of party, however, does not include "legal custodian."

The Second DCA concluded "section 39.510(1) supersedes rule 9.146(b) such that the grandmother does not have standing to appeal the order of the trial court placing K.M. with the Father" because "[a] statute conferring a right to appeal upon a litigant relates to a substantive, rather than a procedural right." *State v. Kelley, 588 So.2d 595, 597 (Fla. 1st DCA 1991).*

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Drug Use

M.F. v. Department of Children and Families, 2008 WL 583892 (Fla. 4th DCA)

The father appealed the trial court's dependency adjudication of his children. The youngest child was born cocaine positive. The Department of Children and Families (the department) alleged three grounds for dependency as to the father: (1) the father neglected the youngest child by failing protect the children from the mother's on-going substance abuse problem, (2) the father neglected the children by failing to protect them from the mother's cocaine use, (3) the children are presently at risk of imminent neglect based upon the father's own drug use.

To find the youngest child dependent as to the father, the department must show that the "(1) father knew about the mother's drug use, and (2) he was capable of preventing the child's

exposure, but failed to do so." The Fourth District Court of Appeal (Fourth DCA) held that "The father's testimony that he was present in the home on a regular basis may raise an inference of knowledge but does not contradict his testimony that he did not know the mother was using cocaine while pregnant."

Next, the Fourth DCA discussed whether the father's drug use placed the children at risk of imminent neglect. "To prove that a child is at risk of imminent neglect, the department must put forth competent, substantial evidence that ... neglect is 'impending and about to occur." It must be shown: (1) that the parent has an ongoing substance abuse problem, (2) that it adversely affected his ability to care for the child, and (3) that the child suffered harm or injury-physical, mental or emotional-as a consequence of the parent's drug use."

The Fourth DCA reversed the trial court's adjudication, holding that the department presented no evidence that the father used drugs in the presence of the children or that his drug use adversely affected the children or had an adverse effect on his ability to parent. The "totality of the circumstances" did not show that an imminent risk of harm was created by the father's drug use.

Read the Opinion

Voluntariness of Surrender

A.A. v. Department of Children and Families, 972 So.2d 1116 (Fla. 4th DCA 2008)

After dependency proceedings were initiated by the Department of Children and Families (the department) the mother voluntarily surrendered her children. Later the mother moved to vacate the surrender. The trial court denied her motion and she appealed.

The Fourth District Court of Appeal (Fourth DCA) affirmed the trial court's denial of the mother's motion to vacate her surrender. The surrender was made in open court before a judge, and judge specifically inquired as to voluntariness and mother's understanding and intent. The mother argued that the court was required to hold another inquiry whether the mother's surrender was unforced, voluntary and enforceable. The Fourth DCA disagreed and found that "voluntariness of the surrender in this case was addressed sufficiently in open court when the surrender was executed by the mother."

Jurisdiction

E.G. v. Department of Children and Family Services, 2008 WL 649435 (Fla. 3d DCA)

The mother filed an emergency motion asserting that the trial court had acted without jurisdiction when it ordered her children into shelter care when the Department of Children and Family Services (the department) had only requested court-ordered services with the children to remain in the home.

The Third District Court of appeal (Third DCA) held that the trial court had jurisdiction when the department filed its motion for court-ordered services. The mother also contends that the court cannot place the children in shelter care when the petition to the court did not request shelter care. The Third DCA held that "trial court has the power to take immediate action if, in the course of hearing a petition for court-ordered services, the trial court finds that the facts of the case are such that the children are in immediate peril. In that circumstance, the trial court has the authority to take emergency action to place the children in a shelter, even though the pending petition did not request such relief." § 39.402 Fla. Stat. (2007).

Read the Opinion

Domestic Violence

J.S. v. Department of Children and Families, 2008 WL 818319 (Fla. 5th DCA)

The mother consented to her child's dependency adjudication. The father appeals the trial court's order adjudicating his child dependent as to him. The Department of Children and Families (the department) grounds for dependency as to father, were that the father abandoned the child,

engaged in domestic violence in front of the child, and had failed to appropriately supervise the child.

The Fifth District Court of Appeal (Fifth DCA) held that "the trial court's conclusion was not supported by substantial competent evidence" where the father and mother ceased living together in when the child was seven months old; parties were separated over sixteen months prior to the filing of the supplemental petition; there was no evidence that the child was affected by the two alleged incidents of domestic violence; and any possible risk of harm during either domestic violence incidents, was caused primarily by the mother.

The Fifth DCA reversed.

Read the Opinion

Jurisdiction

C.B. v. Department of Children and Families, 2008 WL 611606 (Fla. 5th DCA)

The mother appeals four post-disposition dependency orders. The children had originally been sheltered with the parents under the Department of Children and Families (the department) supervision. An adjudication of dependency was withheld and supervision was eventually terminated. Later, the trial court "reinstated supervision" due to the mother's incarceration and lack of housing. The trial court removed the children and ordered the mother to comply with the previous case plan. The trial court denied the mother's motion for an adjudicatory hearing.

Because the Fifth District Court of Appeal (Fifth DCA) did not have appellate jurisdiction, as these were non-final orders, the Fifth DCA treated the direct appeal as a petition for writ of certiorari. The mother argued that the children were never adjudicated dependent, and after termination of supervision the trial court was not allowed to exercise jurisdiction over her children without and entitle new dependency action. The Fifth DCA agreed and held that the "the trial court violated the essential requirements of the law when it attempted to exercise full jurisdiction without the initiation of a new dependency action."

Read the Opinion

Modification of Visitation

J.R. v. Department of Children and Families, 2008 WL 649613 (Fla. 4th DCA)

The mother appealed the trial court's order suspending visitation with her children. The mother argues that the trial court did not make specific findings of fact to support the modification of her visitation and the court erred in modifying her visitation.

The Fourth District Court of Appeal (Fourth DCA) held that the trial court failed to make "specific findings of fact and conclusions of law." Rule 8.260(a) of the Florida Rules of Juvenile Procedure requires all orders of the court to "contain specific findings of fact and conclusions of law." Therefore, the Fourth DCA reversed and remanded the case. However, the Fourth DCA agreed with the trial court's order suspending the mother's visitation in the best interests of the child.

Read the Opinion

Website Resources

The internet offers a vast array of information for anyone interested in the child welfare system. Below are a few examples of websites and what they offer – at no cost.

Major Federal Legislation Concerned With Child Protection, Child Welfare, and Adoption.

http://www.childwelfare.gov/pubs/otherpubs/majorfedlegis.cfm

The Child Welfare Information Gateway has created documents summarizing the major provisions of key Federal laws regarding child protection, child welfare, and adoption the documents include a timeline of Federal child welfare legislation.

Child Welfare Trauma Training Toolkit
http://www.nctsnet.org/nccts/nav.do?pid=ctr_cwtool
This resource from the National Child Traumatic Stress Network is designed to teach basic knowledge, skills, and values about working with children who are in the child welfare system and who have experienced traumatic stress.

8 Skills for Building Family Connections
http://www.nationalcasa.org/download/Connection/0802_top_tips_0036.pdf
National CASA has created a list of tips for CASA and GAL volunteers to help build connections for children and youth in foster care.

On the Line with CWLA
http://www.blogtalkradio.com/CWLA-Radio
The Child Welfare League of America offers a free internet radio discussion focusing on subjects, stories, and strategies of special interest to child welfare policymakers, providers, and practitioners. Upcoming discussions include: April 9, Reauthorization of the Child Abuse and Prevention Act (CAPTA); April 16, Remembering Children Lost to Abuse and Neglect; April 23, Family Matters: Kinship Caregivers Nationwide Convene at the Capitol; April 30, Broken Bonds: Children with Parents in Prison. The weekly program broadcasts Wednesdays, 2:00-2:30 pm ET. The call-in number is 347/326-9411.

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