

First District Court of Appeal

Disqualification of Judge

D.H. v. Department of Children and Families, 2009 WL 1383344 (Fla. 1st DCA)

The mother appealed the trial court's order terminating her parental rights and placing her child with Department of Children and Families (the department) for purposes of adoption. The mother based her appeal on the trial court's denial of her motion to disqualify the judge; the trial court's abuse of discretion in denying her motion to continue the proceedings for 45 days to allow the mother to have another psychiatric evaluation; and that the trial court erred in concluding that the mother did not substantially comply with her case plan.

The mother filed a motion to disqualify the judge on three grounds. First, she would not get a fair adjudicatory hearing because the judge, having presided repeatedly over mother's earlier proceedings, was biased or prejudiced against her based on his knowledge of mother's and her child's history in the dependency system. § 38.10, Fla. Stat. (2007). Second, that the judge's remarks at the pretrial conference suggested that the court had prejudged her mental health status and predetermined the merits of the case before hearing all the evidence, compelling his removal under Florida Rule of Judicial Administration 2.330(d)(1) (the trial judge noted on the record that he knows Appellant, who "has been in the foster care system herself for years," that she has had "very competent legal representation," and that she is "a mother, well known to have psychiatric and psychological deficits."). "Third, the motion alleged that the judge is a material witness for or against one of the parties to the cause, requiring his disqualification under Florida Rule of Judicial Administration 2.330(d)(2)." the trial judge "may be a material witness to establish the existence of a missing psychiatric evaluation performed on the Mother during a previous case involving the Mother before this Court."

When a judge contemplates a motion for disqualifications they are only to review the motion for legal sufficiency and not the truth of the facts alleged. If the motion is legally sufficient the judge must grant the motion and enter an order granting disqualification. Florida Rule of Judicial Administration 2.330(f). The judge in this case went beyond determining legal sufficiency and looked at the truth of the facts alleged.

The First District Court of Appeal (First DCA) held that the trial court reversibly erred by denying the mother's motion to disqualify the judge. The First DCA reversed the order terminating the mother's parental rights and remanded the case for further proceedings in front of a different judge. The First DCA's "disposition of the appeal on this ground effectively moots" the other issues mother appealed in this case.



[Read the Opinion](#)

Second District Court of Appeal

Standard Used in Determining Placement

In re K.H., 2009 WL 1491719(Fla. 2d DCA)

The mother appealed the trial court's order granting permanent placement of her

daughter with the maternal grandparents and terminating the supervision of the Department of Children and Family Services (the department). The mother argued that because her daughter was never adjudicated dependent as to the mother, the trial court erred in applying the best interest standard in placing the child with the maternal grandparents. The trial court should have applied § 39.521(3)(b), Fla. Stat.(2008), which specifically requires that the child be placed with the nonoffending parent “unless the court finds that such placement would endanger the safety, well-being, or physical, mental, or emotional health of the child.”

The Second District Court of Appeal agreed with the mother and remanded the case for the trial court to determine whether or not placement with the mother would endanger the health, safety, or well-being of the child.



Read the Opinion

Consent to Dependency

In re T.F., 2009 WL 1139239 (Fla. 2d DCA)

The mother appealed the trial court's order adjudicating her child dependent. The dependency petition was based on abandonment. The mother consented to the dependency petition. The trial court specifically approved the mother's request to waive her appearance at the disposition hearing so that she would not miss gain time as she was incarcerated. The case plan was based on reunification.

At the disposition the trial court “questioned why the mother had received a reunification case plan when she would be incarcerated until 2009, a date after her case plan's expiration date. The Department's attorney responded: “Judge ... she's not going to be her incarceration is not significant enough for her-to proceed with TPR.” Nevertheless, the court sua sponte stated it would not allow the mother a reunification plan because “[i]t's just impossible[.]” The court then changed the goal from reunification to adoption, concurrent with permanent guardianship. The trial court subsequently denied the Mother's motion for rehearing and ordered the Department to file a petition for termination of parental rights.”

The Second District court of Appeal (Second DCA) held that the trial court abused its discretion when it changed the mother's case plan goal from reunification to adoption through termination of parental rights. The trial court also abused its discretion in ordering the department to file a termination of parental rights petition.

The Second DCA also pointed out the due process issues raised in this case. “Consent to a finding of dependency is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of the ... consent.” Florida Rule of Juvenile Procedure 8.325(c). The mother in this case consented to the dependency with reunification as the goal. Adoption was never discussed with the mother. The trial court's unilateral decision to change the goal to “adoption through termination of parental rights meant that the mother's consent to the dependency adjudication was not knowing and voluntary.” An adjudicatory hearing was never held in this case. “Thus, the trial court erred under the facts of this case in addressing a substantive issue without either obtaining the mother's knowing and voluntary consent at a new arraignment or holding an adjudicatory hearing.”

The Second DCA reversed and remanded.



Read the Opinion

Dependency - Medical Needs of the Child

In re D.J., 2009 WL 1260109 (Fla. 2d DCA)

The mother appealed the trial court's order adjudicating her child dependent. The

Department of Children and Family Services' (the department) affidavit in support of the shelter petition alleged that the mother had a psychiatric history, and that she was noncompliant with her treatment. The department also alleged that the mother had a history of running away (she was under the supervision of the department as a child), some mental retardation, and a possible history of drug use. However the "department's shelter petition did not indicate that its sole basis for its claim that the mother had a "psychiatric history" was her counsel's request for a competency evaluation in her pending criminal case. The petition also did not indicate that the mother's history of running away had occurred more than two years prior to [the child's] birth and that the alleged prior drug use was a single positive urine test for marijuana two years earlier." Although the Second District Court of Appeal (Second DCA) recognized that the department "actively worked at cross-purposes with the Mother" they upheld the dependency adjudication of the child. The child had specific medical needs for which "the mother was simply not trained and equipped to handle." Her lack of training, at the time of the hearing," was sufficient to establish prospective medical neglect-not due to any intentionally neglectful conduct on the part of the mother, but simply due to her lack of training."

The Second DCA affirmed the dependency adjudication.



Read the Opinion

Termination of Parental Rights - Incarceration

In re L.L-R., 2009 WL 1025761 (Fla. 2d DCA)

The father appealed the trial court's order terminating his parental rights. The Department of Children and Family Services (the department) based its termination petition on abandonment and the trial court determined that the father abandoned the child. § 39.806(1)(b) Fla. Stat. (2006).

A year after the child was removed from the mother's custody, the father was found in a New Jersey prison. Once informed of the proceedings, the father immediately contacted the case manager, and the child. The department did not offer the father a case plan. Two months later the department filed a petition to terminate parental rights.

The Second District Court of Appeal (Second DCA) reversed the trial court's termination of the father's parental rights. "[T]he incarceration of a parent ... may support a finding of abandonment. But incarceration does not constitute abandonment as a matter of law. Rather, it is a factor that courts may consider when determining whether the child has been abandoned. § 39.01(1); *T.H. v. Dep't of Children & Family Servs.*, 979 So.2d 1075, 1078 (Fla. 2d DCA 2008)." In this case, the father communicated with the child as soon as he found out about the proceedings. In addition, the department pointed out that the child's manifest best interests were not considered when terminating this father's parental rights. See §39.810.



Read the Opinion

Third District Court of Appeal

Termination of Parental Rights – Failure to Protect

P.I. v. Department of Children and Families, 2009 WL 1675824 (Fla. 3d DCA)

The mother appealed the trial court's order terminating her parental rights to her two children. The Child Protection Team had testified that one of the children had been severely abused; there was testimony that the mother knew that the step-father was abusing the children; the mother waited a month after the child suffered a brain injury from the abuse before taking the child to the hospital; the mother was in denial about any abuse occurring; and the mother had her own mental health issues.

The Third District Court of Appeal (Third DCA) affirmed the trial court's termination. The

Third DCA held that this was a case where termination was the only alternative available to protect the children. “There is also every reason to believe that the abuse and neglect in this case will continue, placing the children at continued risk. *A.C. v. Dep’t of Children & Families*, 798 So.2d 32, 35 (Fla. 4th DCA 2001). Additionally, even a parent who is not present, or who does not personally participate in abuse, but who knowingly fails to protect the child from egregious abuse may have his or her parental rights terminated. *C.S. v. State, Dep’t of Health & Rehabilitative Servs.*, 697 So.2d 914 (Fla. 2d DCA 1997). Based on the same reasoning, termination as to T.M., Jr., is also justified. *K.A. v. Dep’t of Children & Family Servs.*, 880 So.2d 705, 708 (Fla. 2d DCA 2004). The mother witnessed the father’s treatment of the child but was never able to stop it. Here, DCF met its burden of presenting evidence to support the court’s finding that sections 39.01 and 39.806 were satisfied.”



Read the Opinion

Termination of Parental Rights -Abandonment

***R.S. v. Department of Children and Family Services*, 2009 WL 928495 (Fla. 3d DCA)**

The mother appealed the trial court’s order terminating her parental rights. The termination was based on the mother’s abandonment of her two children. The children were first taken into custody after the children were found wandering on the streets alone. The children were reunified with the mother and the court retained jurisdiction. See § 39.521(7), Fla. Stat. (2005). The children were again sheltered after one child stabbed her mother with a knife, the mother lost her housing and one child was absent from school thirty-seven times. After the children were taken into the custody of the Department of Children and Family Services, the mother only visited the children twice, and took no affirmative steps to foster visitation. The mother argues that she was unable to build a relationship with her children “because of language difficulties and an unresponsive case worker.”

The Third District Court of Appeal affirmed the trial court’s termination of the mother’s parental rights holding that “[t]he record here shows [the mother] has authored her own undoing. See *M.M. v. Dep’t of Children & Family Servs.*, 867 So.2d 573 (Fla. 3d DCA 2004). She has left her children to languish in the system for five years under DCF and court supervision, without doing what is necessary to rescue her children from final DCF intervention.”



Read the Opinion

Fifth District Court of Appeal

Termination of Parental Rights – Least Restrictive Means

***C.A.T. v. Department of Children and Families*, 2009 WL 1159192 (Fla. 5th DCA)**

The father appealed the trial court’s order terminating his parental rights arguing that terminating his parental rights is not the least restrictive means to protect his child. The Fifth District Court of Appeal (Fifth DCA) agreed with the father holding that the Department of Children and Families (the department) failed to prove by clear and convincing evidence that termination of the father’s parental rights was the least restrictive means of protecting [the child] from harm and reversed and remanded the case.

The department submitted the petition for termination of parental rights against both the father and mother, pursuant to § 39.806(3), Fla. Stat. (2007), which permits a termination petition to be filed with an offer of a case plan with the goal of termination rather than reunification. However, the department must show that “the parent will not benefit from court ordered services.” The Fifth DCA held that “[The department] did not establish that the father was not amenable to remedy his problems through actual, appropriate services, or that supervised visitation would be harmful to [the child] during

the time the father worked to resolve his problems. Moreover, this is not a case of egregious abuse or danger to [the child].”

The Fifth DCA reversed.



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Termination of Parental Rights - Incarceration

J.W.B. v. Department of Children and Families, 2009 WL 1024588 (Fla. 5th DCA)

The father appealed the trial court’s order terminating his parental rights. The termination of parental rights petition was based upon the father’s incarceration for a substantial portion of the period of time before his child attained the age of eighteen. § 39.806(1)(d)1 Fla. Stat. (2006). The child was sheltered when she was sixteen months old. The father was incarcerated since the child was born and was not expected to be released until the child was twelve years old.

The Fifth District Court of Appeal (Fifth DCA) held that the father would be incarcerated for 60 percent of the child’s life which was a substantial portion of the child’s life before she reaches eighteen. The Fifth DCA also discussed *B.C. v. Florida Department of Children & Families*, 887 So.2d 1046 (Fla.2004), which used percentages to determine what a substantial portion of a child’s life before age eighteen included. “[T]he statutory language ‘requires the court to evaluate whether the time for which a parent is expected to be incarcerated in the future constitutes a substantial portion of the time before the child reaches eighteen, not whether the time the parent has been incarcerated is a substantial portion of the child’s life to date.’”

The Fifth DCA also considered that the child had been with the current adoptive parents since she was two weeks old, the father had not supported or contacted the child, nor had the father ever seen the child. The Fifth DCA affirmed the trial court’s order terminating the father’s parental rights.



Read the Opinion

Website Resources

GuardianadLitem.org. Along with a variety of other resources the GAL website has a section developed specifically for research and information concerning psychotropic medications and their use with children in the foster care system. Go to Resources by Topic, and then click on Psychotropic Medication.

[Florida Best Practice Medication - Child/Adolescent Guidelines](#). This website includes guidelines in the form of easy to understand charts developed by Florida Medicaid Drug Therapy Management Program for Behavioral Health.

[The Center for the Advancement of Children’s Mental Health](#). Links for information on various medication and therapeutic treatment options.

[Physicians’ Desk Reference](#). On this site you can enter the name of a drug and find information written in lay terms based on the FDA-approved drug information found in the PDR. It gives plain-English explanations for the safe and effective use of prescription and nonprescription drugs.

Abusewatch.net. Their mission is to protect children from abuse. They do this by providing a centralized source of easy-to-access and understand child abuse prevention information and education. The site is designed for use by the public and professionals alike.

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