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

Legal Briefs Newsletter

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Termination of Parental Rights

Abandonment – Unmarried Biological Father

J.C.J. v. Heart of Adoptions, Inc., 2008 WL 2596365 (Fla. 2d DCA)

The unmarried biological father (father) appealed the trial court's termination order which was based upon abandonment. The father argued that the department failed to introduce clear and convincing evidence that he abandoned the child. The Second District Court of Appeal (Second DCA) upheld the trial court's termination of father's parental rights.

The father was not married to the mother and the mother did not disclose to the adoption agency (agency) the father's name until three weeks before the child's birth. The father refused to consent to the adoption, and did not register with the putative father registry. However, he did file a paternity action. The agency informed the father that failure to provide support for the birth mother during pregnancy and for the child after birth could be evidence of abandonment. The only issue on appeal is whether or not the father's rights were appropriately terminated under the abandonment ground.

> *"An unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during the pregnancy and after the child's birth. The state has a compelling interest in requiring an unmarried biological father to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity rights in accordance with the requirements of this chapter. § 63.022(1)(e), Fla. Stat. (2004)."*

> *"Additionally, an unmarried biological father of a child younger than six months of age when placed with adoptive parents, on service of notice of an intended adoption plan or a petition for termination of parental rights pending adoption, must execute[ ] and file[ ] an affidavit in that proceeding stating that he is personally fully able and willing to take responsibility for the child, setting forth his plans for care of the child, and agreeing to a court order of child support and a contribution to the payment of living and medical expenses incurred for the mother's pregnancy and the child's birth in accordance with his ability to pay." § 63.062(2)(b)(2).*

The Second DCA upheld the trial court's termination of parental rights based on abandonment. The Second DCA cited the father's lack of support of the child even though he was financially able, the fact that the father never visited the child even though the prospective adoptive parents offered the father visitation, and that the father never "filed an affidavit of responsibility or family law financial affidavit until over two years after he filed his paternity action."

Read the Opinion

Substantial Compliance with Case Plan

H.D. v. Florida Dept. of Children and Family Services, 2008 WL 2491661 (Fla. 1st DCA)

The mother appealed the trial court's order terminating her parental rights based on her failure to substantially comply with her case plan. § 39.806(1)(e) Fla. Stat. (2007). The mother contended that her rights cannot be terminated under this ground because the Department of Children and Family Services (the department) failed to provide the services necessary to complete her case plan.

The First District Court of Appeal agreed with the mother, reversed the trial court's order, and held that the department must provide "meaningful assistance designed to help appellant accomplish the tasks set out in her case plan."

Read the Opinion

C.F. v. Department of Children and Families, 982 So.2d 1249 (Fla. 5th DCA 2008)

The mother appealed the trial court's order terminating her parental rights and not placing the children with the grandmother in a long-term relative placement. The Fifth District Court of Appeal affirmed the trial court's order as the children had been living with the mother and grandmother as a family. Even with the resources the Department of Children and Families provided, the "grandmother was unable to provide or assist mother with providing a safe and secure home for children."

Read the Opinion

Dependency

Reinstatement of Supervision

Department of Children and Family Services v. M.L., 2008 WL 2357067 (Fla. 3d DCA)

The Department of Children and Family Services (the department) seeks certiorari relief from a dependency court order denying the department's attempt to reinstate supervision over a minor child. The department sought to reinstate supervision over a child three years after entry of an order terminating supervision. The department based the reinstatement of the case on a provision in an earlier order is which the court retained jurisdiction. The trial court held that the department must initiate a new dependency proceeding.

The Third District Court of Appeal agreed with the trial court and held that the department could not reinstate the case based upon the court's retention of jurisdiction. The "abridged process sought by DCFS constitutes a denial of due process to both the parent and child in this case. *See A.G. v. Dep't of Children & Families,* 721 So.2d 414, 414 (Fla. 4th DCA 1998)."

Read the Opinion

Nexus, Neglect

E.S. v. Florida Dept. of Children and Families, 2008 WL 2491663 (Fla. 1st DCA)

The mother appealed the trial court's dependency order. The mother had custody of her two-month old niece when the niece died in the mother's care. The Department of Children and Families (the department) sheltered the mother's other children after the nieces death. The department's dependency petition was based upon the mother hitting one of the children with a comb; inadequate living environment; and inadequate supervision in which mother's niece died.

The First District Court of Appeal (First DCA) reversed the trial court's dependency order. Although the mother admitted to striking the child and "losing control" on one occasion, the First DCA held that one occasion is not sufficient to support an dependency adjudication. *See C.C. v. Dep't of Health & Rehabilitative Servs.*, 556 So.2d 416 (Fla. 1st DCA 1989).

Further, the First DCA held that trial court's finding of neglect was not supported by competent substantial evidence. The only evidence presented showed that the mother did not check on her children when she returned home. Her 14-year-old daughter put the four-year old child to bed; therefore, the child was not entirely unsupervised. The child was sleeping and so it is unclear what the child's needs were that the mother failed to meet.

Finally, the First DCA noted that it agreed with the trial court that the circumstances in this case would have led to a dependency adjudication of the niece. However, the department failed to establish a nexus between the mother's apparent neglect of her infant niece and her treatment of her child. *See M.N. v. Dep't of Children & Families*, 826 So.2d 445, 447-48 (Fla. 5th DCA 2002) (requiring that the department introduce independent evidence establishing a nexus between prior abuse and prospective abuse).

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

Read the Opinion

Abandonment

T.B. v. Department of Children and Families, 2008 WL 2695916 (Fla. 5th DCA)

The father appealed the trial court's dependency order which was based upon abandonment and imminent risk of neglect. The father did not establish paternity until a month before the adjudicatory hearing. The delay was caused by the Department of Children and Families (the department) not retrieving the father's DNA while he was incarcerated. The father was not tested until after his release. The trial court found that the father had abandoned the child based on his failure to communicate with or financially support his child while he was incarcerated.

The Fifth District Court of Appeal (Fifth DCA) reversed the trial court's dependency adjudication. Ordinarily, a finding that a parent has not seen or supported his or her child for eleven months would support a finding of abandonment. In this case, the paternity test was not completed until a month before the adjudicatory hearing. The department argues that the father should have voluntarily acknowledged paternity; however the mother gave the names of two prospective fathers.

The Fifth DCA further disagreed with the department that the child was at imminent risk of neglect where the father had no driver's license, no job, had a felony conviction, and lived with his mother and aunt. There is no requirement that a parent have a drivers license, he had been employed with his father in construction before his incarceration and his mother and aunt had stated that they were financially able to care for the child.

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

Read the Opinion

Standing

Foster Parents

C.M. v. Department of Children and Families, 981 So.2d 1272 (Fla. 1st DCA 2008)

Former foster parents appealed the trial court's order terminating parental rights and permanently committing the child to Department of Children and Families for the purpose of adoption. The First District Court of Appeal dismissed the motion for lack of standing. Foster parents lacked standing to appeal § 39.815(1), Fla. Stat. (2007), as they were not parties to the proceedings. § 39.01(50).

Read the Opinion

Grandparents

R.H. v. Dept. of Children and Family Services, 2008 WL 2811785 (Fla. 3d DCA)

Grandparents appealed an order modifying placement of their granddaughter from them to the paternal aunt and uncle. The Third District Court of Appeal held that the grandparents lacked standing to appeal as they were "participants" and not a "party" to the case. See § 39.01(50), Fla. Stat. (2007) (limiting the definition of a "party" under Chapter 39 to "the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child"). Those that can appeal after a termination of parental rights are limited to "[a]ny child, any parent or guardian ad litem of any child, any other party to the proceeding who is affected by an order of the court, or the department...." § 39.815(1).

Read the Opinion

Reunification

Case Plan Compliance

G.V. v. Department of Children and Families, 2008 WL 2815537 (Fla. 4th DCA)

The mother appealed the trial court's order denying her motion for reunification with her children and an order terminating the department's protective supervision, permanently placing the children with their custodians. Although the trial court had found that the mother had completed her case plan for reunification, the trial court denied the reunification because the "mother had continued to deny the seriousness of her problems and had discontinued using medication without permission from her physician."

The Fourth District Court of Appeal (Fourth DCA) reversed the trial court's order denying reunification. Because the trial court found that the mother had completed her case plan the only thing in the way of reunification was the *safety* of the children. The Fourth DCA referred to *C.D. v. Dep't of Children & Families*, 974 So.2d 495 (Fla. 1st DCA 2008) which held "[w]hen 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 children may be endangered if the mother did not recognize the serious nature of her mental illness. In this case however, the mother evidenced her recognition of the seriousness of her mental illness by maintaining regular therapy appointments and taking her medication as directed.

The department's primary witness (Dr. Maria) had not seen the mother in six months and had not called her current therapist yet opined that the children would not be safe in her

care. Dr. Maria based her opinion on the mother's failure to acknowledge, months earlier, the serious nature of her illness, and her failure to cooperate with treatment. The case manager also had no current information regarding the mother yet stated reunification would not be in the best interest of the children. One of the other child's case managers testified that she had never been to see the mother.

The mother's witness, and current therapist, testified that she had been regularly attending therapy session (16 sessions in 4 months), taking her medication and had only stopped taking her medication due to pregnancy.

The Fourth DCA reversed the trial court's order.

Read the Opinion

Domestic Violence

Corporal Punishment

Moore v. Pattin, 983 So.2d 663 (Fla. 4th DCA 2008)

After the trial court granted the mother's petition for an injunction for protection against domestic violence on behalf of her ten-year-old child, the father appealed. The father argued that when he disciplined the child it was not excessive corporal punishment. The father agrees with the mother that he beat the child with a belt or shoe on numerous occasions after making her take of her clothes. The mother testified that the child had previously been sexually abused by the mother's ex-husband.

The Fourth District Court of Appeal agreed with the trial court and held that the father's abuse, coupled with the child's psychological reaction to unwanted touching, constituted domestic violence, and thus warranted issuance of an injunction for protection against domestic violence. §§ 741.28(2), 741.30(1)(a).

Read the Opinion

Appropriateness Hearing

R.H. v. Department of Children and Families, 2008 WL 2815538 (Fla. 4th DCA)

After an appropriateness hearing, the child's biological relatives, with whom the child had been placed, appealed a final order finding the Department of Children and Families' (the department) selection of a new adoptive placement as an appropriate placement. The child's biological relatives had refused to sign a subsidy agreement or complete an application to adopt the child, and had ultimately asked that the department "immediately remove the child from their custody." The department removed the child, and placed the child in the new adoptive placement. The biological relatives then wanted to adopt. The trial court held an appropriateness hearing.

The Fourth District Court of Appeal (Fourth DCA) first explained that the trial court "lacks authority to determine whether another adoptive placement is more appropriate. In *C.S. v. S.H.,* 671 So.2d 260 (Fla. 4th DCA 1996)." Rather, in an appropriateness hearing, the trial court must only determine whether the department's decision to place the child in a new adoptive placement was "appropriate, consonant with the department's polices, and made in an expeditious manner given the facts and circumstances of this case."

The Fourth DCA upheld the trial court's decision citing the new adoptive placement's positive home study, the appropriate amount of space and the financial security of the new placement, the testimony of the case worker, guardian ad litem and the social worker who testified that the child had adapted well and bonded with his new family and

the placement was in the child's best interests.

Read the Opinion

Shelter

Lack of Housing

M.B. v. Department of Children and Family Services, 2008 WL 2596323 (Fla. 3d DCA)

The mother appealed the trial court's order placing her child in shelter. The Department of Children and Family Services (the department) based its petition on the mother's lack of housing. The mother admitted to one night of homelessness in her move from New York to Miami, and her need for continued public assistance. The trial court placed the child in shelter care. In its petition, the department stated that it did not provide services to the mother that would allow the child to remain with her because the child "faced imminent danger and could not be protected from this danger" without removal to a shelter.

The Third District court of Appeals (Third DCA) held that the shelter order departed from essential requirements of law because: (1) the only ground was homelessness; (2) homelessness was for only one night, the mother tried to find shelter for that night, and that her inability to do so was due only to her financial situation; and (3) no services were offered to eliminate the need for the child's placement in shelter.

"In *Brown v. Feaver*, 726 So.2d 322 (Fla. 3d DCA 1999), we stated that [h]omelessness, derived solely from a custodian's financial inability" does not constitute the kind or level of "abuse, neglect, or abandonment" necessary to justify the removal of a child, unless the Department of Children and Family Services "offers services to the homeless custodian and those services are rejected."

The Third DCA quashed the shelter order, and remanded with directions to allow the minor child to be returned to the custody and care of his mother.

Read the Opinion

Right to Counsel

State's Payment of Attorney Fees for Non-Parent

Justice Administrative Com'n v. Peterson, 2008 WL 2811999 (Fla. 2d DCA)

The Justice Administrative Commission (JAC) petitioned the Second District Court of Appeal (Second DCA) for writ of certiorari to quash the trial court's order that it pay attorney's fees and costs to the court-appointed counsel for an indigent, grandfather who was the child's legal custodian in a dependency proceeding.

The Second DCA held that the JAC should not have been ordered to pay the grandfather's legal expenses as the grandfather was not within the plain meaning of the statute that grants authority for the JAC to pay attorneys fees to appointed counsel. Section 27.42(5), Fla. Stat. (2006), authorizes the JAC to compensate court-appointed attorneys with funds appropriated by the Florida Legislature. However, § 29.007(2) limits the JAC to compensating only court-appointed attorneys who represent an indigent client with either a statutory or constitutional right to appointed counsel. A nonparent, such as a grandfather, does not have the right to appointment of counsel as he is not considered a parent and only indigent parents have the right to appointed counsel (*See* definition of parent in § 39.01(48)).

"Indigent persons subject to a dependency action who are not the natural or adoptive parent are not entitled to appointment of counsel at the State's expense because they cannot potentially lose parental rights they do not possess."

The Second DCA granted the petition for writ of certiorari and quashed the trial court's order.

Read the Opinion

Guardian ad Litem Fostering Independence Project

Recently, Peggy Quince became Chief Justice of the Florida Supreme Court. The day she was sworn in, she launched a special initiative -- to recruit pro bono attorneys to work within the framework of the Guardian ad Litem Fostering Independence Project. Through the Fostering Independence Project, attorneys can represent teens in foster care transitioning to adulthood. Attorneys possess valuable expertise and unique skills to help children and can be valuable role models for Florida's abused, abandoned and neglected children. Pro bono attorneys can complete their training by watching on-line videos that qualify them for free CLE credits, including one ethics credit. To learn more about the Fostering Independence Project, visit the Guardian ad Litem Program website at www.GuardianadLitem.org.

Jan Pudlow of the Florida Bar News highlighted Justice Quince's initiative in two articles. You can read them at www.floridabar.org or click the links below:

- *Attorneys Needed for Aging-Out Foster Kids, Jan Pudlow, Florida Bar News (August 2008)*
- *Quince Takes Court's Helm:* Challenges Lawyers to Become GALs for Foster Kids, *Jan Pudlow, The Florida Bar News (July 2008)*

Website Resources

www.GuardianadLitem.org: Learn about the Florida Guardian ad Litem Fostering Independence Project. There are training videos and "Teen Resources" which includes the information a young adult needs to know while in the foster care system and when they age out of foster care. Teen Resources includes information organized by age of the youth in foster care.

FAQ: Frequently Asked Questions for Foster Youth Transitioning to Adulthood.
Prepared by Florida's Children First, Inc.