

## Supreme Court

### *Evidence does not need to be presented in §39.801(3)(d)*

**Florida Dept. of Children and Family Services v. P.E., 2009 WL 2045403 (Fla.)**

The mother appealed the trial court's termination of parental right based upon statutory consent as a result of her failure to appear at the adjudicatory hearing. The Second District Court of Appeal (Second DCA) certified conflict of the consent issue and the Supreme Court granted review.

The issue presented to the Supreme Court (the Court) was whether "consent to termination of parental rights has been entered under §39.801(3)(d), Fla. Stat.(2007) upon the parent's failure personally to appear at the adjudicatory hearing, the trial court must nevertheless receive evidence on the grounds for termination alleged in the petition for termination of parental rights."

The Court agreed with the Second DCA holding that "the Department was not required to proceed with its burden to present evidence on the alleged grounds for termination; otherwise the consent pursuant to §39.801(3)(d) "would be rendered meaningless." *In re H.E.*, 3 So.3d 341,343 (Fla. 2d DCA 2009). In addition, allowing the parent to challenge the basis for the termination of parental rights would be inconsistent with § 39.801(3)(d), which states that the parent's failure "to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights."



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## First District Court of Appeal

### *Due Process*

**B.K. ex rel. K.K. v. State, Dept. of Children and Families, 2009 WL 1636968 (Fla. 1st DCA)**

The father appealed the trial court's order denying his petition challenging the trial court's permanency order.

The father contends that he was denied due process of law as he did not receive notice or the right to be present and represented at the hearing. The Second District Court of Appeal (Second DCA) held that although the father was represented by counsel in 2005, such counsel was later discharged.

The Second DCA held that the father was denied due process and the case was reversed and remanded.



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### *Termination of Parental Rights – Manifest Best Interest*

**State, Dept. of Children and Families v. C.W., 2009 WL 1425981 (Fla. 1st DCA)**

The Department of Children and Families (the department) appealed the trial court's order denying a petition terminating the mother's parental rights. The trial court found that termination of parental rights grounds existed based upon egregious abuse of the child's sibling, and "upon evidence that [the child], while still very young, suffered broken ribs while in the sole care of the mother and stepfather, for which [the child] received no treatment or medical attention." However the court found that it was not in the child's manifest best interest to have parental rights terminated. §39.801, Fla. Stat. (2008).

The trial court found that the child had a strong bond with his maternal grandmother and changed the case plan goal to placement with a fit and willing relative (the grandmother was on probation for drug charges so adoption was not a viable alternative).

The First District Court of Appeal (First DCA) affirmed the trial court's order as it was based on competent substantial evidence and there was no basis on which to reverse. The First DCA's standard of review of the trial court order was "highly deferential."



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## Second District Court of Appeal

### *Termination of Parental Rights – Substantial Compliance/Material Breach*

In re J.L., 2009 WL 2341634 (Fla. 2d DCA)

The father appealed the trial court's order terminating his parental rights to his son. The trial court based the termination order on the father's failure to substantially comply with his case plan §39.806(1)(e)1, Fla. Stat. (2008), and material breach of his case plan under § 39.806(1)(e)(2). The trial court also found that termination was the least restrictive means of protecting the son due to the father's failure to substantially comply with his case plan.

The Second District Court of Appeal (Second DCA) reversed the trial court's order terminating the father's parental rights. The Second DCA found that the department failed to make a good faith effort to rehabilitate the father or reunite him with his son. The case workers did not know whether or not the father received a copy of the case plan; "the case plan was not developed in a face-to-face conference with the father, the line designated for the father's signature was left blank, and the department failed to explain the circumstances concerning the Father's nonparticipation and the efforts made to secure his participation. See §§ 39.6011(1)(a), .6011(1)(c), .6011(3), .602(1), Fla. Stat. (2006)." Additionally, there was nothing in the record showing the father was ever served with a copy of the case plan. See § 39.602(4)(a).

The trial court failed to consider the following factors when determining manifest best interest: that the father adequately cared for the son from August 2005 to January 2007, the strong emotional bond between the father and the son, that the efforts to communicate with the son were repeatedly thwarted.

The Second DCA reversed.



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### *Dependency*

In re M.C., 2009 WL 1975940 (Fla. 2d DCA)

The mother appealed the trial court's order finding her children to be dependent but withholding adjudication of dependency. The mother contended, the Department of Children and Family Services conceded and the Second District Court of Appeal agreed that the department court failed to prove abuse, abandonment or neglect, or imminent

risk thereof. See § 39.01(14)(a), (f), Fla. Stat. (2007).

The Second DCA reversed.



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### *Appealable Order*

**In re M.V.-B., 2009 WL 1606545 (Fla. 2d DCA)**

The father and paternal grandparents appeal the trial court's order adjudicating the child dependent, maintaining the child's placement with a licensed foster care family, and rejecting the paternal grandparents request for placement with them. The Second District Court of Appeal held that grandparents in this context are not parties and do not have standing to appeal such an order and no interested party filed a petition to change custody to grandparents pursuant to postdisposition change of custody statute. § 39.522.

The Second DCA also held "that the orders entered in dependency proceedings after the entry of the order adjudicating dependency and before an order terminating supervision or jurisdiction are not appealable pursuant to 9.130(a)(4). When appropriate, such orders may be challenged by common law certiorari. See *C.B. v. Dep't of Children & Families*, 975 So.2d 1158 (Fla. 5th DCA 2008) (treating mother's appeal from postdisposition dependency orders as a petition for writ of certiorari). In this case, the father has argued nothing that would suggest that certiorari would provide a possible remedy."

The Second DCA dismissed the father's appeal.



## Read the Opinion

### Third District Court of Appeal

#### *Evidence of Egregious Conduct*

**I.D. v. Department of Children and Families, 2009 WL 2168753 (Fla. 3d DCA)**

The father appealed the trial court's order terminating his parental rights. The trial court based the termination of the father's parental rights on engaging in egregious conduct, § 39.806(1)(f), sexual abuse pursuant to § 39.806(1)(g), as defined in §39.01(67); aggravated child abuse, as defined in §827.03, sexual battery or sexual abuse, as defined in §39.01 or chronic abuse, § 39.806(1)(g); and for abandonment pursuant to §39.806(1)(b), as defined in §39.01(1).

The Third District Court of Appeal (Third DCA) upheld the trial court's holding that the father's sexual abuse of his child was "egregious conduct" See, e.g., *N.R.R. v. Dep't of Children & Families*, 959 So.2d 359, 359-60 (Fla. 3d DCA 2007); *Dep't of Children & Families v. B.B.*, 824 So.2d 1000, 1007 (Fla. 5th DCA 2002). Although the father argued that there was no physical evidence or testimony of "professionals" introduced to corroborate the child's testimony, the Third DCA held that "neither physical evidence nor expert testimony is required to establish sexual abuse or egregious conduct by clear and convincing evidence. See *G.C. v. Dep't of Children & Families*, 791 So.2d 17 (Fla. 5th DCA 2001)"

The Third DCA affirmed the trial court's order terminating the father's parental rights.



## Read the Opinion

### *Grandparent's Visitation Rights*

**M.H. v. Department of Children and Families, 2009 WL 2048610 (Fla. 3d DCA)**

The mother appealed the trial court's visitation order allowing the child to have "overnight weekend bi-weekly visitation and daytime visits two times during the week" with the paternal grandmother. The court returned the child to the mother's care and the trial court entered the visitation order. The Third District Court of Appeal (Third DCA) quashed the trial court's order, holding "§39.509, Florida Statutes (2008), allows grandparent visitation when a child has been adjudicated dependent **and** taken from the physical custody of the parent. However, §39.509(4) states, "When the child has been returned to the physical custody of his or her parent, the visitation rights granted pursuant to this section **shall terminate.**" (emphasis added). Accordingly, the trial court departed from the essential requirements of the law when it ordered visitation with the paternal grandmother once the child was returned to M.H.'s physical custody. See *T.M. v. Dep't of Children & Families*, 927 So.2d 1088, 1089 (Fla. 4th DCA 2006); *L.B. v. C.A.*, 738 So.2d 425, 427 (Fla. 4th DCA 1999); see also *Troxel v. Granville*, 530 U.S. 57, 72, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

The Third DCA quashed the trial court's order.



## Read the Opinion

### Fourth District Court of Appeal

#### *Child's Best Interest*

**C.A. v. Department of Children and Families, 2009 WL 2172511 (Fla. 4th DCA)**

The father was killed in an automobile accident before his appeal of the trial court's order terminating his parental rights (TPR) could be heard. The Department of Children and Families (the department) in its notice of death, advised that even if the final judgment of TPR were soundly based and affirmed, it may not now be in the child's best interest to do so. The Fourth District Court of Appeal (Fourth DCA) agreed with the department.

The Fourth DCA held that the paramount concern in a TPR was not the punishment of the parent but the best interest of the child. The Fourth DCA stated that "the term *best interests of the child* is broad enough to encompass property interests of the child related to her natural parent. See, e.g., *D.L.S. and J.S., v. L.R.G.*, 345 N.W.2d 138 (Iowa 1984)."

The Fourth DCA held "that it is now in the best interests of the child to abate this appeal and relinquish jurisdiction to the trial court to make that decision in the first instance. The trial court is authorized to reopen the case, take such additional evidence as may be relevant to that issue and, based on all the evidence before the court, re-enter a judgment on the petition as to whether in light of his death it is in the child's best interests to enter a final order terminating the father's parental rights."



## Read the Opinion

### *Reunification - Six Specific Findings Required*

**C.S. v. Department of Children and Families, 2009 WL 1766681 (Fla. 4th DCA)**

The mother appealed the trial court's order denying reunification with her child where the trial court made no specific factual findings and based its denial only on the child's best interest. The Fourth District Court of Appeal (Fourth DCA) held that "even when it is not an abuse of discretion to deny reunification, we will reverse the order and remand for compliance with § 39.621(10) if the order fails to explicitly address the six factors." *E.I. v. Department of Children and Families*, 979 So.2d 378 (Fla. 4th DCA 2008). The trial court must include in the written findings of fact the following six factors:

- (a) compliance or noncompliance with the case plan;
- (b) whether the circumstances causing the dependency have been resolved;

- (c) length and stability of the child's placement;
- (d) preferences of the child if sufficiently mature and able to express a preference;
- (e) recommendation of the current custodian; and
- (f) recommendation of any guardian ad litem.

The Fourth DCA reversed the trial court's order.



## Read the Opinion

### Fifth District Court of Appeal

#### *Possible long-term placement with a relative does not preclude termination of parental rights*

**B.B. v. Department of Children and Families, 2009 WL 1810013 (Fla. 5th DCA)**

The father appealed the trial court's order terminating his parental rights. The trial court found that the father failed to substantially comply with his case plan and that termination was in the child's manifest best interest. The father argues that "terminating his parental rights was not the least restrictive means of protecting the child because [the child] could have been placed in a permanent guardianship with the paternal grandparents."

The Fifth District Court of Appeal (Fifth DCA) upheld the trial court's order holding "the fact that a long-term placement with a relative exists does not preclude terminating a parent's rights. See *A.J. v. K.A.O.*, 951 So.2d 30, 31 (Fla. 5th DCA 2007)." The Fifth DCA re-emphasized that the least restrictive means test only requires a good faith effort to rehabilitate the parent and reunify the family through the provision case plan. Because the father had a case plan and failed to substantially comply, termination of parental rights was appropriate.



## Read the Opinion

### *Rights of Biological Father*

**Shuler v. Guardian Ad Litem Program, 2009 WL 1883890 (Fla. 5th DCA)**

The biological father appealed the trial court's order placing his daughter with the Department of Children and Families (the department) for purposes of adoption. The mother and biological father were living together when child was taken into custody by the department. Mother was married to another man at the time. While the termination of parental rights (TPR) petition was pending, the mother died. The trial court terminated rights to the legal father (mother's legal husband) based on his deemed consent for his failure to appear. The mother's rights were terminated based on her death.

The biological father filed a paternity petition after TPR grounds had been established as to both mother and biological father. The trial court ordered that the biological father's paternity action be coordinated with the department's pending TPR action and ordered DNA testing. The DNA established the biological father as the father. The trial court entered an order placing the child with the department for adoption and dismissed the biological father's paternity action.

The Fifth District Court of Appeal (Fifth DCA) held that a man who fathers a child with a woman who is married has no parental rights or responsibilities to the child. The mother's husband is the child's legal father unless a court effects the substitution. In this case, the trial court properly advised the biological father that he had no legally recognized parental relationship to the child. He could not intervene in the TPR proceeding. The Fifth DCA found that because the biological father waited until after grounds were met for TPR to act, the trial court was required under § 39.811(2) to place the child with the department for adoption.

The Fifth DCA affirmed the trial court's order.



### Read the Opinion

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#### Website Resources

[GuardianadLitem.org](http://GuardianadLitem.org). Along with a variety of other resources the GAL website has a section developed specifically for research and information concerning education children in the foster care system. Go to Resources by Topic, and then click on Education.

The Legal Center for Foster Care and Education - [www.abanet.org/child/education](http://www.abanet.org/child/education) . Offers national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children in the foster care

[ABA Legal Center for Foster Care and Education Database](#). Searchable database of materials related to the education needs of children in foster care. It is searchable by state, topic, and format.

[The Florida Diagnostic and Learning Resources System \(FDLRS\)](#) provides diagnostic and instructional support services to district exceptional student education programs and families of students with exceptionalities statewide. FDLRS supports the State education goals of high student achievement, safe schools, and high performing workforce. FDLRS activities reflect these goals and demonstrate outcomes toward accomplishing them.

[Advocacy Center for Person's with Disabilities, Inc.](#) The Advocacy Center for Persons with Disabilities, Inc., is a non-profit organization providing Protection and Advocacy Services in the State of Florida.

[Wrightslaw](#): Parents, educators, advocates, and attorneys come to Wrightslaw for accurate, reliable information about special education law and advocacy for children with disabilities. Wrightslaw includes thousands of articles, cases, and free resources on dozens of special education topics.

[Asking the Right Questions: A Judicial Checklist to Ensure That the Educational Needs of Children and Youth in Foster Care Are Being Addressed, National Council of Juvenile and Family Court Judges, Reno, Nevada. \(2005\)](#) Provides a field-tested checklist that judges can use to make inquiries regarding the educational needs of children and youth under their jurisdiction with the goal of positively impacting their educational outcomes and preparing them for adulthood.