

Nexus

In the context of chapter 39, nexus has been called a “predictive relationship” between the abuse of one child and the “prospective abuse of another” child. In re K.A., 880 So.2d 705 (Fla. 2d DCA 2004). Nexus is also known by the phrase “substantial risk of significant harm.” See Dep’t of Children & Fams. v. F.L., 880 So. 2d 602, 608 (Fla. 2004); Padgett v. Dep’t of Health & Rehab. Servs., 577 So. 2d 565, 570-570 (Fla. 1991).

Nexus must be proven in both dependency and termination of parental rights cases any time a child has not been the direct victim of abuse, neglect, or abandonment. Nexus must be proven in cases where one child is abused and others are not, and nexus must be proven in cases where the parents are bad actors but not aiming their bad acts directly at children. These cases include, for example, domestic violence cases, substance abuse cases, and murder/manslaughter cases.

Nexus is not “a generalized conclusion that the parents lack the requisite skills to bring up a child.” J.T. v. Dep’t of Health & Rehab Servs., 532 So. 2d 1085 (Fla. 3d DCA 1988). Nexus is also not a generalized “failure to accept responsibility” for a past misdeed. See J.F. v. Dep’t of Children & Fams., 890 So.2d 434 (Fla. 4th DCA 2004).

Nexus requires proof of how conduct that was not directed at the child nevertheless directly harms the child or creates “a substantial risk of significant harm.” It is not speculation, conjecture, or a generalized concern. The Florida Supreme Court has held that the trial court’s decision may not be based on any one fact but, instead, must be based on the “totality of the circumstances” surrounding the child who has not yet been abused or neglected.

“Connecting the dots” between the bad behavior of the parent and the effect on the child

Proof of harm or a substantial risk of future harm:

- Behavioral problems, nightmares, and fear in children;
- Relapses following drug or alcohol abuse treatment;
- Continuing living arrangements that caused or contributed to harm of another child;
- Continuing a lifestyle or relationship that caused or contributed to harm of another child;
- Failure of a parent to visit or support unabused children while they are out of the home;
- Parental absence from the home as when off on binges;
- Real examples of a parent’s inability to parent.

Proof of harm or a substantial risk of future harm (expert testimony may be required):

- Parental conduct has had a psychological impact on the unabused child, as evidenced by diagnosis of post-traumatic stress disorder, anxiety disorders, attachment disorder, etc.;

- The parent’s condition is beyond the parent’s control (i.e., mental illness, developmental disability, pedophilia);
- The parent’s conduct /condition is likely to continue;
- The conduct/condition is documented in professional literature to pose increased risk of harm to child; and
- The conduct/condition makes caring for the child impossible.

Examples of when proof of nexus is required:

- While mom is away with the two kids, dad uses drugs in the home and kills another person in the home. Nexus must be proven. Without evidence of any actual abuse of the children, the father’s egregious conduct poses only prospective abuse or neglect.
- Dad kills mom. Proof of nexus is required. There is no evidence the child has actually been abused, so any abuse or neglect is prospective only. The nexus requirement is the same whether the killer is a victim or perpetrator of domestic violence.
- A five year old boy is found severely abused; the mom and boyfriend also have a two year old girl that has no signs of abuse or neglect. No proof of nexus is required for the boy, but nexus must be proven as to the girl.
- The parents have one child. The child is found malnourished and with bruises, scars and old fractures. No nexus is required because this child has been abused and neglected.

Practice Tips

When presenting a nexus case it is important to emphasize:

- Similarity between prior conduct and the circumstances of the unabused child;
- Similarities between the abused child and the unabused child such as age, relationship, and gender;
- Close proximity in time between prior conduct and the circumstances of the unabused child;
- Treatment the parent received or didn’t receive after the prior conduct and any relapses the parent has experienced;
- All circumstances that have not changed; and
- Expert testimony.

Always be prepared to prove the nexus element

Always be prepared to prove nexus. Reversal is virtually assured when a favorable trial court adjudication is not supported by *specific evidence* and *findings of fact* establishing a link between parental conduct and actual harm or a significant risk of harm to an unabused child. Ensure that there are written findings of fact in the final order. If such findings are not contained in the order, consider filing a motion for clarification. Remember that reversal negatively impacts children and sometimes even causes children to experience additional emotional trauma.

Adapted from Proving Nexus Training, presented by Thomas Young, Appellate Counsel

Florida Supreme Court

Padgett v. Dep't of Health & Rehabilitative Servs., 577 So. 2d 565 (Fla. 1991). Termination of a parent's right in one child under circumstances involving abuse or neglect may serve as grounds for permanently severing the parent's rights in a different child without violating parent's constitutional rights.

In re M.F., 770 So.2d 1189 (Fla. 2000). A simple showing by the Department of Children and Families that a parent committed a sex act on one child does not by itself constitute proof that the parent poses a substantial risk of imminent abuse or neglect to the child's sibling, as required by the statute, and, while the commission of such an act may be highly relevant, it is not automatically dispositive of the issue of dependency; a court instead should focus on all the circumstances surrounding the petition in each case.

Second DCA Cases

D.H.L. v. Dep't of Children and Fams., 990 So. 2d 1267 (Fla. 2d DCA 2008). Generally, nexus is established when the parent has a mental or emotional condition that will continue, such as mental illness, drug addiction, or pedophilia, and which will make it highly probable that in the future the parent will abuse or neglect another child.

K.A. v. Dep't of Children and Family Servs., 880 So. 2d 705 (Fla. 2d DCA 2004) requires a separate finding of nexus, and that the parent is not amenable to services (least restrictive means), over and above a finding of egregious conduct.

But see In re S.M., 997 So. 2d 513 (Fla. 2d DCA 2008), where no nexus was necessary. "Without regard to the probability of future harm, there are times when a child's present knowledge of past or ongoing abuse to his or her sibling, coupled with the response of the parents to that knowledge, can result in present mental injury qualifying the child for protection under dependency."

Third DCA Cases

T.P. v. Dep't of Children and Family Servs., 935 So. 2d 621 (Fla. 3d DCA 2006). Under the statute permitting the trial court to terminate parental rights to a child who has suffered egregious abuse, and to any siblings of the child, egregious abuse directed at one sibling is sufficient, without more, to support termination of parental rights to another child. Additional proof to establish likelihood that an abused child's sibling will also be abused is not required.

Fourth DCA Cases

C.B. v. Department of Children & Families, 879 So.2d 82 (Fla. 4th DCA 2004). The issue in cases in which termination of parental rights is sought based on prospective abuse is whether **future behavior**, which will adversely affect the child, **can be clearly and certainly predicted** and whether the **behavior of the parent was beyond the parent's control, likely to continue, and placed the child at risk**.

T.M. v. Department of Children and Families, 971 So. 2d 274 (Fla. 4th DCA 2008). Evidence was sufficient to support finding of prospective future abuse, so as to support termination of mother's parental rights; there was evidence that father had violently abused mother multiple times in past, his violence was reason mother had lost custody of her first son, mother failed to take child to hospital for more than 24 hours after incident causing his broken femur, size of fractured bone required very substantial force to cause break, mother's explanation was scientifically unlikely, mother lied about relationship with father being finished, and mother failed to protect child from father.

Fifth DCA Cases

In Dep't. of Children & Fams. v. B.B., 824 So. 2d 1000, 1007 (Fla. 5th DCA 2002) the Fifth District found, ...[u]nder this statute, egregious abuse directed at one sibling is sufficient, **standing alone**, to support termination of parental rights to another child, without requiring additional proof to establish a likelihood that remaining children will be abused."

Gaines v. Department of Children & Families, 711 So.2d 190 (Fla. 5th DCA 1998). Finding of child's dependency based solely on prospective abuse was improper, despite fact child's older brothers were properly found dependent based on mother's abuse of them, as there was no nexus between the prior abuse of brothers and the allegation of prospective abuse against child.

Resources

www.GuardianadLitem.org. On the Statewide Guardian ad Litem website, in the Legal Resources section, you will find resources available in order for you to learn more, including:

- The Dependency Practice Manual
- Conferences and Training – PROVING NEXUS, Thomas W. Young, Appellate Counsel, Statewide Guardian ad Litem Office
- TERMINATION OF PARENTAL RIGHTS, Florida Guardian ad Litem Regional Training – included are worksheets, charts and checklists.