

## First District Court of Appeal *Case Plan Compliance*

**L.J.S. v. Florida Dept. of Children and Families, 2008 WL 5101142 (Fla. 1st DCA)**

The mother appealed the trial court's order denying her motion for reunification with her children. The magistrate, in an oral pronouncement, said the mother had "absolutely" complied with her case plan yet in the written order the magistrate held that the mother was noncompliant with her case plan and that the children's safety, well-being, and physical, mental, and emotional health would be endangered if they were returned to their mother's care.

The First District Court of Appeal (First DCA) held that the "trial court improperly relied on the magistrate's deficient order to conclude that returning the children to the mother would endanger their safety and well-being." When a parent files a motion for reunification the trial court must consider two factors: (1) the parent's compliance with the case plan, and (2) whether reunification would be detrimental to the children. See § 39.522(2), Fla. Stat. (2007). The trial court must "specifically address the following six sub-factors:

- (a) The compliance or noncompliance of the parent with the case plan;
- (b) The circumstances which caused the child's dependency and whether those circumstances have been resolved;
- (c) The stability and longevity of the child's placement;
- (d) The preferences of the child, if the child is of sufficient age and understanding to express a preference;
- (e) The recommendation of the current custodian; and
- (f) The recommendation of the guardian ad litem.

§ 39.621(10), Fla. Stat. (2007)." The trial court in this case "failed to make detailed factual findings regarding five of the six factors in its order denying the mother's motion for reunification."

The First DCA reversed and remanded the case for the trial court to make detailed factual findings pursuant to § 39.621(10).



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### *One-Parent Termination of Parental Rights*

**M.F. v. Florida Dept. of Children and Families, 992 So.2d 410 (Fla. 1st DCA 2008)**

The mother appealed the trial court's order terminating her parental rights based on her failure to appear (consent) and/or that she "abandoned" her child. The First District Court of Appeal held that because the trial court "affirmatively declined to make necessary findings (requested by the attorneys for Appellee and for the Guardian ad Litem)" under § 39.811(6), Fla. Stat. (2007) the order terminating the mother's parental rights must be reversed. Section 39.811(6) "sets forth a list of circumstances that will allow the severing of one parent's rights without the severing of the other parent's rights."



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### **Second District Court of Appeal**

#### *Termination of Parental Rights, Incarceration*

**In re S.H., 992 So.2d 316 (Fla. 2d DCA 2008)**

The father appealed the trial court's order, terminating his parental rights to his three children ages two, three and four. The termination was based upon the statute allowing for termination if a parent is incarcerated for a substantial portion of time before the child attains the age of majority. § 39.806(1)(d)(1), Fla. Stat. (2008).

The Second District Court of Appeal reversed the trial court's order finding that the fathers remaining years did not constitute a substantial portion of time before the children reached the age of majority. "[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.'" *B.C. v. Fla. Dep't of Children & Families*, 887 So.2d 1046 (Fla.2004) quoting *In re J.D.C.*, 819 So.2d 264, 266 (Fla. 2d DCA 2002).



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### **Nexus**

**In re D.L.H., 990 So.2d 1267 (Fla. 2d DCA 2008)**

The father appealed the trial court's termination of his parental rights to his son. The Department of Children and Family Services (the department) based the termination petition on the father's egregious abuse of the child's sibling. § 39.806(1)(f) Fla. Stat. (2008). The father argued that the department failed to establish "a nexus or predictive relationship" between the past abuse of the child's sibling and any prospective abuse of the child and failed to prove the termination was the least restrictive means to protect the child from harm.

The Second District Court of Appeal (Second DCA) reversed the termination of the father's parental rights because no nexus was shown between the abuse of the child's sibling and prospective abuse of the child. 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." *In re G.D.*, 870 So.2d 235 (Fla. 2d DCA 2004) quoting *In re C.M.*, 844 So.2d 765 (Fla. 2d DCA 2003). The department's witness, a psychologist, did not establish that the father "lacked self-control or had a drug addiction or a mental or emotional condition."

The Second DCA also agreed with the father that the department failed to show that termination was the least restrictive means of protecting the child from harm. The department did not offer the father court-ordered services and could not show that he would not benefit from such services.

The Second DCA reversed the final judgment terminating the father's parental rights and remanded for further proceedings.



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## Fourth District Court of Appeal

### *Abandonment*

**J.R. v. State, Dept. of Children and Families, 2008 WL 4922953 (Fla. 4th DCA)**

The mother appealed the trial court's order adjudicating her children dependent based upon abandonment and neglect where the mother had left her children for three weeks with the maternal great-grandmother and the mother was not able to be reached.

The Fourth District Court of Appeal reversed the dependency adjudication as the dependency was based on "uncorroborated hearsay evidence of an anonymous abuse report stating that the children had been abandoned at the great-grandmother's home." Absent the hearsay evidence there was no other evidence that supported a dependency adjudication.



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### *Prior Involuntary Termination of Parental Rights*

**J.J. v. Department of Children and Families, 2008 WL 4864203 (Fla. 4th DCA)**

The mother appealed the trial court's termination of parental rights to her twins who were born five years after her parental rights to a sibling child were terminated for egregious conduct. The Department of Children and Families (the department) based its termination petition on § 39.806(1)(f) and (i), Fla. Stat. (2007). The mother argues the department did not prove by clear and convincing evidence that she posed "a substantial risk of significant harm to her twin children and that termination of her parental rights is the least restrictive means of protecting them from harm."

The Fourth District Court of Appeal (Fourth DCA) agreed with the mother and reversed and remanded the trial court's decision. The Fourth DCA held that "factors that can weigh against finding a substantial risk of harm to current children include the passage of time and positive changes in a parent's circumstances." Five years had passed and the mother had made many changes. On her own, the mother had participated in parenting classes, domestic violence and counseling. She had obtained stable housing, employment and had severed the relationship with the father. Further, the department failed to provide testimony showing that the mother suffered from any "mental illness, drug addiction, or other impairments that would cause her to be a danger to her children or render her incapable of reestablishing a relationship with them."

The Fourth DCA held that the department failed to show that the termination was the least restrictive means available to protect the current children from harm. The mother had not been offered a case plan and the department did not provide the court with a psychological evaluation to evaluate "the mother's present mental or emotional condition and likelihood of prospective abuse."

The Fourth DCA remanded the case to "the trial court for continuation of the children's dependency status, formulation of a case plan for the mother, and for further

proceedings consistent with this opinion.”



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### Fifth District Court of Appeal

#### *Placement Change, Best Interest Standard*

**Guardian Ad Litem Program v. R.A.**, 2008 WL 4952580 (Fla. 5th DCA)

The Guardian ad Litem appealed an order granting the father's motion to change the placement of his daughter, from the home of her foster parents to the home of her grandmother. The Fifth District Court of Appeal quashed the order holding that the trial court departed from “the essential requirements of the law when ordering the change of placement.” The trial court should have based the determination on what was in the child’s best interest. § 39.522(1), Fla. Stat. (2008).



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#### *Settled Purpose to Assume Parental Responsibility*

**A.W. v. Department of Children and Families**, 2008 WL 4889139 (Fla. 5th DCA)

The father appealed the dependency adjudication of the child. The Department of Children and Families based its dependency petition on the father’s failure to assert his possible paternity, abandonment of the child, failure to provide for the child and failure to establish or maintain contact with the child. The trial court adjudicated the child dependent - and the Fifth District Court of Appeal agreed – based on the father’s “... moral and ethical conflicts, his failure to have contact with the child, his failure to support the child and other factors that the trial court found evinced a lack of settled purpose to assume all parental responsibility for the child.”



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#### *Nexus, Psychiatric Disorder*

**M.C. v. Department of Children and Families**, 2008 WL 4753757 (Fla. 5th DCA)

The mother appealed the trial court’s dependency adjudication of her children. The mother contacted the Department of Children and Families (the department) for assistance with food and housing. The department decided to shelter the children after the mother admitted she heard voices and could not sleep. At the hearing the department admitted that they sheltered the children just to make sure that the mother was ok. They were not concerned that the mother had harmed the children. The department based the dependency petition on § 39.01(14)(f), Fla. Stat. (2007).

The Fifth District Court of Appeal reversed the trial court’s dependency adjudication. In order to find the children dependent in this situation the department must show “sufficient nexus between [the mother’s] psychiatric disorder and the potential that she would substantially impair her children's physical, mental, or emotional health.” *Richmond v. Dep’t of Health & Rehab. Servs.*, 658 So.2d 176 (Fla. 5th DCA 1995). The department failed to provide the trial court with “evidence concerning the existence, extent, or nature of any mental health problem.”



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*Ineffective Assistance of Counsel*

**L.H. v. Department of Children and Families, 2008 WL 4998963 (Fla. 5th DCA)**

The Fifth District Court of Appeal certified the following questions:

1. DOES FLORIDA RECOGNIZE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL ARISING FROM A LAWYER'S REPRESENTATION OF A PARENT(S) IN A PROCEEDING FOR THE TERMINATION OF PARENTAL RIGHTS?
2. IF SO, WHAT PROCEDURE MUST BE FOLLOWED TO PURSUE A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL?



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## Website Resources – Incarcerated Parents

### **National Resource Center on Children and Families of the Incarcerated**

[www.fcnetwork.org](http://www.fcnetwork.org)

Building on the work of The Federal Resource Center for Children of Prisoners which was funded by the National Institute of Corrections from 2001 to 2006 and hosted by the Child Welfare League of America, The National Resource Center on Children and Families of the Incarcerated (NRCCFI) at FCN will continue to gather and disseminate information and link people with others that are living with or working on the impact of incarceration on children and families.

### **Center for Children of Incarcerated Parents**

[www.e-ccip.org](http://www.e-ccip.org)

CCIP developed its research, publications and services in the areas of: education, family reunification, therapeutic services, and information.

### **Legal Services for Prisoners with Children**

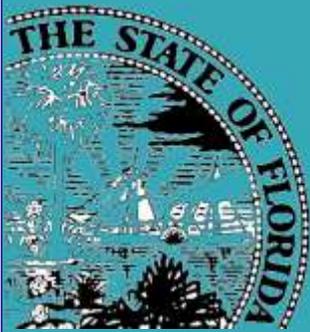
[www.prisonerswithchildren.org](http://www.prisonerswithchildren.org)

LSPC advocates for the human rights and empowerment of incarcerated parents, children, family members and people at risk for incarceration. They respond to requests for information, trainings, technical assistance, litigation, community activism and the development of more advocates. Their focus is on women prisoners and their families, and that emphasize that issues of race are central to any discussion of incarceration.

### **Child Welfare League of America: Children with Incarcerated Parents**

[www.cwla.org/programs/incarcerated](http://www.cwla.org/programs/incarcerated)

This section of CWLA's site has a plethora of facts about children of incarcerated parents, including selected case law, a recommended reading list for kids and workbooks for incarcerated parents.



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