Legal Briefs Newsletter

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Termination of Parental Rights

Case closed prior to 12-month period

D.S. v. Department of Children and Families, 2005 WL 623284 (Fla. 5th DCA)

Three children were removed from their mother when the mother was arrested. Two of the children were placed with their respective, non-offending fathers. The mother's case plan had dual goals of reunification with the mother and to maintain and strengthen the children's relationships with their respective fathers. At a judicial review hearing in November of 2003, the general master found the mother had substantially complied with her case plan, amended the case plan to include a psychological evaluation for the mother, but then closed the case because the children were placed with their fathers. The mother took exceptions to the general master's findings but the court accepted the general master's recommendations. The mother appealed.

The Fifth District Court of Appeal (Fifth DCA) found error because the case was closed prior to the expiration of the twelve-month period which the mother had to comply with the case plan. The Fifth DCA also found mother had a due process right to be permitted to comply with amendment to her case plan. The Fifth DCA further held there was no evidence presented that the children's safety and/or well-being would be endangered by reunification with their mother. The case was reversed and remanded.

Discovery: Information obtained after termination but before written judgment

S.W. v. Department of Children and Family Services, 2005 WL 766967 (Fla. 3rd DCA)

The Department of Children and Families (DCF) filed a petition to terminate the mother's parental rights. During the trial, DCF failed to produce a letter from the therapist of one of the children. The letter recommended the child have continued visitation with the mother. The letter became known after the termination trial but before the written judgment was entered. The trial court found that the discovery violation was unintentional and ruled that the letter made no difference in the determination that the mother's rights should be terminated. The mother appealed.

The Third District Court of Appeals (Third DCA) held that although the letter was pertinent to the issue of post-termination visitation, the trial court's denial of a new trial was within the court's discretion. The Third DCA found no error and affirmed the order.

Prior involuntary termination, abandonment, and incarceration

In re N.S., 2005 WL 780382 (Fla. 2nd DCA)

The mother and father were fleeing Oklahoma to avoid arrest when they came to Florida. Both parents have a history of drug addiction and drug-related criminal offenses. The mother's rights to three of her other children were involuntarily terminated in Oklahoma. Within days of their arrival in Florida, the mother gave birth to twins. When the Department of Children and Families (DCF) was notified, the children were sheltered and

Thank you to Hillary Kambour for her work on this case!

the parents were arrested and extradited back to Oklahoma. Without offering the parents a case plan or assigning a caseworker, DCF filed a termination of parental rights (TPR) petition. The petition alleged, among other grounds, that the mother and father engaged in conduct that continued to threaten the children irrespective of the provision of services and that the mother's parental rights had been involuntarily terminated as to another child. Both parents testified at trial that they had undergone therapy for their drug addiction in prison and had been reformed. The TPR petition was granted and the parents appealed.

The Second District Court of Appeals (Second DCA) held that because the parents had no real contact with the twins since their birth and were never offered a case plan, the trial court could only terminate their rights based on past conduct. The Second DCA held that DCF had failed to prove its case on any of the grounds alleged in the petition. In order to terminate under §39.806(1)(i), DCF needed to show substantial risk of significant harm to the current children and that termination was the least restrictive means of protecting the child. The Second DCA further held that the trial court could not terminate under §39.806(1)(c) because improvement was demonstrated and further improvement was possible. The Second DCA held the trial court erred in terminating the parent's rights under §39.806(1)(b) and (d) because incarceration alone is insufficient to prove abandonment and DCF offered no evidence to show the father abandoned the children otherwise. The Second DCA reversed the order and the case was remanded.

Jurisdiction –Service of Process

Department of Children and Families v. J.J.E., 2005 WL 782689 (Fla. 5th DCA)

The father's parental rights to his child were terminated in 2002 by the circuit court in Hernando County. Service of process was made on the father by publication because he could not be located. Over two years later, the father became concerned about the well-being of his son. When the Department of Children and Families (DCF) refused to allow him access to the child, the father filed a petition for writ of habeas corpus in the same court. The father's petition was given a new case number and assigned to a new judge. In his petition, the father argued that his child was being wrongfully restrained by DCF and that, jurisdiction had never been obtained over him since he had never been served with process. The new judge determined he had jurisdiction over the father's petition and DCF sought a writ of prohibition to restrain the judge from assuming jurisdiction.

The Fifth District Court of Appeal (Fifth DCA) held that although the circuit court has jurisdiction to hear petitions for writ of habeas corpus, an emergency situation existed and the child's custody was clearly outside of the subject matter jurisdiction of the circuit court. The Fifth DCA noted that if the circuit court were to grant the father's petition, two conflicting orders by equal courts would exist and neither would be subordinate to the other. A Writ of Prohibition was issued and the trial court was ordered to dismiss the father's petition or transfer the proceeding to the court that ordered the termination of the father's rights.

Substantial Compliance with Case Plan

In re D.D., 879 So.2d 10 (Fla. 2nd DCA 2004)

The Department of Children and Family Services (DCF) filed a petition to terminate the mother's parental rights pursuant to §39.806(1)(c) and (e). The trial court entered an order terminating the mother's parental rights pursuant to §39.806(e) and also found, based on the eleven factors contained in §39.810, that termination was in the manifest best interests of the children. The mother appealed.

The Second District Court of Appeal (Second DCA) held that several of the trial court's findings were not supported by clear and convincing evidence. The Second DCA pointed out the trial court's finding that the mother failed to substantially comply with her case plan was contradicted by the evidence produced at trial. The Second DCA further held that the trial court did not have clear and convincing evidence to support four of the eleven findings concerning manifest best interests. The termination order was reversed and the case was remanded.

Appeal

Standard of Review

T.F. v. Department of Children and Families, 895 So.2d 1288 (Fla. 5th DCA 2005)

The Fifth District Court of Appeal (Fifth DCA) held that an appellate court does not conduct a *de novo* review of evidence or substitute its judgment for that of the trial court. A trial court is responsible for finding abuse, abandonment or neglect and their holding will be sustained if supported by competent, substantial evidence. The Fifth DCA held the testimony of the caseworker provided competent, substantial evidence to support the adjudications of dependency and the trial court's decision was affirmed.

Standing

C.S. v. I.V., 2005 WL 767055 (Fla. 4th DCA)

C.S.'s former wife had a child with I.V. After his former wife died, C.S. petitioned to terminate I.V.'s parental rights so that C.S. could adopt the child. I.V. consented to the child's adoption by C.S. The matter was set before a general master, who found that C.S. lacked standing to bring the petition and recommended dismissal. I.V. took exceptions, but the family court adopted the general master's finding that C.S. lacked standing and dismissed the case. The family court entered an order that gave C.S. twenty days to re-file the petition under Chapter 39. The petition was never re-filed and over two months later, C.S. filed a motion for final judgment in the family court. The court denied the motion and C.S. appealed.

The Fourth District Court of Appeals (Fourth DCA) held that the test to determine the finality of an order, judgment or decree is whether the order in question marks the end of the judicial labor in the case and nothing further remains to be done by the court. There was nothing further for the family court judge to do after it ruled C.S. lacked standing and dismissed the case. The Fourth DCA added C.S. had thirty days to appeal the order and he failed to do so. The order was affirmed.

Delinquency

Involuntary Commitment of Minors

M.H. v. State, 2005 WL 662718 (Fla. 4th DCA)

M.H., a juvenile, was arrested and a petition for delinquency was filed against him for battery on a school employee. After being evaluated by two psychologists, M.H. was found incompetent to stand trial and diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). The trial court held a hearing on competency and involuntary commitment, at which one of the psychologists testified that M.H. did not suffer from any mental illness. The State requested and the trial court ordered involuntary commitment under Florida Rule of Juvenile Procedure 8.095(a)(4). The order was later vacated and a new order was entered under §985.223(3).

The Fourth District Court of Appeal (Fourth DCA) held that both Rule 8.095(a)(4) and §985.223(3) require a finding that (1) the juvenile is mentally ill or retarded, (2) that because of the mental illness or retardation the child is incapable of surviving or that there is a substantial likelihood that the child will inflict serious bodily harm and (3) less restrictive alternatives for treatment are inappropriate. Because the trial court only made findings as to the third prong, the order on involuntary commitment was quashed and the case remanded.

Dependent Child

W.C. v. Smith, 2005 WL 723892 (Fla. 1st DCA)

W.C., a child, had been adjudicated dependent and placed in foster care. After she ran away from her placement, the circuit court found W.C. to be in indirect criminal contempt of court and ordered her to be held in detention for 21 days. There was no delinquency petition filed against W.C. nor was there a hearing held where the child could be informed of, or respond to, contempt charges. W.C. was not represented by counsel throughout the proceedings in the circuit court. The Department of Juvenile Justice (DJJ) filed a petition for writ of habeas corpus and alleged W.C. was being unlawfully detained.

The First District Court of Appeal (First DCA) held the power to place juveniles charged with a delinquent act into detention is entirely statutory in nature. Both sections 984.09(4)(b) and 985.216(4)(b) require the court to hold a hearing within 24 hours to determine whether the child committed indirect contempt of a valid court order. At the hearing, certain due process rights (including the right to legal counsel) must be afforded to the child. Because the child was not given a hearing and denied her due process rights, the petition for writ of habeas corpus was granted.

Non-Offending Parent

Child should be placed with a non-offending parent unless the court finds the placement would endanger the safety or health of the child

L.P. v. Department of Children and Families, 871 So.2d 306 (Fla. 1st DCA 2004)

The father of the child lives with his fiancée who is confined to a wheelchair. Following a dependency hearing, the trial court dismissed the dependency petition against the father and the father sought custody. During the custody hearing, evidence was presented that the father had a stable job but worked the evening shift. A homestudy was completed that did not recommend placement with the father because "no suitable or specific arrangements" had been made for the child's supervision while the father was at work. However, there was uncontested testimony presented that the father's fiancée was familiar with various agencies that could provide assistance to the father and that several family members were also available to assist with child care while the father worked. The trial court denied the father's motion for custody and the father appealed.

The First District Court of Appeal (First DCA) held that §39.521(3)(b) requires the court to place a child with a non-offending parent unless the court finds the placement would endanger the safety or health of the child. The First DCA held that the best interest standard does not apply and, in the absence of evidence of endangerment, the non-offending parent is entitled to custody. Because there were no compelling reasons demonstrating the child would be endangered if placed with the father, the First DCA held the trial court abused its discretion by denying the father custody of his child. The case was reversed and remanded.

EVIDENCE REVIEW – Judicial Notice

Lois Sears, Esq.

Hypothetical

At a dependency trial, the guardian ad litem, through counsel, requests that the court take judicial notice of records from a different dependency case filed in another Florida county involving the same family.

Florida Evidence Code **§ 90.202(6)** Court Records; **§ 90.203** Compulsory Judicial Notice Upon Request

Florida Evidence Code Section 90.202 (6)

A court may take judicial notice of the following matters. . .:

(6) Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.

Florida Evidence Code Section 90.203

Compulsory judicial notice upon request

A court shall take judicial notice of any matter in § 90.202 when a party requests it and:

(1) Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request.

(2) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

Foundation

1. Your Honor, I request that the Court take judicial notice of records from Court X, Case # Y, Case Style (Parties) XYZ.
2. In support of my request, I offer what has been marked as GAL Exhibit #___, which is a Certified Copy of the above mentioned court records, copies of which have been previously provided to opposing counsel.

Even when the court judicially notices a court file, there may be independent evidentiary objections.

For example, judicial notice under § 90.202(6) cannot be utilized to justify the admission of hearsay statements in court files. See Stoll v. State, 762 So.2d 870,876 (Fla. 2000). "Although a trial court may take judicial notice of court records, it does not follow that this provision permits the wholesale admission of all hearsay statements contained within those court records. We have never held that such otherwise inadmissible documents are automatically admissible just because they were included in a judicially noticed court file."

If you would like to make suggestions for our newsletter, contribute an article or have an idea for an article, please contact Liz Damski at Elizabeth.damski@gal.fl.gov