# Legal Briefs Newsletter

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Please visit the new Statewide Guardian ad Litem Website at www.gal.fl.gov

***This month the Statewide Guardian ad Litem Office officially launched its new website at www.gal.fl.gov. The website is dedicated to making the work of volunteers and attorneys easier and more rewarding. The website includes forms for volunteers, internet resources, an application process for potential volunteers and a legal section which includes case summaries and other professional resources. Archived issues of the Legal Briefs Newsletter are also included.***

***We hope the website is a useful informational resource!***

## Termination of Parental Rights

### No Reasonable Efforts – The Circuits Conflict & Supreme Court Solution

**No reasonable efforts required**

**DCF not required to make reasonable efforts to reunify family and can immediately file a TPR petition if:**

**Voluntarily surrender §39.806 (1)(a)**

**Abandonment §39.806 (1)(b)**

**Abuse continues "irrespective of services" §39.806 (1)(c)**

Department of Children and Families v. F.L., 880 So.2d 602 (Fla. 2004).

The mother in this case had her rights to six of her children terminated. Rights to her seventh child were terminated based on prior involuntary termination of parental rights. §39.806(1)(i) Fla. Stat (2000). The Fourth District Court of Appeal declared §39.806(1)(i) facially unconstitutional because §39.806(1)(i) and prior cases, created a rebuttable presumption in favor of termination when a parent previously had rights to a child involuntarily terminated. The Fourth District Court of Appeal reversed the termination order.

Florida's Supreme Court disagrees with the Fourth District Court of Appeal and held §39.806(1)(i) constitutional. The Court states relieving the state of proving "substantial risk to the child" violates the constitutional requirements articulated in *Padgett v. Dep't of Health & Rehab. Servs.,* 577 So.2d 565 (Fla.1991). "…[P]arental rights may be terminated under section 39.806(1)(i) only if the state proves both a prior involuntary termination of rights to a sibling and a substantial risk of significant harm to the current child. Further, the state must prove that termination of parental rights is the least restrictive means of protecting the child from harm." A parent is not required to show a change in circumstances to avoid termination.

In re: A.D.C. v. Department of Children and Families, 854 So.2d 720 (Fla. 2nd DCA 2003).

When grounds for termination are based on incarceration for a substantial portion of the period of time before the child reaches the age of eighteen, §39.806 (1)(d)

**Incarceration §39.806 (1)(d)**

**Involuntary TPR as to sibling may serve as grounds for TPR on another child §39.806 (1)(e)**

**"Egregious abuse" §39.806 (1)(f)**

**Aggravated child abuse, sexual battery, or chronic abuse §39.806 (1)(g)**

**Parent has committed murder, voluntary manslaughter, or felony assault resulting in serious bodily injury to the child or another child §39.806 (1)(h)**

**Parental rights to a sibling involuntarily terminated §39.806 (1)(i)**

Fla. Stat. (2001), a substantial amount of time is not parent's release by the time the child at issue is five years old.

A parent's parental rights cannot be terminated based on failure to comply with case plan when family services counselor never had contact with the parent and the parent had never received a copy of the case plan. §39.806 (1)(e). Parental rights cannot be terminated based on involuntary termination of a previous child (§39.806 (1)(i)) when the parent failed to appear at the adjudicatory hearing. The court considers failure to appear consent to the termination, not an involuntary termination.

Department of Children and Families v. B.B., 824 So.2d 1000 (Fla. 5th DCA 2002).

The parents in this case, had rights to one of their children terminated, but the trial court refused to terminate the rights to the remaining children. The father in this case was a polygamist who sexually abused his daughter and attempted to sexually abuse his stepdaughter. The trial court held that sexual abuse of the daughter could not serve as the sole basis for termination. The trial court held that the Department of Children and Families (DCF) would have to show the parents pose a "substantial risk of imminent harm to the boys." DCF appealed and argues that no nexus between the sexual abuse of the daughter and the likelihood of abuse of the boys was required. The Fifth District Court of Appeal agrees.

DCF does not need to show a nexus or connection between egregious conduct against one child and the possible abuse of remaining children. The court held that the abuse does not need to be "symmetrical" or the same type of abuse. In a termination of parental rights based on egregious conduct of parent or parents, egregious abuse directed at one sibling is enough to support termination of another child without requiring additional proof that the remaining children are likely to be abused.

Department of Children and Families v. J.H.K., 834 So.2d 298 (Fla. 5th DCA 2002).

Father's parental rights were involuntarily terminated as to two children in New Mexico. The trial court took judicial notice of the foreign involuntary terminations. The father had been incarcerated six months before the child at issue's birth but was to be released soon. The trial court held that the Department of Children and Families failed in its burden to establish a legal basis to terminate J.H.K.'s parental rights. The trial court also found that the involuntary terminations in New Mexico were insufficient to support a termination in this case.

This court held that the trial judge should recognize the termination of parental rights in [foreign proceeding] for purposes of § 39.806(1)(i). *Dept. of Children and Families v. V.V.,* 822 So.2d 555 (Fla. 5th DCA 2002). Involuntary termination in a foreign proceeding is sufficient to support termination based on §39.806(1)(i), Fla. Stat. (2000).

In the Interest of G.C.A. et al v. Department of Children and Families, 863 So.2d 476 (Fla. 2nd DCA 2004).

Mother had rights to her seven children terminated based on abuse and neglect of the oldest three, more than ten years prior, when she was involved with the father of her older children. The Department of Children and Families (DCF) based the termination on neglect and abandonment. The abandonment was based on the parents' failure to provide support while the children were in DCF custody.

To terminate grounds on the basis of §39.806(1)(c), the court must find the following:

- the threat to the children's life, safety, or health by the continued interaction with the parent regardless of the provision of services; **and**
- DCF must prove there is no reasonable basis to believe that the parent will improve; **and**
- DCF must show that termination in the least restrictive means of protecting the children from serious harm.

Those measures short of termination be utilized if such can permit the safe reestablishment of the parent-child bond.

This court held that a termination of parental rights based on a parent committing a sex act on one child does not alone constitute proof that the parent poses a substantial risk of imminent abuse or neglect to the child's siblings.

The court held the mother had substantially complied with the tasks of her case plan. She had housing, employment, participated in parenting classes and visited her children regularly. The court reversed the termination on six of the seven children. The seventh child's termination was affirmed as it was based on allegations of sexual abuse and the child had not wanted to participate in visitation and seemed to be happy in her foster home.

M.H. v. Department of Children and Families, 866 So.2d 220 (Fla. 1st DCA, 2004).

Termination of parental rights is improper under §39.806(1)(c) when services can improve a parent's situation. Parent's drug addiction not enough to support termination. The Department of Children and Families (DCF) must prove the following:

- the trial court must find the children's life, safety, or health would be threatened by continued interaction with the parent, regardless of the provision of services; **and**
- DCF must prove there is no reasonable basis to believe the parent will improve; **and**
- DCF must show termination is the least restrictive means of protecting the children form serious harm.

The court held that none of the requirements were met as there was no evidence that the mother's children suffered as a result of her drug addiction. The mother self-referred into a drug rehabilitation treatment center and voluntarily placed her children in care so she could obtain treatment. DCF provided no services except referrals for urinalysis and closure counseling so mother and children could be prepared for the termination of parental rights. Further, DCF did not fully investigate relative placements. The DCF service worker testified she did not explore any relative placement, despite being provided the names of various relatives.

The termination of parental rights was reversed and remanded.

P.S. v. Department of Children and Families, 863 So.2d 392 (Fla. 3rd DCA 2003).

Mother was arrested for drug smuggling and was to spend 30 months in jail. The Department of Children and Families (DCF) filed for an expedited termination of parental rights based on egregious conduct. §39.806(1)(f). The Third District Court of Appeal held arrest for drug smuggling is not egregious conduct within the meaning of §39.806(1)(f) and DCF could not terminate her rights to her child based on mother's arrest. If the arrest would have to be connected to abuse, neglect or specific harm to the child that was present at the arrest an expedited

termination would be appropriate. The court also rejected the oral argument of termination based on §39.806(1)(d) -- incarceration of parent for a substantial amount of time before the child reaches the age of eighteen. The mother had 6 months left in her sentence and the court held this was not a substantial portion of the child's life before he reached eighteen.

## Grandparent's Rights

### Grandmother given adoptive preference

B.B.: In re the Adoption of M.E. v. Department of Children and Families, 854 So.2d 822 (Fla. 1st DCA 2003).

Grandmother appealed an order denying her petition to adopt her twin grandchildren who had lived with her for 3 months. The trial court previously directed DCF to give the grandmother the opportunity to adopt her grandchildren if a cousin could not or would not adopt them and the grandmother met certain conditions, and DCF failed to appeal that order. The cousin decided not to adopt. DCF failed to give grandmother any information regarding the adoption. DCF provided no evidence that they complied with the trial court's order. The district court overturned the lower court's order by holding that the grandmother had the equivalent of statutory priority, as she had been court approved as a potential adoptive placement. The court continues to have jurisdiction in a dependency proceeding after TPR is completed and through adoption proceedings. §§ 39.812(4) and 39.813 Fla. Stat. (2001). DCF's discretion in adoptive placement is not absolute. DCF's selection must be appropriate and consonant with DCF's policy. DCF's policy and Florida law provide that "relatives are the placement of choice." Fla. Admin. Code R 65C-16.002(2). In addition, grandparents are given preference to adopt when the child has lived with the grandparent for a period of six months and DCF shall notify the grandparent of the impending adoption before the adoption is filed § 3.0425(1) Fla. Stat. (2001). In this case, the children lived with the grandmother for three months, the trial court had previously granted conditional approval of the grandmother as an adoptive placement, and grandmother visited her grandchildren regularly and was "clearly interested in their welfare."

**Grandparent's statutory priority**

Sullivan v. Sapp, 866 So.2d 28 (Fla. 2004).

**Grandparent has no right to intervene**

Grandmother sought to intervene in a paternity action and sought award of visitation after child's mother died in a car accident while mother's motion for rehearing in a paternity action was pending. § 61.13 (2)(b) 2.c., Fla. Stat. (2001). Grandmother did not have the right to intervene in this case. The Court held that granting grandparent visitation rights without showing harm to child if there were no grandparent visitation, impermissibly infringes on the parent's state constitutional privacy right to raise his or her child (disapproving *Spence v. Stewart,* 705 So.2d 996 (Fla. 4th DCA 1998)).

## Dependency as to One Parent

### Home study prior to placement with non-offending parent

B.C. v. Department of Children and Families, 864 So.2d 486 (Fla. 5th DCA 2004).

**Requiring a home study before a dependent child**

The child in this case was found dependent as to mother who had a history of drug and alcohol abuse. The shelter order found probable cause to believe the children were at risk from both mother and father but did not assert those allegations against father in the dependency petition. Father argues that §39.01(14)(a) did not intend for children to be found dependent when allegations are only against

**is placed is not an unconstitutional imposition on a non-offending parent**

one parent and there is a non-offending parent available to take custody.

The court held that the statute governing dependency allows the finding of dependency even when there is a non-offending parent willing to assume custody. Further, the court finds that to require a home study before a dependent child is placed with a non-offending parent is not an unconstitutional imposition on the non-offending parent. The statute recognizes the state's compelling interest in the safety of children by the least restrictive means possible. The statute protects the child's interest by requiring a home study – at a minimum -- prior to the placement of the child with the non-offending parent.

P.M. v. Department of Children and Families, 865 So.2d 8 (Fla. 5th DCA 2003).

**A non-offending parent is not automatically entitled to custody of the child**

Child was found dependent as to mother but not as to father even though there were serious concerns about possible sexual abuse by father. The trial court placed the child in the custody of the Department of Children and Families (DCF). Father appealed. The Fifth District Court of Appeal held that the father had admitted to the facts which form the basis for the allegations of sexual abuse. He also admitted to the allegations of domestic abuse. A non-offending parent is not automatically entitled to custody of the child. There must be a home study and the court must find that the placement will not endanger the child. In this case, it is unclear whether or not a home study was completed. However, the trial court judge found that placement of the child with the father would endanger the safety, well-being, or physical, mental, or emotional health of the child. §39.5219(3)(b)

The court also held that circuit courts have the authority to impose requirements on the non-offending parent – in this case a psychosexual evaluation, domestic violence counseling and parenting classes.

# Websites Resources

### Florida Guardian ad Litem State Association

The Florida Guardian ad Litem State Association is a non-profit organization, whose mission is to improve the lives of abused and neglected children in Florida, by promoting the development, expansion and improvement of Guardian ad Litem Programs statewide. www.flgal.org

### TEAM Florida Partnership

A state level planning, technical assistance and policy support workgroup made up of representatives from child serving agencies, organizations and programs, advocates, consumers, legislative staff, Governor's staff and community facilitators from each district. www.teamfla.org

### Juvenile Justice Center

The American Bar Association Juvenile Justice Center is dedicated to monitoring the legislative, fiscal, policy, and administrative changes rapidly emerging in juvenile justice systems across the nation.
www.abanet.org/crimjust/juvjus/home.html

**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**

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