

The Conferences and Training Section, located in the Legal Resources portion of the Statewide Guardian ad Litem website, provides audio transcripts of training provided by experts in various areas of the law from across the state. Many of the experts also provide useful practice aids, checklists and other resources to enhance their presentation. Some of the latest training calls include:

- *LEGAL ETHICS IN DEPENDENCY PRACTICE, David Silverstein, Office of the Attorney General, Children's Legal Services Hillsborough County Florida*
- *VIEW FROM THE BENCH, Judge Altenbernd, Second District Court of Appeals, and Judge Seals, Twentieth Circuit Court*
- *2009 LEGISLATIVE UPDATE, Deborah Lacombe, Deputy General Counsel, Legislative Affairs, Statewide Guardian ad Litem Office*
- *GUARDIANSHIP 101 FOR CHILD ADVOCATES, Shannon M. Miller, MILLER & BRASINGTON, P.L.*
- *EDUCATION: THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008, Kristin Kelly and Kathleen M. McNaught, Center on Children and the Law, American Bar Association*
- *INDEPENDENT LIVING, Bill Booth, Esq., Juvenile Advocacy Project, Legal Aid Society of Palm Beach County*

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First District Court of Appeal

Failure to Provide Transcript

S.P. v. Florida Dept. of Children and Family Services, 2009 WL 2948459 (Fla. 1st DCA)

The father appealed the trial court's denial of his post-dependency motion for reunification with his child. The First District Court of Appeal (First DCA) held that because the father did not provide a transcript of the trial court's hearing on his motion for reunification, the First DCA was unable to overturn the trial court's order. Without a transcript the father failed to show whether he "adduced evidence supporting additional findings militating in favor of reunification." § 39.621(10), Fla. Stat. (2009).



Read the Opinion

Single Parent Termination

J.S. v. Florida Dept. of Children and Families, 2009 WL 3078150 (Fla. 1st DCA)

The Guardian ad Litem Program and the Department of Children and Families (department) appealed the trial court's order denying terminating father's parental rights and placing the child in permanent guardianship. The mother appealed the trial court's order terminating her parental rights.

The child was adjudicated dependent in 2004 based on the parent's home being "hazardous and unsanitary" and that the child was exposed to domestic violence. The parent's case plan included tasks to prevent the risk that the child would be exposed to domestic violence and to remedy the conditions of the home. The department then filed Petition for Involuntary Termination of Parental Rights, basing the termination on § 39.806(1)(c) and (e), Fla. Stat. (2006).

The psychologist, the guardian ad litem, and the department all recommended terminating the rights of both parents. The parent's had failed to complete their case plans in that the home was still unsanitary and both parents were living there; the mother had mental health issues that were unresolved; and a psychologist testified that the parent-child relationship had been reversed as the child had assumed the care-taking role.

The Mother. The trial court terminated the mother's parental rights. The trial court held that "the circumstances that caused the creation of the case plan had not been significantly remedied"; and "circumstances existed to justify terminating one parent's rights without terminating the rights of the other." § 39.811(6)(d) and (e). The mother appealed, alleging that the trial court erred in finding grounds for a single-parent termination under § 39.811(6).

The First District Court of Appeal (First DCA) agreed, holding that the trial court failed to appropriately consider the additional factors required and listed in §39.811(6). The trial court held that the mother meet the additional factors as she had children who she had her rights involuntarily terminated. The First DCA held that the court erred "because neither the department nor GAL submitted competent, substantial evidence of this fact at the termination of parental rights trial."

Secondly, §39.811(6)(e) "enumerates specific grounds that are sufficient to support a single-parent termination." The mother's rights were terminated under §39.806(1)(c) and (e) which are not included in the grounds that are sufficient to support a single-parent termination.

The trial court placed the child in permanent guardianship removing any harm to the child that might otherwise "demand" the termination of the mother's parental rights. The First DCA reversed the trial court's order terminating the mother's parental rights.

The Father. The trial court found that the department had not established the father's failure to substantially comply with the case plan. The trial court held that the issues regarding the unsanitary conditions of the home were because of the mother and her mental health issues. In lieu of terminating the father's rights, the trial court decided to place the child in permanent guardianship.

The First DCA held that the trial court erred in declining to find grounds for termination of the father's parental rights under § 39.806(1)(e). The trial court found that the father substantially complied with his case plan and yet found that the home, that he and the mother shared, was still unsanitary and unsafe for the child. The mother's rights had been terminated for failure to substantially comply because of the hazardous conditions of the house. The orders of the mother and father were irreconcilable. "Even if the father did not cause the condition of the home, the trial court's recognition that the home was still hazardous indicates that the father failed to take the necessary steps to remedy the problem, thus falling into non-compliance with the case plan."

The First DCA held that the trial court failed to "address specifically each of the manifest best interests factors enumerated in § 39.810." Although the trial court is not required to make specific written findings as to each factor, Florida Rule of Juvenile Procedure 8.260(a) requires all orders issued in juvenile proceedings to contain specific findings of fact and conclusions of law.

The First DCA held that the trial court's factual findings were "insufficient to facilitate meaningful appellate review." If the trial court's "failure to make adequate factual findings interferes with an appellate court's ability to determine whether an abuse of discretion has occurred, reversal is necessary."



Read the Opinion

Second District Court of Appeal

Single Parent Termination

In re R.R., 2009 WL 2767214 (Fla. 2d DCA)

The mother appealed the trial court's order terminating her parental rights. Both the father and mother's parental rights had been terminated by the trial court, but on appeal the order terminating the father's parental rights was reversed. The mother contends that because the trial court did not establish grounds for the mother's single parent termination, the termination must be reversed.

The Second District Court of Appeal (Second DCA) agreed with the mother stating that "unique problems arise when both parents' parental rights are terminated in a single proceeding and the appellate court subsequently determines that the termination of one parent's rights was improper." Section 39.811(6) requires a trial court to consider additional factors when terminating one parent's rights without terminating the rights of the other parent. Those factors are:

- (a) If the child has only one surviving parent;
- (b) If the identity of a prospective parent has been established as unknown after sworn testimony;
- (c) If the parent whose rights are being terminated became a parent through a single-parent adoption;
- (d) If the protection of the child demands termination of the rights of a single parent; or
- (e) If the parent whose rights are being terminated meets any of the criteria specified in § 39.806(1)(d) and (f)-(i).

The mother's rights were terminated because of failure to complete her case plan (§ 39.806(1)(e)) which is not a ground specified in § 39.811(6)(e). Additionally the Department of Children and Family Services did not introduce evidence to establish any other ground for termination under § 39.811(6)(a) through (d).

The Second DCA reversed and remanded for further proceedings.



Read the Opinion

Disparate Treatment of Similarly Situated Children

In re R.R., 2009 WL 2767215 (Fla. 2d DCA)

The father appealed the trial court's order terminating his parental rights to his son. The father had four children. The Department of Children and Family Services (department) filed two separate dependency petitions (one for the three oldest and another for the youngest) as the youngest child had a different mother. The case plans in both cases were identical and primarily dealt with the father's substance abuse. The department filed a termination petition as to the youngest child but not as to the oldest three because "the older children would have had to consent to adoption, they had each indicated that they would not consent, and thus termination would have resulted in them lingering in foster care." The three older children were eventually reunited with the father. The father's parental rights were terminated as to the youngest child.

The Second District Court of Appeal (Second DCA) expressed concern over the disparate treatment of the children. The Second DCA held that the "department may not make its decision as to whether to seek termination of parental rights solely on its assessment of the "adoptability" of each individual child with no reference to the least

restrictive means of protecting that child from harm.”

The Second DCA reversed and remanded the case.



Read the Opinion

Unmarried Biological Father –Right to Notice and Consent to Adoption

K.D. v. Gift of Life Adoptions, Inc., 2009 WL 2901298 (Fla. 2d DCA)

An unmarried biological father sought review of the final summary judgment terminating his parental rights based on his failure to file a claim with the Putative Father Registry and a pledge of commitment to his biological child. He raises five issues on appeal. First, that he was unable to file a claim of paternity form and comply with § 63.062(2) because the circuit court delayed too long in appointing counsel. Second, his hand-written response to the petition complied with the statutory requirements. Third, the notice of the petition was insufficient to inform him of his obligations. Fourth, Gift of Life Adoptions (GLA) should have provided him notice of his obligations to preserve his rights before filing the petition for termination of parental rights. Finally, that the court erred in resolving factual disputes about his compliance with the notice requirements in a summary judgment proceeding.

In order for an unmarried biological father to preserve his rights to notice and consent to adoption, he must fulfill the obligations in §§ 63.054, and 63.062(2). The statute requires that the unmarried biological father file a claim of paternity before a petition for termination of parental rights is filed. § 63.054(1). In fact, “the Office of Vital Statistics is precluded from recording a claim of paternity filed after the filing date of a petition for termination of parental rights.” In this case, the father was served notice after the petition for termination of parental rights had already been filed. The father was then unable to fulfill the requirements of §63.054 as he was precluded from being able to file a claim of paternity. The Second DCA held that the trial court erred in terminating parental rights as the unmarried biological father did not have sufficient or timely notice nor was he given an opportunity to comply.

The Second DCA held that “GLA’s failure to provide notice of the intended adoption plan at least thirty days before filing the petition for termination of parental rights requires reversal.”



Read the Opinion

Placement in Permanent Guardianship

In re J.S., 2009 WL 3151342 (Fla. 2d DCA)

The mother appealed the trial court’s order placing her children in permanent guardianship and terminating supervision. The trial court found that the mother was unemployed, lacked stable housing, and was noncompliant with domestic violence and couples counseling.

The Second District Court of Appeal (Second DCA) held that the trial court was required to explain why reunification with the mother was not possible. The order made only a general reference to “the circumstances from which the court previously based its findings that the children are dependent.” The Second DCA also held that the trial court erred in placing the children in permanent guardianship as evidence introduced to the trial court showed that the mother was making “determined efforts” to rehabilitate herself. Testimony also showed that the children were in a secure and stable placement.

The Second DCA reversed and remanded for reinstatement of the most recent case plan.



Read the Opinion

Third District Court of Appeal

Grandparents Visitation Order after Child Reunified

D.G. v. Department of Children and Families, 2009 WL 2601876 (Fla. 3d DCA)

The father sought a writ of certiorari, quashing the trial court's non-final order granting the maternal grandparents unsupervised weekly and biweekly visitation rights with the father's child, after the children had been returned to the father. The Third District Court of Appeal (Third DCA) held that in order grant "a writ of certiorari, this Court must find that:

- (1) the trial court departed from the essential requirements of the law;
- (2) this departure will result in material injury for the remainder of the case; and
- (3) the departure cannot be corrected on postjudgment appeal."

Grandparents are entitled to visitation rights when the child "has been adjudicated a dependent child and [has been] taken from the physical custody of the parent." However, all such visitation rights terminate "when a child has been returned to the physical custody of his or her parent." § 39.509(4)"

The Third DCA held that the trial court departed from essential requirements of law as the child had been returned to the father, and the father did not pose a threat of harm to the child.

The father's petition was granted and the order was quashed.



Read the Opinion

Neglect – Definition

R.S., Sr. v. Department of Children and Family Services, 2009 WL 2513826 (Fla. 3d DCA)

The parents appealed the trial court's order finding their child dependent. The Department of Children and Family Services (the department) based the petition on the parent's neglect of the child. § 39.01(14)(a), Fla. Stat. (2007). "[N]eglect" occurs when a child ... is permitted to live in an environment when such ... environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired." See § 39.01(43).

The parent's lived in separate houses. The father was arrested in his home while the child was at his house. However, the child was not regularly permitted to go to his father's house nor was he present when the father participated in illegal activities. The trial court found the child dependent because "(1) the father brought his son on occasion to his home; (2) cocaine, cash, and an unsecured firearm were found in the father's home; and, (3) the child was "present at the Father's house on the day of the parents' arrest, went to school within 25 feet of the Father's home, and frequently visited his friend next door to his Father's home on a regular basis."

The Third District Court of Appeal (Third DCA) held that "the trial court unlawfully expanded the reach of the case law of neglect." The department focused on the word *environment* in § 39.01(43), which would include "the totality of the child's exposure." The Third DCA did not expand the definition to include the *totality of the child's exposure* but instead interpreted "*live in an environment*" to mean *where the child lives*.

The Third DCA reversed the dependency adjudication as the child did not reside with the father at any time relevant to the dependency adjudication.



Read the Opinion

Fifth District Court of Appeal

Incarceration Alone is not Enough for Dependency Adjudication

B.T. v. Department of Children and Families, 2009 WL 2605254 (Fla. 5th DCA)

The father appealed the trial court's order adjudicating his child dependent based on the father's abandonment of the child. The father had been incarcerated since before his child was born and he is expected to remain in prison until 2011. The father argues that he has been in contact with the child through letters and pictures sent to him by the child's mother, and family. The Department of Children and Families (department) did not ask him how often he was in contact with the child. The father also contends that the only reason he cannot support his child is due to his incarceration.

The Fifth District Court of Appeal held that the department failed to introduce evidence as to the father's abandonment of his child. "Incarceration alone is not enough to support a dependency adjudication. *In re L.L.-R.*, 9 So.3d 707, 709 (Fla. 2d DCA 2009). Rather, it is a factor that courts may consider when determining whether the child has been abandoned. See also *In re T.H.*, 979 So.2d 1075, 1078 (Fla. 2d DCA 2008)."



Read the Opinion

Website Resources

Achieving Permanency

The Effect of Youth Presence in Dependency Hearings" (2006), *Juvenile and Family Justice Today*, National Council of Juvenile and Family Court Judges
www.clcla.org/Images/pdfs/pdfs_whatsnew_columns/Fall_06_feature.pdf

Why Should the Child Field Focus on Minimizing Placement Change as Part of Permanency Planning for Children? (2007), Casey Family Programs
<http://www.casey.org/Resources/Publications/pdf/MinimizingPlacements.pdf>

"Achieving Timely Permanency in Child Protection Courts: The Importance of Front-Loading Court Process" (Spring 2007), Edwards, L. *Juvenile and Family Court Journal*, National Council of Juvenile and Family Court Judges
members.ncjfcj.org/images/stories/publications/Journal/spring%2007_ncj%20journal.pdf

Child Welfare Information Gateway "Achieving & Maintaining Permanency"
www.childwelfare.gov/permanency

Resources to support professionals in ensuring a legally permanent, nurturing family for every child in out-of-home care through family reunification, adoption from foster care, guardianship, and permanent placements with relatives. Includes information on legal and court issues, preparing and supporting children and youth, interjurisdictional placements, post permanency services, and special issues in achieving permanency for older youth, children from minority groups, and children with disabilities.



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