

Third District Court of Appeal

TPR Not Automatic Upon a Finding of Egregious Abuse

C.T. v. State, Dept. of Children & Families, 22 So.3d 852 (Fla. 3d DCA 2009)

The mother appealed the trial court's termination of her parental rights. The trial court terminated her parental rights based on §39.806(1)(f), which provides that a ground for termination exists when "[t]he parent ... engaged in egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling." The court concluded that a ground for termination existed because the trial court had found the mother had committed egregious abuse of the mother's two other children.

In order to terminate parental rights the trial court must find: that grounds for termination exist; that the termination is in the children's manifest best interest; and is the least restrictive means of protecting the siblings from harm. §§ 39.806, 39.810.

The Third District Court of Appeal (Third DCA) held that the trial court erred in stating, as a legal standard, that termination of parental rights to all children was automatic upon the establishing of egregious abuse of one sibling. However, the Third DCA held that it was harmless error as the trial court considered both the manifest best interests of the children and whether termination was the least restrictive means of protecting the children from harm.

The Third DCA affirmed the trial court's termination of the mother's parental rights.



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Visitation Order Between Non-Relatives

L.D. v. Florida Dept. of Children and Families, 2009 WL 5126233 (Fla. 3d DCA)

The mother filed petition for writ of certiorari to review the trial court's order denying her motion to terminate visitation by a non-relative and the trial court's order denying the Florida Department of Children and Families' (the departments) motion for termination of supervision.

After being adjudicated dependent, the child was placed with a non-relative caregiver. The mother and caregiver entered into a guardianship agreement. The mother's parental rights were not terminated. The trial court reunified the mother and child and entered a case plan that provided for six months of protective supervision. The trial court also ordered unsupervised weekend visits every other weekend between the former caregiver and child.

The mother complied with the case plan and the visitation schedule. At the end of six months, the mother moved to end the court-ordered visitation, specifying that visitation would be in her discretion after the case closed. The trial court denied the motion to terminate visitation, stating that caregiver was the child's "psychological parent" and that it was in the child's best interests to have continued visitation. The department filed a motion to terminate protective supervision, which was denied by the trial court (because the parties could not agree on the former caregiver's visitation rights).

The Third District Court of Appeal (Third DCA) granted the petition and quashed the trial court's order. The Third DCA held that Florida law makes no provision for visitation between unrelated parties. The court has "no authority to compel visitation between a child and one who is neither a parent, grandparent, nor great-grandparent. Visitation rights are, with regard to a non-parent, statutory, and the court has no inherent authority to award visitation." *Meeks v. Garner*, 598 So.2d 261, 261 (Fla. 1st DCA 1992). Section 39.509, Florida Statutes (2008), permits visitation between a child and grandparents or great-grandparents only when the child has been adjudicated dependent. Once the child has been reunified with the parent, visitation rights terminate. The caregiver was not a relative.



[Read the Opinion](#)

Fourth District Court of Appeal

Sufficiency of Shelter Order

P.U. v. Department of Children and Families, 2009 WL 4928008 (Fla. 4th DCA)

The mother filed a writ of certiorari after the trial court entered a shelter order as a result of the Department of Children and Families (the department) alleging that the child had been sexually abused by a neighbor.

The mother had temporarily lived with friends and while at the residence, the child was sexually abused. The mother moved out of the house and reported the incident. The trial court found that the mother failed to protect her child "from sexual abuse by failing to provide a safe suitable residence, despite the provision/attempt at services."

The Fourth District Court of Appeal (Fourth DCA) held that the trial court's shelter order departed from essential requirements of law. "Section 39.402(1)(a), Fla. Stat. (2009), permits the removal of a child and placement of the child in shelter care if there is probable cause to believe that the child has been "abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment." Section 39.402(8)(d), provides that, to continue the placement in shelter care, the Department of Children and Families must establish probable cause that reasonable grounds for removal exist, and that the provision of appropriate and available services will not eliminate the need for placement."

The Fourth DCA held that the department did not establish probable cause under either §§ 39.402(1)(a) or (8)(d). The department, at the shelter hearing, presented no evidence that the mother could have, or should have, foreseen the sexual abuse. Further, the department represented that the mother acted appropriately following the incident by reporting it immediately and moving from that residence to stay with other friends.

The Fourth DCA held that "the Department failed to demonstrate probable cause that the mother abused, neglected, or abandoned the child, or failed to protect her from such, based on either the mother's alleged failure to protect the child from sexual abuse, or the mother's frequent moves. As a result, it was irrelevant whether the department made reasonable efforts to provide available services or whether the mother allegedly rejected those services."



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Fifth District Court of Appeal

Termination of Parental Rights – Egregious Conduct

J.R. v. Department of Children and Families, 2010 WL 322173 (Fla. 5th DCA)

The father appealed the termination of his parental rights to his five adoptive children. The youngest child had been severely abused. After the incident, the father failed to seek medical attention for over six hours which led to the child's death. The Fifth

District Court of Appeal upheld the trial court's order finding the father's conduct to be egregious and the trial court made the required findings pursuant to § 39.806.



Read the Opinion

Case Plan Amendment – Due Process Rights

R.N. v. Department of Children and Families, 2010 WL 198471 (Fla. 5th DCA)

The father appealed the trial court's order amending his case plan to include additional tasks. The Department of Children and Families' (the department) filed an expedited motion for modification of visitation based on an allegation of a new incident of a domestic altercation, between the father and mother.

The father argues that the department's expedited motion for modification of visitation with his children did not provide him notice that the case plan might be amended therefore denying his due process rights. He based his argument on two cases whose rulings were "based on application of the former rule addressing the process for the amendment of case plans-Florida Rule of Juvenile Procedure 8.400(b). In 2007, the case plan amendment rule was significantly modified and is now set forth in Rule 8.420. The new rule was adopted in response to the Legislature's enactment of § 39.6013, Florida Statutes (2006) they were based on application of the former rule addressing the process for the amendment of case plans-Florida Rule of Juvenile Procedure 8.400(b). In 2007, the case plan amendment rule was significantly modified and is now set forth in Rule 8.420. The new rule was adopted in response to the Legislature's enactment of section 39.6013, Florida Statutes (2006)."

The Fifth District Court of Appeal upheld the trial court's order and found "the rule does not require that specific prior notice of a possible amendment be given. Here, the trial court's actions complied with both §39.6013 and Rule 8.420. The trial court determined, after a duly noticed evidentiary hearing, that there was a demonstrated need to amend the case plan based on circumstances that arose after its approval of the initial case plan. The amendment to the case plan was deemed necessary for the protection of the children, if and when, the father was again granted the right of unsupervised contact with his children. Substantial competent evidence supported the trial court's decision. The father had notice and an opportunity to be heard on the new allegations and was aware that [the department] was seeking a restriction on his visitation rights as well as any other relief necessary and reasonable to protect the children."



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Appointment of Counsel for Parent

Justice Administrative Com'n v. Harp, 2009 WL 5150300 (Fla. 5th DCA)

Justice Administrative Commission (JAC) appealed the trial court's order requiring it to pay the attorney fees of a mother's court-appointed private counsel in a termination of parental rights proceeding in which the mother executed a voluntary written surrender. The Fifth District Court of Appeal (Fifth DCA) agreed with the JAC, and quashed the trial court's order.

The Fifth DCA held that the plain language of §29.007(2), Fla. Stat. (2009) and §39.807(1), authorizes the JAC to pay attorney's fees to private attorneys appointed by the court to represent indigents or other litigants in civil proceedings that require court-appointed counsel in accordance with state and federal constitutional guarantees or statutes. However the statute, which establishes the statutory right to appointed counsel in termination proceedings, specifically excludes "any parent who has voluntarily executed a written surrender of the child and consent to the entry of a court order." § 39.807(1)d.



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Website Resources

Children of Incarcerated Parents

Working Effectively with Children of the Incarcerated, their Parents and Caregivers (2009) <http://www.dshs.wa.gov/ca/pubs/cfip.asp>

These video modules from the Washington State Department of Social and Health Services are designed to help social workers and other social service providers understand the particular needs of families with an incarcerated parent and learn effective practices in working with children of the incarcerated, their parents and caregivers.

National Resource Center on Children and Families of the Incarcerated

<http://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.

- NRCCFI has compiled a list of helpful materials and presents them in an online library format. The Children of Prisoners Library and the Children of Prisoners Library with Spanish Translation focus on resources for people working with the children of the incarcerated. The Incarcerated Fathers Library contains resources on fathers that are incarcerated.

Center for Children of Incarcerated Parents <http://www.e-ccip.org/index.html>

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

Children of Incarcerated Parents: An Action Plan for Federal Policymakers

http://www.reentrypolicy.org/jc_publications/federa_action_plan_/Children_Incarcerated_Parents_v8.pdf

This action plan reviews both federal and state barriers to identifying and serving children of incarcerated parents, and offers policy recommendations for the U.S. Congress and the Administration. The action plan is designed to help federal leaders improve policies for children of incarcerated parents, but also includes recommendations of value to states and local governments that can facilitate and complement federal initiatives and result in better responses to this population. (2009)

comments or suggestions - elizabeth.damski@gal.fl.gov

