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## Termination of Parental Rights

*Manifest Best Interest – Least Restrictive Means*

**C.M. v. Department of Children and Families, 2007 WL 412790 (Fla. 1st DCA)**

The trial court terminated father's parental rights (TPR). The father appealed. The father argued that the TPR was not the least restrictive means available to protect his child because there was a relative placement available that hadn't been considered; and, second, that no competent, substantial evidence supported the trial court's finding that the available relative placement was not suitable.

The Department of Children and Families (the department) had not yet completed the background check and home study of the possible relative placement. The First District Court of Appeal (First DCA) affirmed the TPR, but remanded the case to determine whether the child's manifest best interests would be served by placing the child with the available relative placement.

Whether to terminate parental rights involves two key determinations: 1) whether the department has proved at least one of the grounds for termination; and 2) whether the child's manifest best interests would be served by granting the TPR petition.

Elements of "least restrictive means" test are separate from, and not to be confused with, "manifest best interests" The First DCA stated adoption is the preferred permanency alternative after termination. The First DCA further stated that TPR does not, of itself, exclude the possibility of adoptive placement with a suitable relative.

The First DCA affirmed the TPR but, remanded the case to consider the possibility of an adoptive placement with the available relative placement.

*Termination of Parental Rights – Evidence*

**R.P. v. Department of Children and Family Services, 2007 WL 865807 (Fla. 2d DCA)**

The father appealed the trial court's judgment terminating his parental rights based on the allegations that he had sexually abused his child. The father argued that the child was incompetent to testify, and that the evidence provided to the trial court was not legally sufficient.

The Second District Court of Appeal (Second DCA) held that the evidence in this case was legally insufficient for termination and reversed and remanded the case for reinstatement of the father's parental rights.

The five-year old child fell short of being a competent witness. The trial “court never allowed the father to voir dire, posed few questions to clarify her ability to understand the difference between the truth and a lie, and never made the required findings.” The introduction of the child’s testimony constituted harmful, reversible error as her testimony should have been disqualified. The Second DCA also held that the trial court relied on unconvincing medical evidence, then considered it in conjunction with the child’s incompetent testimony, and taken together held that it constituted clear and convincing evidence of abuse. The Second DCA held that this weighing of the evidence constituted reversible error.

The Second DCA also stated that because the transcripts of the case were “dismal” they would have reversed because of the lack of a meaningful transcript.

*Jurisdiction, service of process, diligent search*

**Department of Children & Families v. J.J.E., 2007 WL 935064 (Fla. 5th DCA)**

Father’s parental rights were terminated. The means of service was by publication. When the father learned of the termination, much later, he alleged that the child was being wrongfully restrained in the custody of the Department of Children and Families (the department) because jurisdiction had never been obtained over him. The trial court “set out to determine whether the department had performed the statutorily required diligent search prior to using publication as a means to serve process on and gain jurisdiction over the father.”

When personal service cannot be made, service by publication (constructive service) may be made but with strict statutory compliance. The facts must show that the “complainant reasonably employed the knowledge at his command, made diligent inquiry and exerted an honest and conscientious effort appropriate to the circumstance to acquire the information necessary to enable him to effect personal service of the defendant.”

The trial court held that the department did not conduct the statutorily required diligent search for the father. The department looked in the phone book and drivers license records, but failed to look at any other agencies or county public records. Nor did the department contact the Department of Revenue (Child Support) who had recently issued an Order Suspending Child Support Payments to the father – with his address.

The Fifth District Court of Appeal affirmed the trial court’s finding that service of process by publication in which agency sought to obtain jurisdiction over father was invalid (no diligent search), and the subsequent order terminating father’s rights was void.

*Putative Father Registry*

**In re Baby H., 2007 WL 914676 (Fla. 2d DCA)**

The biological father appealed the trial court’s termination of his parental rights (pending adoption) which was based on his failure to file a notarized claim of paternity with Florida’s Putative Father Registry.

The Second District Court of Appeal (Second DCA) reversed the trial court’s order, in accordance with two previous cases - (*In re Baby R.P.S.*), 942 So.2d 906 (Fla. 2d DCA 2006), and *A.S. v. Gift of Life Adoptions, Inc. (In re Termination of Parental Rights for the Proposed Adoption of Baby A.)*, 944 So.2d 380 (Fla. 2d DCA 2006), and held that the failure of the biological father “to meet the requirement of statute governing consent to adoption for the filing of a notarized claim of paternity with the Florida Putative Father Registry did not constitute a basis for terminating parental rights.” Section 63.062(2)i Fla. Stat. (2006).

The Second DCA certified the following question:

IN A PROCEEDING ON A PETITION FOR TERMINATION OF PARENTAL RIGHTS PENDING ADOPTION, MAY THE PUTATIVE FATHER'S RIGHTS IN RELATION TO THE CHILD BE TERMINATED BASED ON THE PUTATIVE FATHER'S FAILURE TO PROPERLY FILE A CLAIM OF PATERNITY WITH THE FLORIDA PUTATIVE FATHER REGISTRY?

## Dependency

*Domestic Violence, Failure to Protect and Substance Abuse*

### **In re L.C., 947 So.2d 1240 (Fla.2d DCA)**

The trial court held that the mother's children were dependent. The mother appealed to the Second District Court of Appeal (Second DCA). The Second DCA reversed the trial court's dependency adjudication.

The trial court based its dependency adjudication on three allegations – domestic violence, failure to protect and substance abuse.

*Domestic Violence:* “Domestic violence may constitute either harm to a child's health or welfare as defined in § 39.01(30), or abuse of a child as defined in § 39.01(2).” Harm can occur when a person “[e]ngages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.” § 39.01(30)(i). However, domestic violence may constitute “harm” only if it occurs in the child's presence. *M.B. v. Dep't of Children & Family Servs. (In re K.B.)*, 937 So.2d 709, 710 (Fla. 2d DCA 2006); *S.B. v. Dep't of Children & Family Servs. (In re E.B.)*, 834 So.2d 415, 416 (Fla. 2d DCA 2003). Some evidence must show that the child has seen the violence or was aware of it. *A.R. v. Dep't of Children & Family Servs. (In re J.A.H.)*, 876 So.2d 647, 649 (Fla. 2d DCA 2004); *D.D. v. Dep't of Children & Families*, 773 So.2d 615, 617-18 (Fla. 5th DCA 2000). For domestic violence to constitute “abuse,” the child must witness the violence and the violence must result in some physical, mental, or sexual injury to the child. *M.B.*, 937 So.2d at 711; *W.T. v. Dep't of Children & Families*, 787 So.2d 184, 185 (Fla. 5th DCA 2001).”

In this case, the only evidence of domestic violence that could have affected the children was the father's written petition for a domestic violence injunction against the mother when the oldest child was born. In that petition, the father alleged that domestic violence happened in front of the oldest child. The father later denied any domestic violence occurred in front of the child, and stated he had “inadvertently” checked the box indicating it had on the petition form. This was the only evidence the Department of Children and Families (the department) submitted regarding domestic violence that happened while the children were alive.

The Second DCA held that the domestic violence injunction petition was clearly hearsay and because the father's statement in the petition was not made under oath, in a trial or other proceeding, it did not meet the hearsay exception requirements for prior inconsistent statements. Section 90.801(2)(a) Fla. Stat.(2006).

*Failure to Protect:* The dependency petition also alleged that the mother failed to protect the children. “In failure-to-protect cases, two nexuses must be proved: first, that the abuser's acts demonstrate that he or she will continue the abuse; and second, that the parent's behavior shows that he or she will continue failing to protect the child.” The Second DCA held that there was no evidence to support either of the required nexuses.

*Substance Abuse:* The trial court also adjudicated the children dependent based on § 39.01(30)g, Fla. Stat.(2006) “the mother's chronic and severe use of illegal drugs has demonstrably affected the children.” The Second DCA reversed the trial court's dependency adjudication based on the mother's substance abuse because the only

evidence entered was based on the earlier petition for a domestic petition filed by the father which stated that the mother took the child on an 8-hour drug binge. The father disavowed this allegation in his testimony at hearing. As discussed earlier, the document was hearsay and did not meet any hearsay exception requirements.

The Second DCA reversed the dependency adjudication.

*Failure to Protect – Domestic Violence*

**M.M. v. Department of Children and Families, 946 So.2d 1287 (Fla. 4th DCA 2007)**

The mother appealed the trial court's dependency adjudication of her child which was based on the mother's failure to protect the child from the father's domestic violence.

The Fourth District Court of Appeal (Fourth DCA) held that evidence did not support the trial court's finding that child was dependent based on mother's alleged failure to protect child from domestic violence. "The incidents of domestic violence did not take place in front of the child, mother successfully prevented father from having any contact with child subsequent to the two incidents of domestic violence, and no evidence indicated that mother's failure to extend the temporary restraining order entered against father constituted imminent harm to child."

The Fourth DCA reversed the dependency adjudication.

*Financial Inability to Care for Children: Not in itself a basis for dependency adjudication*

**S.H. v. Department of Children and Families, 2007 WL 601521 (Fla. 4th DCA)**

The trial court adjudicated the father's children dependent and the father appealed the decision. The Department of Children and Families (the department) based the dependency petition on the father's unstable housing and employment, and the father's inability to provide children with basic necessities, such as food, clothing, and shelter. Section 39.01(43) Fla. Stat. (2006) states that, "the foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person."

The Fourth District Court of Appeal (Fourth DCA) held that the dependency adjudication was based primarily on the father's financial inability to care for children. The Fourth DCA held that "While these circumstances may serve as grounds for an adjudication of dependency, in the instant case they cannot, because the evidence at bar does not disclose any offer of services which were rejected by the father."

The Fourth DCA reversed the trial court's dependency adjudication.

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## Failure to Substantially Comply with Case Plan

*What is "substantial compliance"*

**B.L. v. Department of Children and Families, 2007 WL 776546 (Fla. 5th DCA)**

Following a permanency hearing, the trial court entered an order terminating reunification efforts for mother and father, and ordered child's long-term placement with relatives. The trial court's order was based on the parent's failure to substantially comply with their case plan. The mother and father appealed the trial court's order.

The parents argued that substantial compliance was more than an inquiry about the completed tasks in their case plan. Substantial compliance is defined in § 39.01(68) Fla. Stat. (2006), as "circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child's parent."

The parents argue that at about the same time the order for long-term relative

placement was signed, a dependency petition for their newborn child was dismissed. The parents maintain that it is “inconceivable” that the trial court could find that the newborn was not at substantial risk of abuse, abandonment or neglect, and yet decide that this child would be endangered if returned to the parents' custody.

The Fifth District Court of Appeal (Fifth DCA) agreed with the parents and held that “substantially comply” is a term of art and requires more than just a determination that the case plan has or has not been completed before long-term relative placement can be ordered.

The Fifth DCA reversed and remanded the case.

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## Due Process

*Procedural due process rights were violated when case was closed at the judicial review hearing without prior notice that permanency would be decided*

**R.H. v. Department of Children and Families, 948 So.2d 898 (Fla. 5th DCA 2007)**

Children were adjudicated dependent as to their mother. They were temporarily placed with their respective fathers. The mother's case plan had a goal of reunification. The mother later moved for reunification with the children. The trial court denied her motion, and instead granted fathers' ore tenus motions to close the case, and awarded permanent custody to the fathers. The mother appealed.

The mother argued that her procedural due process rights were violated when the trial court closed the case at the judicial review hearing without prior notice that permanency would be decided.

The Fifth District Court of Appeal (Fifth DCA) agreed with the mother and held that her procedural due process rights were violated when court closed case at judicial review hearing without prior notice that permanency would be decided. Florida Rule of Juvenile Procedure 8.345(b) provides that any party requesting termination of supervision or the jurisdiction of the court or both shall do so solely by written motion or in a written report to the court.

The Fifth DCA also held that the trial court order had the effect of modifying the case plan – this was done without the required evidentiary hearing.

The Fifth DCA disagreed with the mother's contention that she substantially complied with her case plan as the record shows ample evidence that she did not.

The Fifth DCA reversed and remanded the trial court's order closing the case and awarding permanent custody to the fathers.

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## Evidence

*Preserving the Record for Appeal*

**Elwell v. State, 2007 WL 777521 (Fla. 2d DCA)**

Defendant was convicted of attempted lewd and lascivious molestation. The defendant appealed. The defendant argued that the trial court erred in failing to make the specific findings required by § 90.803(23), Fla. Stat. (2003), before admitting child-hearsay statements into evidence.

**Preserving and Issue for Appeal:** The Second District Court of Appeal (Second DCA) held that the defendant failed to preserve the issue of admissibility of child-hearsay statements for appeal. To preserve an issue on appeal “first, a litigant must make a

timely, contemporaneous objection; second, the party must state a legal ground for that objection; and third, in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below. Section 924.051(1)(b) Fla. Stat. (2006).”

The Second DCA held that the defendant did not properly preserve for appeal his argument that the trial court failed to make specific factual findings as required by § 90.803(23). In addition, “the failure of a trial judge to make sufficient findings under the statute, in and of itself, does not constitute fundamental error.” *State v. Townsend*, 635 So.2d 949 (Fla.1994).

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## Website Resources

### Young Adults Aging Out of Foster Care

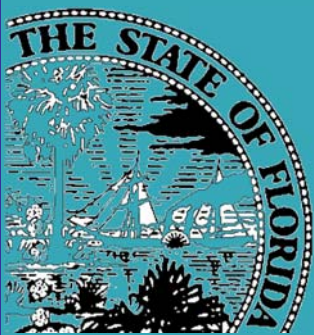
[Aging Out](#) What happens when you’ve grown up in foster care and suddenly you’re on your own? This documentary film was broadcast nationwide on PBS in May 2005 and can be viewed on the Jim Casey Youth Opportunities Initiative website. ([Video](#))

[Foster Club](#) has developed a list of Questions and Answers that young adults aging out of the foster care system may find helpful. Young adults can look up questions about what to expect from their foster family, questions about school, leaving foster care, health, and even the legal process. It’s a great site!

[It's My Life: Employment](#) Career and employment success for young people from foster care is rooted in an ongoing journey connecting parents, caregivers, friends, mentors, advocates, communities, schools, and employers. Specific tools and strategies can help in this process. Expanding on the *It's My Life* transition framework, this practical, concise handbook is intended for child welfare professionals and others responsible for helping young people prepare for transition to adulthood and the workplace.

[It's My Life: Post Secondary Education and Training \(2006\)](#) helps child welfare professionals prepare young people from foster care for financial and academic success after high school.

[It's My Life: Financial Aid Excerpt \(2006\)](#) For those primarily interested in helping young people find funding sources for college or vocational training, a 30-page excerpt from the guide.



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