

2020 Developments in Dependency Case Law Summary Guide

<p><u><i>E.S. v. Dep’t of Children & Families,</i></u> <i>286 So. 3d 934 (Fla. 2d DCA 2019), and</i> <u><i>M.S. v. Dep’t of Children & Families,</i></u> <i>286 So. 3d 864 (Fla. 2d DCA 2019)</i></p>	<p>The Second District reversed an imminent neglect dependency adjudication. The children were originally sheltered from the parents due to substance abuse and mental health concerns following an incident where the parents were Baker Acted. But there was no evidence that the incident resulted in any harm to the children, and all witnesses testified that the children appeared fed, clean, and well-cared for. At trial, no admissible evidence was presented that the parents engaged in substance abuse, had substance abuse issues, or were diagnosed with any mental health disorders that placed the children at risk of future abuse or neglect. The appellate court found the isolated incident that led to the shelter was not, in and of itself, competent substantial evidence that the children were in an imminent risk of harm from the parents.</p>
<p><i>In re: Amendment to the Florida Rules of</i> <i>Judicial Administration,</i> <i>288 So. 3d 512 (Fla. 2019)</i></p>	<p>The Florida Supreme Court adopted Rule of Judicial Administration 2.570 creating a parental leave continuance. However, for cases governed by the Florida Rules of Juvenile Procedure, a motion for continuance based on the parental leave of the lead attorney will be governed by Rule 2.545(e) and any applicable Florida Rule of Juvenile Procedure rather than Rule 2.570, except in cases governed by Part III of the Florida Rules of Juvenile Procedure (Dependency and TPR Proceedings), which require a motion for a continuance based on parental leave of the lead attorney to be governed by Florida Rule of Juvenile Procedure 8.240(d).</p>
<p><u><i>N.C. v. Dep’t of Children & Families,</i></u> <i>290 So. 3d 580 (Fla. 2d DCA 2020)</i></p>	<p>The Second District quashed a trial court order authorizing immunizations for the children over the mother’s objection, finding the trial court did not strictly comply with the statutory requirements of section 39.407(2)(c). The Department had not obtained an initial medical screenings of the children and there was no evidence presented from a licensed health care professional to demonstrate that the immunizations were medically necessary.</p>
<p><u><i>A.B. v. Dep’t of Children & Families,</i></u> <i>291 So. 3d 161 (Fla. 5th DCA 2020)</i></p>	<p>The Fifth District held the trial court did not abuse its discretion when it denied the mother’s motion to set aside her consent because she failed to meet the Florida Supreme Court’s three-prong test, specifically the existence of a meritorious defense.</p>

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<p><u>A.W. v. Dep't of Children & Families,</u> 3D19-748, 2020 WL 559186 (Fla. 3d DCA 2020)</p>	<p>The Third District affirmed the trial court's dependency order because there was competent substantial evidence to demonstrate that the mother exposed the children to substantial risk of imminent neglect by failing to provide a proper and safe home environment for them and by failing to comply with her court-ordered visitations. However, the appellate court remanded the case with directions for the trial court to amend the dependency order and remove the finding related to the mother's continued substance misuse, which was not supported by competent substantial evidence.</p>
<p><u>S.S. v. Dep't of Children & Families,</u> 3D19-2525, 2020 WL 559147 (Fla. 3d DCA 2020)</p>	<p>The Third District granted the mother's petition for writ of prohibition, preventing the trial judge from conducting further proceedings in the dependency case, because of the trial judge's commentary concerning the credibility of the mother and her family members before the completion of the mother's direct-examination or the presentation of any witnesses in support of her case.</p>
<p><u>Dep't of Children & Families v. F.A.P.,</u> 291 So. 3d 130 (Fla. 4th DCA 2020)</p>	<p>The Fourth District reversed in part an order denying the Department's expedited TPR petition. The Department filed an expedited petition to terminate parental rights because the child suffered 2 bone fractures while in the parents' care and custody. The Department appealed the trial court's denial order, arguing that the trial court failed to consider whether the child was dependent. The appellate court held the trial court failed to consider whether the child was dependent pursuant to section 39.811(1), which it was statutorily required to do. The appellate court found the child dependent.</p>
<p><u>R.V. v. Dep't of Children & Families,</u> 5D20-162, 2020 WL 1645337 (Fla. 5th DCA 2020)</p>	<p>The Fifth District affirmed an order terminating the mother's parental rights because she only challenged 1 of 5 grounds that were proven for the termination of her parental rights. She admitted that the other 4 grounds, as well as the trial court's findings related to least restrictive means and manifest best interests, were supported by the evidence.</p>

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<p><i>B.N. v. Dep’t of Children of Families, 292 So. 3d 796 (Fla. 4th DCA 2020)</i></p>	<p>The Fourth District reversed an order terminating the father’s parental rights. The child was sheltered from the mother and adjudicated dependent based on the mother’s consent. The mother surrendered her parental rights to the child. The GAL Program petitioned to terminate the non-offending father’s parental rights because he had not been able to pass a homestudy in more than a year’s time. After the GAL Program filed its TPR petition, the father agreed to do a case plan to address his issue with obtaining safe and stable housing. He was only given 3 months to substantially comply with his case plan. After the 3 months passed, the GAL Program filed an amended TPR petition, which the trial court granted. The appellate court found (1) the evidence was not competent and substantial and (2) the GAL Program failed to prove the Department made reasonable efforts to assist the Father with obtaining housing before TPR was sought.</p>
<p><i>A.D. v. Dep’t of Children & Families, 3D19-1732, 2020 WL 1697212 (Fla. 3d DCA 2020)</i></p>	<p>The Third District reversed an adjudication of dependency. The mother’s parental rights to 2 older autistic children, N.D. and Z.D., were terminated for abuse in 2005 before the birth of J.H., who is also autistic. At the end of 2006, the father returned N.D. and Z.D. to the mother. N.D. and Z.D. had been living with the mother for 12 years when an abuse report was received alleging the mother attacked and scratched Z.D. Upon investigation, no injuries to Z.D. were found. The children were sheltered from the mother approximately 50 days later, after the investigator received the file with the prior TPR order. At the time of removal, the mother reported that N.D. and Z.D. were on medication; however, they reported they had not received their medication for months. The trial court adjudicated J.H. dependent based on the mother’s violation of the order terminating her parental rights and her inability to provide care for J.H. based on the medication issue with N.D. and Z.D. The appellate court found the Department failed to prove a nexus between the mother’s past abuse to N.D. and Z.D. and any risk of harm to J.H. There had been no abuse of N.D. or Z.D. during the 12-year period that the mother had physical custody of them. It also found the mother’s failure to provide medication to N.D. and Z.D. did not pose a risk to J.H. because J.H. did not need medication.</p>

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<p><u>L.C. v. Dep't of Children & Families,</u> <u>3D19-1786, 2020 WL 1870351</u> <u>(Fla. 3d DCA 2020)</u></p>	<p>The Third District reversed the portion of a disposition order that required the mother to submit to a substance abuse evaluation. During the case plan approval hearing, the Department asked for the mother to submit to a substance abuse evaluation. The mother requested an evidentiary hearing to determine whether good cause had been shown, but the trial court approved the case plan without conducting the evidentiary hearing. The appellate court held the trial court abused its discretion when it ordered the mother to submit to a substance abuse evaluation because the only references to her alleged substance abuse were found in the allegations set forth in the shelter and dependency petitions, which were not competent and substantial evidence. The appellate court remanded the case for an evidentiary hearing to determine whether good cause existed to require the mother to submit to a substance abuse evaluation.</p>
<p><u>M.H. v. Dep't of Children & Families,</u> <u>294 So. 3d 452 (Fla. 5th DCA 2020)</u></p>	<p>The Fifth District reversed a permanent guardianship order. The parents consented to the children being adjudicated dependent based on one child's unexplained femur fracture. The father was charged with aggravated child abuse, entered a plea agreement, and was ordered to have no unsupervised contact with minors for 5 years. The mother requested reunification with the children, while the Department filed a motion for permanent guardianship. Following an evidentiary hearing, the trial court denied the mother's motion for reunification and granted the Department's motion for permanent guardianship. It relied primarily on the special condition of the father's probation and the mother's refusal to separate from the father, who was her husband. The appellate court reversed and remanded the trial court's orders, finding the Department presented no evidence as to what danger might befall the children should they be left with the father contrary to the probation order.</p>
<p><u>I.J. v. Dep't of Children & Families,</u> <u>3D19-2223, 2020 WL 2176518</u> <u>(Fla. 3d DCA 2020)</u></p>	<p>The Third District affirmed the trial court's the supplemental disposition and case plan approval order requiring him to submit to a psychological and substance abuse evaluation. Good cause for a substance evaluation is shown when the parent has a history of drug use, and good cause for a psychological evaluation is established when a parent participated in incidents of domestic violence and possesses a criminal history that includes incidents of violence.</p>

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<p><u><i>B.R. v. Dep't of Children & Families,</i></u> <i>3D19-11785, 2020 WL 2176558</i> <i>(Fla. 3d DCA 2020)</i></p>	<p>The Third District denied the mother's petition for a writ of certiorari to quash the case plan approval order that required her to submit to a mental health evaluation. As part of her consent plea to the adjudication, the mother admitted that she needed trauma-informed individual therapy because she was still involved in a relationship with the father who was her abuser, and she continued to leave her child with the father, in violation of a court order, who was an inadequate caregiver.</p>
<p><u><i>H.S.S. v. Dep't of Children & Families,</i></u> <i>3D20-0091, 2020 WL 2464750</i> <i>(Fla. 3d DCA 2020)</i></p>	<p>The Third District affirmed the adjudication of dependency because the trial court applied the correct law and because competent substantial evidence supported the trial court's findings of abuse and neglect.</p>
<p><u><i>B.A. v. State Dep't of Children & Families,</i></u> <i>4D20-270, 2020 WL 2745452</i> <i>(Fla. 4th DCA 2020)</i></p>	<p>The Fourth District reversed and remanded an expedited TPR order as to the mother. It found the Department failed to prove section 39.806(1)(c) because there was a reasonable basis to believe that the mother would improve because she became sober previously and she was able to become sober again immediately upon the children's current removal. The mother also successfully completed a more comprehensive substance abuse treatment program than she previously completed even though she was not offered a case plan. It also found the Department failed to prove a history of domestic violence between the parents or that the parents were in an ongoing relationship. Finally, the appellate court found the Department did not prove section 39.806(1)(l) because it failed to establish that the conditions that led the children's 3 removals were all caused by the mother.</p>

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<p><u>L.A. v. Dep't of Children & Families,</u> <u>2D19-4856, 2020 WL 2892384</u> <u>(Fla. 2d DCA 2020)</u></p>	<p>The Second District reversed an expedited TPR order finding the Department failed to prove a ground for termination of the mother's parental rights. It found the Department failed to prove section 39.806(1)(c) because only the mother testified about the incident that led to the child's removal. The Department offered no witness to refute the mother's testimony, nor did it demonstrate that hers and the child's physical condition on the day of the removal was as it alleged in its TPR petition. The mother was not offered a case plan and she did not fail to follow through with substance abuse treatment. Additionally, the appellate court found the Department failed to prove section 39.806(1)(l) because, other than the shelter order, no evidence was offered to prove the child's current removal and out-of-home placement were caused by the mother.</p>
<p><u>R.S. v. Dep't of Children & Families,</u> <u>3D20-116, 2020 WL 2892560</u> <u>(Fla. 3d DCA 2020)</u></p>	<p>The Third District found the trial court did not abuse its discretion when it adjudicated the 7-month-old child dependent as to the mother for both abuse and neglect after the child sustained fractures in both legs, an indicator of child abuse, and the mother, who shared sole caregiver responsibility with the father, could not explain the fractures. The trial court relied on the testimony of multiple medical experts who treated the child.</p>
<p><u>W.R. v. Dep't of Children & Families,</u> <u>3D20-0109, 2020 WL 3261131</u> <u>(Fla. 3d DCA 2020)</u></p>	<p>The Third District found the father's incarceration may be a factor, when considered with other factors in evidence, in determining whether he abandoned or neglected the child, and the trial court did not abuse its discretion when it adjudicated the child dependent because it applied the correct law and its ruling was supported by competent substantial evidence.</p>
<p><u>D.M. v. Dep't of Children & Families,</u> <u>3D19-2323, 2020 WL 3443264</u> <u>(Fla. 3d DCA 2020)</u></p>	<p>The Third District found on rehearing that when a parent voluntarily surrenders their parental rights pursuant to section 39.806(1)(a), Florida Rule of Juvenile Procedure 8.520(c) does not require the trial court to make additional findings of fact specifying the act or acts justifying TPR.</p>

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<p><i><u>K.J. v. Dep't of Children & Families,</u></i> <i>1D19-3887, 2020 WL 3480839</i> <i>(Fla. 1st DCA 2020)</i></p>	<p>The First District affirmed the TPR order as to the mother because there was competent substantial evidence to support the order. It also found a cell phone video, which may have been erroneously entered into evidence, did not give cause for reversing the TPR order because the video was cumulative to other evidence that had been properly introduced.</p>
<p><i><u>T.B. v. Dep't of Children & Families,</u></i> <i>4D19-3862, 2020 WL 3563991</i> <i>(Fla. 4th DCA 2020)</i></p>	<p>The Fourth District reversed and remanded a TPR order as to the father, finding the parents' last incident of domestic violence, which was initiated by the mother, occurred 8 months before the TPR trial; the father unsuccessfully tried to distance himself from the mother; and the father complied with his court ordered contact with the mother. The appellate court also found TPR was not in the children's manifest best interests because the children were bonded with the father, and not the least restrictive means of protecting the children from harm, which it determined would have been assisting the father with obtaining a Chapter 39 injunction against the mother, if necessary.</p>
<p><i><u>E.S. v. L.G.,</u></i> <i>1D20-458, 2020 WL 4580565</i> <i>(Fla. 1st DCA 2020)</i></p>	<p>The First District affirmed the trial court's order modifying placement, rejecting the father's argument that the trial court should have applied section 61.13, which applies to dissolution proceedings, because neither Chapter 39 nor the rules of juvenile procedure provide for consideration of section 61.13 in dependency cases.</p>

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<p><i>J.R.B. v. Dep't of Children & Families,</i> <i>1D20-1206, 2020 WL 4669822</i> <i>(Fla. 1st DCA 2020)</i></p>	<p>The First District dismissed an appeal of an adjudication because it was untimely. On November 12, 2019, the father filed exceptions to the magistrate's findings, but on November 15, 2019, the trial court entered a final order adopting the magistrate's recommendation and adjudicating the child dependent. On November 19, 2019, the father filed a motion for rehearing, which was denied pursuant to Rule 8.265(b)(3) because the trial court did not rule within 10 days. On March 5, 2020, the trial court entered a written order denying the father's motion for rehearing. On March 11, 2020, it also entered an order rejecting the father's exceptions and reconfirming the magistrate's findings. The father then filed his notice of appeal on April 3, 2020, challenging the trial court's November 15, 2019, March 5, 2020, and March 11, 2020, orders.</p> <p>The appellate court held that the law required the father to preserve his rights to challenge the order rendered November 15, 2019, either by securing a ruling within 10 days after he filed his motion for rehearing, or by timely filing a notice of appeal.</p>
<p><i>B.T. v. Dep't of Children & Families,</i> <i>1D19-2788, 2020 WL 4591725</i> <i>(Fla. 1st DCA 2020)</i></p>	<p>The First District affirmed affirmed a TPR order because, even though the order included unpled grounds, they were <i>in addition</i> to grounds that had been pleaded and proven for both parents, the parents never raised their issue with the TPR order in a motion for rehearing, and there was no fundamental error. The appellate court also affirmed the order despite the parents not being properly noticed of their right to challenge the effectiveness of their trial lawyers. The court found the lack of notice itself was not a deprivation of a substantive right; rather, it was a procedural defect, which is not per se reversible. The parents failed to show a deprivation of a right that followed from the lack of notice.</p>