

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

F.E.O., the Mother v. Department of Children and Families, et al.

No. 3D24-1609 (Fla. 3d DCA Apr. 2, 2025) · No. No. 3D24-1609 · Decided April 2, 2025

SUMMARY

The Florida Third District Court of Appeal affirmed the trial court's denial of the mother's motion to set aside a final judgment terminating her parental rights. The court held that the parent's failure to appear at the adjudicatory hearing, after appearing at the advisory hearing and receiving notice, constituted consent under section 39.801(3)(e), Florida Statutes (2024).

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Per Curiam; Chief Judge Logue; Judge Emas; Judge Scales
JURISDICTION	Florida Third District Court of Appeal
DECIDED	April 2, 2025
DOCKET	No. 3D24-1609
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a termination-of-parental-rights proceeding in the Circuit Court for Miami-Dade County, including the denial of the mother's motion to set aside and vacate the final judgment of termination of parental rights.
STANDARD OF REVIEW	Abuse of discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	F.E.O., the Mother v. Department of Children and Families, Guardian ad Litem

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- family law
- termination of parental rights
- appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion in denying the mother's motion to set aside and vacate the final judgment terminating her parental rights.
2. Whether the mother's failure to appear at the adjudicatory hearing constituted consent to termination under section 39.801(3)(e), Florida Statutes.

HOLDINGS

1. The circuit court did not abuse its discretion in denying the mother's motion to set aside and vacate the final judgment terminating her parental rights.

KEY QUOTATIONS

“If a parent appears for the advisory hearing and the court orders that parent to appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of the hearing and, if applicable, instructions for appearance through audio-video communication technology, then failure of that parent to appear, either physically or, by agreement of the parties or at the discretion of the court, through audio-video communication technology, at the adjudicatory hearing constitutes consent for termination of parental rights.”

“Discretion, in this sense, is abused when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the trial court. If reasonable [people] could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion.” (1203)

FACTUAL BACKGROUND

The proceeding concerned termination of the mother's parental rights. The opinion applied section 39.801(3)(e), which provides that a parent's failure to appear at the adjudicatory hearing after appearing at the advisory hearing and being ordered to appear constitutes consent to termination. The mother challenged the resulting termination judgment through a motion to set aside and vacate.

PROCEDURAL HISTORY

The circuit court entered a final judgment terminating the mother's parental rights after she failed to appear at the adjudicatory hearing. The mother sought to set aside and vacate the judgment, and the Third District Court of Appeal affirmed the circuit court's disposition.

DISPOSITION

affirmed

CASES CITED

- M.P. v. Dep't of Children & Families, 230 So. 3d 512, 513 (Fla. 3d DCA 2017)
- Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980)
- E.S. v. Dep't of Children and Family, 878 So. 2d 493, 496 (Fla. 3d DCA 2004)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed April 2, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D24-1609 Lower Tribunal No. D22-15623 _____ F.E.O., the Mother, Appellant, vs. Department of Children and Families, et al., Appellees. An Appeal from the Circuit Court for Miami-Dade County, Michelle Alvarez Barakat, Judge.

F.E.O., the Mother, in proper person. Karla Perkins, for appellee Department of Children and Families; Sara Elizabeth Goldfarb, Statewide Director of Appeals, and Laura J. Lee, Assistant Director of Appeals (Tallahassee), for appellee Guardian ad Litem.

Before LOGUE, C.J., and EMAS and SCALES, JJ. PER CURIAM. Affirmed. See § 39.801(3)(e), Fla. Stat. (2024) (“If a parent appears for the advisory hearing and the court orders that parent to appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of the hearing and, if applicable, instructions for appearance through audio-video communication technology, then failure of that parent to appear, either physically or, by agreement of the parties or at the discretion of the court, through audio-video communication technology, at the adjudicatory hearing constitutes consent for termination of parental rights.”); *M.P. v. Dep’t of Children & Families*, 230 So.

3d 512, 513 (Fla. 3d DCA 2017) (“We review the trial court’s order denying M.P.’s Motion to Set Aside and Vacate the Final Judgment of Termination of Parental Rights under an abuse of discretion standard.”); *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980) (observing that the “abuse of discretion” standard of review is highly deferential: “Discretion, in this sense, is abused when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the trial court.

If reasonable [people] could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion.”) (modernized) (citation omitted); see also *E.S. v. Dep’t of Children and Family*, 878 So. 2d 493, 496 (Fla. 3d DCA 2 2004) (requiring, in the context of a motion to vacate a default entered upon a constructive consent to termination of parental rights, that “the party seeking to vacate the default act with due diligence, demonstrate excusable neglect, and demonstrate the existence of a meritorious defense to the termination petition.”).

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