

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

L.J.S. v. Florida Department of Children and Families

995 So. 2d 1151 (Fla. Dist. Ct. App. 2008) · No. No. 1D07-5941 · Decided December 5, 2008

SUMMARY

The Florida First District Court of Appeal reviewed an order denying a mother's motion for reunification with her children and placing them in permanent guardianship. The court reversed and remanded because the trial court failed to make the detailed factual findings required by section 39.621(10), Florida Statutes, including findings concerning case-plan compliance and the children's potential detriment from reunification.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Per Curiam; Lewis, J.; Roberts, J.; Benton, J.
JURISDICTION	Florida
DECIDED	December 5, 2008
DOCKET	No. 1D07-5941
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The mother sought review of a trial court order overruling her exceptions to a magistrate's report and recommendations and denying her motion for reunification.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	L.J.S., natural mother of J.S., A.S., and W.S. v. Florida Department of Children and Families

TOPICS

- guardianship procedure
- guardianships
- parental rights
- family law procedure
- appellate procedure

PRACTICE AREAS

- Dependency
- Family law
- Child welfare

QUESTIONS PRESENTED

1. Whether the trial court could deny the mother's motion for reunification without making detailed factual findings regarding each statutory reunification factor.
2. Whether the trial court improperly relied on a magistrate's deficient and internally contradictory recommended order.

HOLDINGS

1. When a parent requests reunification and has substantially complied with the case plan, the children are presumed to be returned unless returning them would endanger them; a trial court denying reunification must make detailed factual findings addressing the parent's case-plan compliance, whether reunification would be detrimental, and each of the six statutory sub-factors.
2. The trial court may not rely on a deficient recommended order that fails to make the required statutory findings, particularly when the order contains a factual finding inconsistent with the magistrate's oral pronouncement.

KEY QUOTATIONS

"A finding regarding each of these factors is mandatory and vital to a proper order denying reunification."
(1153)

"Courts lack the authority to deviate from statutory requirements when determining the placement of a child." (1153)

FACTUAL BACKGROUND

In 2004, the children were removed from their mother's home after she attempted suicide in front of them and was hospitalized. The Department's dependency case plan initially sought reunification and required the mother to complete parenting-skills and counseling programs, which she completed. The mother then sought reunification, but the magistrate recommended denial and placement of the children in permanent guardianship, while making a written finding of case-plan noncompliance that contradicted its oral finding that she had been "absolutely" compliant.

PROCEDURAL HISTORY

The children were removed from the mother's home and placed in shelter care after the mother attempted suicide in their presence. After the mother completed the parenting and counseling requirements of her case plan, she moved for reunification. The magistrate recommended, and the trial court adopted, orders placing the children in permanent guardianship, terminating protective supervision, modifying visitation, and denying reunification. The appellate court reversed and remanded because the trial court failed to make the required factual findings concerning reunification.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must make detailed factual findings pursuant to section 39.621(10), Florida Statutes.

CASES CITED

- C.D. v. Department of Children & Families, 974 So. 2d 495, 500 (Fla. 1st DCA 2008)
- S.J. v. Department of Health & Rehabilitation Services, 700 So. 2d 71, 75 (Fla. 1st DCA 1997)

OPINION

Ljs v. Fla. Dept. of Children and Fam.

995 So. 2d 1151

PER CURIAM.

995 So.2d 1151 (2008) L.J.S., natural mother of J.S., A.S., and W.S., Appellant, v. FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, Appellee. No. 1D07-5941. District Court of Appeal of Florida, First District. December 5, 2008.

*1152 Shannon C. Lord of Hunter & Lord, P.A., Panama City, for Appellant.

Adrienne C. Rodgers, Senior Attorney, Panama City for Appellee Florida Department of Children and Families. Ama N. Appiah, Appellate Counsel, Orlando, for the Guardian Ad Litem Program. PER CURIAM. L.J.S., the mother of J.S., A.S., and W.S., seeks review of the trial court's order overruling her exceptions to the magistrate's report and recommendations. The mother argues that the trial court failed to make the requisite factual findings. We agree and reverse and remand accordingly. In 2004, the children were removed from the mother's home after she attempted to commit suicide in front of them. The mother was hospitalized and the children were placed in shelter care with their great aunt and uncle. In its petition for dependency, the Department of Children and Families (Department) alleged that the mother's seizures, mental health problems, and recent hospitalization impaired her ability to care and provide for the children and was likely to significantly impair the children's physical and emotional health. Initially, the Department's case plan had a goal of reunification, requiring the mother to complete a parenting skills course and counseling sessions. After completing both, the mother filed a motion for reunification. In response, the Guardian Ad Litem (GAL) and the Department filed a joint motion to modify visitation and to terminate protective supervision. The magistrate held a hearing on the motions and, on November 9, 2007, the trial court adopted the magistrate's July 16, 2007, recommended orders placing the children in permanent guardianship, terminating protective supervision, modifying the mother's visitation, and denying the mother's motion for reunification. In its recommended order denying the mother's motion for reunification, the magistrate contradicted its oral pronouncement at the conclusion of the hearing that the mother had "absolutely" complied with her case plan. Instead, the magistrate found that the mother was noncompliant with her case plan. The magistrate determined that the children's safety, well-being, and physical, mental, and emotional health would be endangered if they were returned to their mother's care. It is well-

established that, when a parent requests reunification and has *1153 substantially complied with his case plan, there is a presumption that the children should be returned unless it is established that returning the children would endanger them. See *C.D. v. Dep't of Children & Families*, 974 So.2d 495, 500 (Fla. 1st DCA 2008). In order for the trial court to deny a motion for reunification, it must demonstrate a thorough consideration of two factors: (1) the parent's compliance with the case plan, and (2) whether reunification would be detrimental to the children. See § 39.522(2), Fla. Stat. (2004); *C.D.*, 974 So.2d at 500. When considering these two factors, the trial court must specifically address the following six sub-factors: (a) The compliance or noncompliance of the parent with the case plan; (b) The circumstances which caused the child's dependency and whether those circumstances have been resolved; (c) The stability and longevity of the child's placement; (d) The preferences of the child, if the child is of sufficient age and understanding to express a preference; (e) The recommendation of the current custodian; and (f) The recommendation of the guardian ad litem. § 39.621(10), Fla. Stat. (2007). A finding regarding each of these factors is mandatory and vital to a proper order denying reunification. See *C.D.*, 974 So.2d at 500. Courts lack the authority to deviate from statutory requirements when determining the placement of a child. See *S.J. v. Dep't of Health & Rehab. Servs.*, 700 So.2d 71, 75 (Fla. 1st DCA 1997). In the instant case, the trial court failed to make detailed factual findings regarding five of the six factors in its order denying the mother's motion for reunification. Instead, the trial court relied on the magistrate's recommended order, which only addressed the mother's noncompliance with her case plan. Even that finding, however, contradicted the magistrate's oral pronouncement at the conclusion of the hearing that the mother was "absolutely" compliant with her case plan. Thus, the trial court improperly relied on the magistrate's deficient order to conclude that returning the children to the mother would endanger their safety and well-being. Accordingly, we REVERSE and REMAND for the trial court to make detailed factual findings pursuant to section 39.621(10). LEWIS and ROBERTS, JJ., concur; BENTON, J., concurs in result.