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## 2011 Survey of Juvenile Law

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## 2011 SURVEY OF JUVENILE LAW

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I. INTRODUCTION .....	179
II. DEPENDENCY .....	179
III. TERMINATION OF PARENTAL RIGHTS .....	186
IV. CRIMINAL CHILD NEGLECT.....	188
V. JUVENILE DELINQUENCY .....	189
VI. OTHER MATTERS.....	196
VII. STATUS OFFENSES—CHILDREN IN NEED OF SERVICES.....	199
VIII. CONCLUSION .....	200

### I. INTRODUCTION

Atypically, the Supreme Court of Florida was not active during the past year, deciding no cases in the juvenile law field. On the other hand, the intermediate appellate courts were active both in the delinquency area and in the dependency field.<sup>1</sup> As in the past, decisions in the delinquency area involving generic issues of criminal procedure not unique to juvenile delinquency are not covered in this article.

### II. DEPENDENCY

“A parent’s right to counsel in a dependency case in Florida is purely statutory.”<sup>2</sup> The Supreme Court of Florida had held in 1980 in *In re Interest of D.B.*,<sup>3</sup> that parents did have the right to appointed counsel if indigent in termination of parental rights (TPR) cases but not as an absolute right in dependency cases<sup>4</sup> Initially, as a result of the decision in *In re Interest of D.B.*,

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1. See, e.g., *K.J.F. v. State*, 44 So. 3d 1204, 1205, 1209–11 (Fla. 1st Dist. Ct. App. 2010); *S.D. v. Dep’t of Children & Family Servs. (In re Interest of J.D.)*, 42 So. 3d 938, 938–40 (Fla. 2d Dist. Ct. App. 2010); *W.S. v. Dep’t of Children & Families (In re Interest of C.S.)*, 41 So. 3d 433, 433 (Fla. 1st Dist. Ct. App. 2010) (per curiam); *W.G. v. S.A. (In re Interest of A.G.)*, 40 So. 3d 908, 909–10 (Fla. 3d Dist. Ct. App. 2010).

2. Michael J. Dale & Louis M. Reidenberg, *Providing Attorneys for Children in Dependency and Termination of Parental Rights Proceedings in Florida: The Issue Updated*, 35 NOVA L. REV. 305, 336 (2011); see FLA. STAT. § 39.402(5)(b)(2) (2011).

3. 385 So. 2d 83 (Fla. 1980).

4. *Id.* at 90–91.

parents were required to be given counsel in all TPR cases and under certain situations in dependency cases.<sup>5</sup> Subsequently, the Florida Legislature passed a law codifying the opinion and then, as a result of a series of reversals in the appellate courts for failure to assign counsel in dependency proceedings pursuant to *In re Interest of D.B.*, the Legislature in 1998 amended chapter 39 to provide for the “appointment of counsel for parents in dependency as well as TPR cases.”<sup>6</sup>

The issue of whether a non-offending parent should be appointed counsel in a dependency case came before the Third District Court of Appeal in *W.G. v. S.A. (In re Interest of A.G.)*.<sup>7</sup> In that case, the father of a child who was the subject of a dependency proceeding sought “certiorari review of an order denying his motion for appointment of counsel.”<sup>8</sup> The mother, the custodial parent, had been charged in a dependency proceeding with abuse, although no charges were brought against the father.<sup>9</sup> The appellate court held that as a matter of statutory construction, the reference to parents for purposes of appointment of counsel did not make a distinction between offending and non-offending parents.<sup>10</sup> The court recognized that if a parent was non-offending, there would be no logical grounds, and in fact, it would be frivolous to charge that parent.<sup>11</sup> The court held that “as a matter of common sense, the non-offending parent may need, and indeed [would] be entitled to take action” with regard to the possible relief ordered by the court.<sup>12</sup> Finally, as the court said, “a ‘non-offending,’ indigent, non-attorney parent can hardly be expected to navigate through such proceedings without counsel. At any juncture, failure to act could prejudice the non-offending parent’s rights in intervention.”<sup>13</sup> For these reasons, the court granted the petition and quashed the court order below denying the right to counsel.<sup>14</sup>

Evidentiary issues come up regularly in dependency proceedings in Florida.<sup>15</sup> In *W.S. v. Department of Children & Families (In re Interest of C.S.)*,<sup>16</sup> the parents appealed from an order adjudicating their child depen-

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5. *Id.*

6. See FLA. STAT. § 39.013(1) (1999); Dale & Reidenberg, *supra* note 2, at 336–37.

7. 40 So. 3d 908, 909 (Fla. 3d Dist. Ct. App. 2010).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *In re Interest of A.G.*, 40 So. 3d at 910.

13. *Id.*

14. *Id.*

15. See Michael J. Dale, 2009 *Survey of Juvenile Law*, 34 NOVA L. REV. 199, 201–02 (2009).

16. 41 So. 3d 433 (Fla. 1st Dist. Ct. App. 2010) (per curiam).

dent.<sup>17</sup> They argued that the court relied upon inadmissible hearsay to make its finding.<sup>18</sup> The Department of Children and Families (DCF) and the Guardian ad Litem Program conceded error.<sup>19</sup> The hearsay was testimony from an investigator describing what other foster children in the home said about the parents' care.<sup>20</sup> "The investigator did not personally observe any of the [reported] abuse . . . ."<sup>21</sup> Nor did any other witnesses testify as to the physical abuse.<sup>22</sup> The trial court finding was based entirely on hearsay testimony which demonstrated the "probability of prospective abuse."<sup>23</sup> The appellate court held that the Florida Rules of Evidence "applicable in civil cases also apply in adjudicatory hearings under [c]hapter 39."<sup>24</sup> There being no exception to the hearsay rule, and the trial court having relied almost entirely on the inadmissible hearsay, the appellate court reversed and remanded.<sup>25</sup>

In *S.D. v. Department of Children & Family Services (In re Interest of J.D.)*,<sup>26</sup> a mother appealed from an order adjudicating her child dependent on the ground that the evidence "was legally insufficient to sustain the determination."<sup>27</sup> One of the witnesses was a child protection investigator who gave his opinion that the bruises that he saw often look like those resulting from a "struggle and attempted choke."<sup>28</sup> At issue in the case was whether the father had a history of domestic violence and whether the mother was a victim of domestic violence.<sup>29</sup> When the protective investigator met with the mother, "she had scratches on her neck and chest."<sup>30</sup> She replied that "she sometimes scratche[d] herself around her throat when she [was] anxious."<sup>31</sup> The appellate court held that "the only evidence of domestic violence was the child protective investigator's opinion as to the cause of the scratching and bruising on the [m]other's neck."<sup>32</sup> Without addressing the question of whether the opinion testimony was admissible as either expert testimony or proper lay

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17. *Id.* at 433.

18. *Id.*

19. *Id.*

20. *Id.*

21. *In re Interest of C.S.*, 41 So. 3d at 433.

22. *Id.*

23. *Id.*

24. *Id.* at 433–34.

25. *Id.* at 434.

26. 42 So. 3d 938 (Fla. 2d Dist. Ct. App. 2010).

27. *Id.* at 938.

28. *Id.* at 939.

29. *Id.*

30. *Id.*

31. *In re Interest of J.D.*, 42 So. 3d at 939.

32. *Id.*

testimony,<sup>33</sup> the court held that in any event there was no evidence “that the child saw or heard any alleged violence or was otherwise . . . [present for] such violence” as required by Florida law.<sup>34</sup> Thus, the appellate court reversed.<sup>35</sup>

Dependency determinations may be based on what the Florida courts refer to as “prospective neglect.”<sup>36</sup> The Florida courts have regularly ruled on the question of prospective neglect<sup>37</sup> beginning with the supreme court opinion in *Padgett v. Department of Health & Rehabilitative Services*.<sup>38</sup> In *R.M. v. Department of Children & Family Services (In re Interest of J.B.)*,<sup>39</sup> a mother appealed from a dependency adjudication on abuse of discretion grounds where the finding was based on prospective neglect.<sup>40</sup> The trial court had found a significant danger posed to the child by the mother’s persistent anger management problems.<sup>41</sup> To make a finding of prospective neglect, the court must find “a *nexus* between the parent’s problem and the potential for future neglect.”<sup>42</sup> The testimony from family members as to the mother’s chronic use of marijuana, her impairment, her failure to pay attention to her son, and that her marijuana use put her in danger were “predictive of a risk of harm to [the] child.”<sup>43</sup>

A significant procedural issue arose in *C.R. v. Department of Children & Family Services*,<sup>44</sup> where a dependency adjudication was based upon the mother’s consent and where there was an administrative finding that the child had no legal father.<sup>45</sup> In its dependency order, the trial court withheld adjudication as to the mother.<sup>46</sup> When the father came forward, the trial court vacated its order of disposition and then adjudicated the child depen-

33. See FLA. STAT. §§ 90.701, .702 (2011).

34. *In re Interest of J.D.*, 42 So. 3d at 940.

35. *Id.*

36. 1 MICHAEL J. DALE, REPRESENTING THE CHILD CLIENT ¶ 4.14[4][d] (MB 2011). For a discussion of the subject nationally, see *id.*

37. Michael J. Dale, 2005–2006 *Survey of Florida Juvenile Law*, 31 NOVA L. REV. 577, 594–95 (2007); Michael J. Dale, 2004 *Survey of Florida Juvenile Law*, 29 NOVA L. REV. 397, 413–14 (2005).

38. 577 So. 2d 565, 565 (Fla. 1991).

39. 40 So. 3d 917 (Fla. 2d Dist. Ct. App. 2010).

40. *Id.* at 917–18.

41. *Id.* at 918.

42. *Id.* (emphasis added) (citing *N.D. v. Dep’t of Children & Family Servs. (In re Interest of T.B.)*, 939 So. 2d 1192, 1194 (Fla. 2d Dist. Ct. App. 2006)).

43. *Id.*

44. 53 So. 3d 240 (Fla. 3d Dist. Ct. App. 2010).

45. *Id.* at 241.

46. *Id.*

dent as to the father and issued a subsequent order of dependency.<sup>47</sup> The mother appealed, contending that the trial court erred when it vacated the initial order withholding adjudication as to the mother.<sup>48</sup> The appellate court held that “the trial court should have allowed the [w]ithhold [a]djudication [o]rder to stand and then, [should have] held a subsequent evidentiary hearing to determine the father’s status” because the Florida statute allows a supplementary decision to be entered which, in the case at bar, would have allowed a determination of the father’s status.<sup>49</sup>

In Florida, there is a procedure known as a private dependency action.<sup>50</sup> *A.N.B. ex rel. J.T.N. v. Department of Children & Families*<sup>51</sup> is a case in which maternal grandparents brought a dependency proceeding, and the mother appealed from an order of adjudication of the child “who was nineteen days short of [the] seventeenth birthday when the order was entered.”<sup>52</sup> The appellate court found that there were adequate grounds for a finding “that there was no parent capable of supervision and care” under the Florida statute.<sup>53</sup> In addition, the mother appealed on the ground that the “court improperly based its ruling on the child’s preference.”<sup>54</sup> The appellate court held “that the child’s preference is not a valid basis for a finding of dependency, but [in the case at bar], this was not the sole basis for the court’s . . . finding.”<sup>55</sup>

When there are placements of children in other states or other interstate issues arise in dependency cases, the Interstate Compact for the Placement of Children (ICPC) comes into play.<sup>56</sup> Issues can arise concerning proper implementation of the ICPC as in *Department of Children & Families v. T.T. ex rel. M.R.*<sup>57</sup> In a per curiam opinion, the appellate court reversed a trial court order that reunited children with their mother, as well as dismissed a dependency proceeding, terminating the trial court’s jurisdiction for failure to comply with the ICPC.<sup>58</sup> The children had been adjudicated dependent be-

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47. *Id.* at 241, 243.

48. *Id.* at 241–42.

49. *C.R.*, 53 So. 3d at 243; *see* FLA. STAT. § 39.507(7)(b) (2011).

50. *See* FLA. STAT. § 39.501; *see, e.g.*, *A.N.B. ex rel. J.T.N. v. Dep’t of Children & Families*, 54 So. 3d 1049, 1050 (Fla. 5th Dist. Ct. App. 2011) (per curiam).

51. 54 So. 3d 1049 (Fla. 5th Dist. Ct. App. 2011) (per curiam).

52. *Id.* at 1050.

53. *Id.*

54. *Id.*

55. *Id.*

56. *See* FLA. STAT. § 409.401, art. I (2011).

57. 42 So. 3d 962, 963 (Fla. 5th Dist. Ct. App. 2010) (per curiam).

58. *Id.*

cause of “domestic violence between their mother and her paramour.”<sup>59</sup> Subsequently, the mother and father “moved out-of-state to Georgia and Ohio [and] sought reunification.”<sup>60</sup> “[T]he trial court directed DCF to obtain orders of compliance with [the] ICPC for home studies on both parents.”<sup>61</sup> “DCF did not submit the ICPC orders to [either state’s] compact administrators” for a period of time.<sup>62</sup> Despite the lack of compliance, the trial court ordered reunification.<sup>63</sup> The appellate court noted that while “[t]he trial court was understandably frustrated,” a trial court, it held, cannot return the child to a receiving state without compliance of all of the requirements of the ICPC.<sup>64</sup>

Dependency cases occasionally arise involving immigrant children.<sup>65</sup> Two such cases are *In re Interest of T.J.*<sup>66</sup> and *L.T. ex rel. K.S.L. v. Department of Children & Families*.<sup>67</sup> In *In re Interest of T.J.*, “[r]epresentatives of the Florida International University College of Law Immigrant Children’s Justice Clinic, as next friends of [the child], . . . appeal[ed] a circuit court order summarily denying [an] amended petition for an adjudication of dependency.”<sup>68</sup> The child, who had been “born in Turks and Caicos and came to Florida at the age of four months, . . . lived [in Florida] continuously since then” and was to turn eighteen relatively shortly after the dependency proceeding began.<sup>69</sup> The child had been cared for by her mother, but when her mother passed away, and as the whereabouts of the father, who had left the child and the mother when the youngster was an infant, were unknown, a volunteer provided her with a place to stay.<sup>70</sup> The volunteer did “not have any judicially-conferred status as a custodian or guardian of [the child],” and thus a dependency proceeding was brought.<sup>71</sup> The appellate court held that, based on earlier case law, the child had no legal custodian.<sup>72</sup> The child,

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59. *Id.*

60. *Id.*

61. *Id.*

62. *T.T. ex rel. M.R.*, 42 So. 3d at 963.

63. *Id.*

64. *Id.* at 963–64 (citing Dep’t of Children & Families v. Fellows, 895 So. 2d 1181, 1185 (Fla. 5th Dist. Ct. App. 2005)).

65. See, e.g., *In re Interest of T.J.*, 59 So. 3d 1187, 1188 (Fla. 3d Dist. Ct. App. 2011); *L.T. ex rel. K.S.L. v. Dep’t of Children & Families*, 48 So. 3d 928, 929 (Fla. 5th Dist. Ct. App. 2010).

66. 59 So. 3d 1187 (Fla. 3d Dist. Ct. App. 2011).

67. 48 So. 3d 928 (Fla. 5th Dist. Ct. App. 2010).

68. *In re Interest of T.J.*, 59 So. 3d at 1188.

69. *Id.* at 1189.

70. *Id.*

71. *Id.*

72. *Id.* at 1190, 1194.

therefore, “ha[d] made a prima facie case that she [was] dependent.”<sup>73</sup> In a two to one opinion, the court majority also concluded in dicta that the dependency issue was not a “back door route to naturalization.”<sup>74</sup> The child qualified for a declaration of dependency under the *Florida Statutes*, and thus “the child’s motivation to obtain legal residency status from the United States Attorney General [was] irrelevant.”<sup>75</sup> The court then remanded on the ground that the petitioner must demonstrate making a diligent search to find the father.<sup>76</sup>

In *L.T.*, relied upon by the court in *In re Interest of T.J.*, the child had been rescued from a boat that capsized off the coast of Florida.<sup>77</sup> The child’s uncle filed a dependency proceeding on the child’s behalf.<sup>78</sup> “[A]n adjudication of dependency would allow [the child] to petition as a special immigrant juvenile.”<sup>79</sup> The child’s parents were deceased and the child was close to eighteen years of age.<sup>80</sup> The uncle had been the youngster’s caregiver for nine months and continued to do so.<sup>81</sup> Over the objections of DCF, the court reversed and remanded to the trial court, which had dismissed the petition for dependency.<sup>82</sup>

In Florida, when foster children age out of the child welfare system, as adults, they may be entitled to educational and vocational training under the state’s Road to Independence Program (RTI).<sup>83</sup> In *Department of Children & Family Services v. K.D.*,<sup>84</sup> DCF appealed from a trial court order that a child was eligible for RTI funds even though “she had been living with a non-relative court-approved guardian rather than in foster care.”<sup>85</sup> The trial court decided “that the statute’s eligibility provisions violated equal protection by unfairly [providing] services to foster children but not to [those] children [who were] living in non-relative placements.”<sup>86</sup> The appellate

73. *In re Interest of T.J.*, 59 So. 3d at 1190 (citing *L.T. ex rel. K.S.L. v. Dep’t of Children & Families*, 48 So. 3d 928, 930 (Fla. 5th Dist. Ct. App. 2010); *F.L.M. v. Dep’t of Children & Families*, 912 So. 2d 1264, 1268–69 (Fla. 4th Dist. Ct. App. 2005) (per curiam)).

74. *Id.* at 1191 (quoting *Id.* at 1194–95 (Wells, J., concurring in part, dissenting in part) (internal quotation marks omitted)).

75. *Id.* (quoting *F.L.M.*, 912 So. 2d at 1269).

76. *Id.* at 1192, 1194.

77. *Id.* at 1190 (citing *L.T. ex rel. K.S.L.*, 48 So. 3d at 929).

78. *L.T. ex rel. K.S.L.*, 48 So. 3d at 929.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 929–31.

83. FLA. STAT. § 409.1451(5)(b) (2011).

84. 45 So. 3d 46 (Fla. 5th Dist. Ct. App.), *review denied*, 49 So. 3d 747 (Fla. 2010).

85. *Id.* at 47.

86. *Id.*



court held that as a matter of statutory construction, the term foster care means licensed foster care home.<sup>87</sup> A person or a family providing foster care must be licensed.<sup>88</sup> The court reversed and remanded, although it granted a motion for certification to the Supreme Court of Florida on the issue of the definition.<sup>89</sup>

A second case involving RTI is *Wade v. Florida Department of Children & Families*.<sup>90</sup> There, the appellant was notified by DCF services that it planned to terminate her RTI scholarship because she failed to attend school full-time or make satisfactory progress during the prior year.<sup>91</sup> She was notified of her right to request a fair hearing, which she did.<sup>92</sup> A fair hearing followed, and the hearing officer entered an order affirming DCF's decision to terminate the scholarship.<sup>93</sup> The order was entered as a "final order."<sup>94</sup> It also included a notice of right of appeal.<sup>95</sup> The appellate court held that the order was not a final order in the sense of it being final agency action because the decision was not reviewed by the secretary of DCF, and "it is the secretary's decision that is the final agency action [which is then] subject to judicial review."<sup>96</sup> For this technical reason, the appeal was dismissed.<sup>97</sup>

### III. TERMINATION OF PARENTAL RIGHTS

Florida, like other states, provides multiple grounds for termination of parental rights in its statutes.<sup>98</sup> One of these grounds is where a "parent . . . is incarcerated in a state or a federal . . . institution."<sup>99</sup> In a case of first impression recently decided in the Second District Court of Appeal, the question was whether the provision that there be no "commission of [a] new law violation[]" constitutes a valid case plan task," which may then support a decision to terminate a parent's parental rights when the parent's imprisonment results in "a new law violation, [which makes] it impossible for [the parent]

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87. *Id.* at 48 n.2 (citing FLA. STAT. §§ 39.01(31), 409.175(4)(a) (2009)).

88. *Id.* (citing FLA. STAT. § 409.175(4)(a)).

89. *K.D.*, 45 So. 3d at 48–49.

90. 57 So. 3d 869, 870 (Fla. 1st Dist. Ct. App. 2011).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Wade*, 57 So. 3d at 870.

96. *Id.* at 872.

97. *Id.*

98. FLA. STAT. § 39.806 (2011); *see also* DALE, *supra* note 36, at ¶ 4.14[4][a]–[h].

99. FLA. STAT. § 39.806(1)(d).

to complete . . . other case plan tasks within the allotted time.”<sup>100</sup> In *M.N. v. Department of Children & Family Services (In re Interest of C.N.)*,<sup>101</sup> the appellate court held “that the statutory scheme for . . . termination of parental rights,” which includes a provision for termination based upon imprisonment, is “the exclusive method for . . . termination . . . based [upon] the fact of [the] parent’s incarceration.”<sup>102</sup> Thus, inclusion of a provision in a case plan that the “parent [not] commit [a] new law violation[] . . . may not properly be included as a case plan task. The breach of such a task that results in the parent’s incarceration,” the court held, by itself, is not “a proper ground for the termination of parental rights.”<sup>103</sup> The court noted that there is “a comprehensive and detailed list of twelve [distinct] grounds for . . . termination of parental rights” in Florida.<sup>104</sup> The commission of a crime is not among them.<sup>105</sup> Finally, the court noted, a chapter 39 case plan “was [not] intended to be a form of criminal probation.”<sup>106</sup> For these reasons, the court reversed.<sup>107</sup>

The termination of parental rights sometimes occurs on the basis of consent documents signed by the parents in which case a specific statutory requirement as to their filing with the court is required.<sup>108</sup> In *T.H. v. Department of Children & Families*,<sup>109</sup> the Fourth District Court of Appeal reversed the trial court because it failed to receive the proper documentation.<sup>110</sup> In the underlying case, a mother consented to termination of parental rights “conditioned upon [her children] being adopted by her sister who lived in Tennessee.”<sup>111</sup> When that adoption did not go forward, the mother moved for reconsideration of the termination of parental rights which was denied and her rights were terminated.<sup>112</sup> She then appealed.<sup>113</sup> The appellate court found that the trial court had erred in terminating parental rights “because the written surrenders [of parental rights] were neither filed, nor examined [by the court], to determine [whether] they comported with statutory require-

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100. *M.N. v. Dep’t of Children & Family Servs. (In re Interest of C.N.)*, 51 So. 3d 1224, 1225 (Fla. 2d Dist. Ct. App. 2011).

101. 51 So. 3d 1224 (Fla. 2d Dist. Ct. App. 2011).

102. *Id.* at 1225–26.

103. *Id.* at 1232; *see also* FLA. STAT. § 39.806.

104. *In re Interest of C.N.*, 51 So. 3d at 1232.

105. *Id.*

106. *Id.* at 1233; *see also* FLA. STAT. § 39.001(1).

107. *In re Interest of C.N.*, 51 So. 3d at 1234.

108. FLA. STAT. § 39.806(1)(a)(1).

109. 56 So. 3d 150 (Fla. 4th Dist. Ct. App. 2011).

110. *Id.* at 155.

111. *Id.* at 151–52.

112. *Id.* at 154.

113. *Id.* at 151.

ments.”<sup>114</sup> Statutory grounds not having been met, the appellate court reversed.<sup>115</sup>

It is not uncommon for termination of parental rights to involve parents who have mental health problems.<sup>116</sup> The question, however, in a termination of parental rights case, as in *I.Z. v. B.H.*,<sup>117</sup> was whether the mother’s mental health issues “pose[] a risk to the child’s well-being” in order to justify termination of parental rights under the Florida statute.<sup>118</sup> Among the grounds for termination of parental rights is “section 39.806(1)(c), which provides . . . that the parent’s conduct towards the child . . . demonstrates . . . continu[al] involvement of the parent . . . [with the child] threatens the life, safety, well-being, or . . . health of the child irrespective of the provision of services.”<sup>119</sup> The appellate court reversed on this ground and on others, finding that the only evidence of mental health issues that threatened the child’s well-being were at a visit where “the mother began to raise her voice and told the child she was ‘spoiled.’ [Whereupon] workers told the mother she was scaring the child and removed the child to safety.”<sup>120</sup> That event occurred three years earlier, and on that ground and others, the appellate court reversed.<sup>121</sup>

#### IV. CRIMINAL CHILD NEGLECT

Under Florida law, as is true in other jurisdictions, the State may charge a parent with criminal child neglect as well as charge the parent through the DCF with civil child neglect.<sup>122</sup> In *State v. Nowlin*,<sup>123</sup> a seventeen-year-old mother was at home babysitting a neighbor’s two-year-old daughter when it was alleged that a pit bull she owned, and which had bitten another neighborhood child, mauled the two-year-old child.<sup>124</sup> “The State charged [the seventeen year-old] with neglect of a child causing great bodily harm, a second-degree felony . . . .”<sup>125</sup> The trial court held that the seventeen-year-old could not be held criminally liable as she was a juvenile when the event

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114. *T.H.*, 56 So. 3d at 154.

115. *Id.* at 155.

116. DALE, *supra* note 36, at ¶ 4.14[4][b].

117. 53 So. 3d 406 (Fla. 4th Dist. Ct. App. 2011).

118. *Id.* at 409.

119. *Id.*; *see also* FLA. STAT. § 39.806(1)(c) (2011).

120. *I.Z.*, 53 So. 3d at 409–10.

121. *Id.* at 410.

122. *See* FLA. STAT. § 827.03; *id.* § 39.001(8)(a).

123. 50 So. 3d 79 (Fla. 1st Dist. Ct. App. 2010).

124. *Id.* at 80–81.

125. *Id.* at 81.

occurred, and was thus not a caregiver as defined by section 39.01(10) of the *Florida Statutes*.<sup>126</sup> Over a dissent, the appeals court held that the seventeen-year-old indeed was a caregiver, and that the State had made a prima facie showing thereof by demonstrating the seventeen year-old regularly, if not on a daily basis, took care of the two year-old victim.<sup>127</sup> The dissent argued that the term “other person” in the statute governing caregivers is ambiguous and, therefore, did “not give fair notice that a child may be held criminally liable for negligent care of another child.”<sup>128</sup>

## V. JUVENILE DELINQUENCY

A very important Florida case involving the interpretation of the state sex offender statute in the context of a juvenile delinquency case is *K.J.F. v. State*.<sup>129</sup> In that case, “a child appeal[ed] a final disposition entered after he pled guilty to . . . sexual battery” and other sexual charges whereupon the “court withheld adjudication of delinquency, placed [the child] on probation, and [also] ordered [the child] to register as a sex[] offender.”<sup>130</sup> The appellate court reviewed the Florida juvenile delinquency statute<sup>131</sup> and the sexual offender statute<sup>132</sup> and found that a “plain-language interpretation of the definitions of a ‘sexual offender’ and ‘convicted’” in the law demonstrate that the statutory obligation of a juvenile to register as a sex offender “does not apply to juveniles for whom adjudication of delinquency is withheld.”<sup>133</sup> The appellate court thus reversed.<sup>134</sup>

In 1975, the Supreme Court of the United States held, in *Breed v. Jones*,<sup>135</sup> that the Double Jeopardy Clause of the Fifth Amendment applied to juvenile delinquency proceedings.<sup>136</sup> The issue before the Fourth District Court of Appeal in *V.M.S. v. State*,<sup>137</sup> was whether, when a circuit court withheld adjudication and placed a juvenile on probation, it could subsequently modify the probation order to require the juvenile to attend a non-

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126. *Id.* at 81–82; FLA. STAT. § 39.01(10).

127. *See Nowlin*, 50 So. 3d at 83.

128. *Id.* at 84 (Padovano, J., dissenting).

129. 44 So. 3d 1204, 1205 (Fla. 1st Dist. Ct. App. 2010).

130. *Id.* at 1205.

131. FLA. STAT. § 985.4815 (2011).

132. *Id.* § 943.0435.

133. *K.J.F.*, 44 So. 3d at 1206–07, 1211.

134. *Id.* at 1205.

135. 421 U.S. 519 (1975).

136. *See id.* at 531; *see also* *V.B. v. State*, 944 So. 2d 1185, 1186 (Fla. 1st Dist. Ct. App. 2006) (per curiam); *Lisak v. State*, 433 So. 2d 487, 489 (Fla. 1983).

137. 43 So. 3d 938 (Fla. 4th Dist. Ct. App. 2010).

public school and impose a fifty dollar charge under Florida's Crimes Compensation Trust Fund.<sup>138</sup> The appellate court found that a trial court may not "enhance a defendant's probation without the state first charging, and the court determining, that the defendant violated [the] probation."<sup>139</sup> Because the trial court in the case at bar "modified [the child's] probation without [the youngster] having been found in violation of it, [t]he requirement that [the juvenile] attend the PACE School was an enhancement [of] the original sentence [making] the sentence more severe" and thus constituted double jeopardy.<sup>140</sup> Further, the addition of the sentence assessing a fifty dollar payment obligation was also deemed an enhancement.<sup>141</sup> Thus, the appellate court reversed.<sup>142</sup>

A second double jeopardy case is *Z.C.B. v. State*.<sup>143</sup> In that case, the juvenile "challenge[d] [a] disposition order adjudicating him delinquent on a charge of possession of cannabis."<sup>144</sup> Specifically, he claimed that the error was in "adjudicating him delinquent after having dismissed the petition [and subsequently] . . . imposing \$115 [in] court costs."<sup>145</sup> When the State was unable to twice proceed because witnesses were not present, the court dismissed the charge against the juvenile with prejudice.<sup>146</sup> When the State, later in the day, advised the court that the witnesses were present, the court went ahead with the case, denied the defendant's motion to dismiss, and accepted a no contest plea subject to the right of appeal.<sup>147</sup> The appellate court held that double jeopardy did not apply because the order of dismissal, as a result of the State's failure to present evidence, is not an adjudicatory finding.<sup>148</sup> Thus, jeopardy had not attached when the court began the hearing on the merits although it had previously dismissed the case.<sup>149</sup> The court reversed the imposition of the \$115 court costs because the child was only adjudicated on a misdemeanor offense.<sup>150</sup>

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138. *See id.* at 939–40.

139. *Id.* at 940 (citing *Lippman v. State*, 633 So. 2d 1061, 1064–65 (Fla. 1994)).

140. *Id.* at 941.

141. *See id.*

142. *V.M.S.*, 43 So. 3d at 941.

143. 40 So. 3d 36, 37 (Fla. 2d Dist. Ct. App. 2010).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 37–38.

148. *Z.C.B.*, 40 So. 3d at 38.

149. *Id.*

150. *Id.*

An important issue of sequestering witnesses in delinquency cases arose in *L.E.D. v. State*.<sup>151</sup> A child appealed from a finding of burglary of a dwelling and grand theft on the grounds that the trial court abused its discretion in sequestering the child's mother.<sup>152</sup> "At the beginning of the trial, [the child's] defense counsel invoked the rule of sequestration of witnesses."<sup>153</sup> However, the lawyer argued that the mother, who was a party to the case, should not be sequestered.<sup>154</sup> The trial court disagreed, and the mother was "sequestered until she was called as a witness [for] the defense."<sup>155</sup> Under Florida law, because a parent may be legally responsible for restitution, service of process is to be made upon parents, and Florida law "contemplates [that] parents' participation at both detention . . . and final disposition hearings" are necessary;<sup>156</sup> the parent is viewed as a party. The appellate court held that it is not harmless error to sequester a parent who is a party, and that under Florida law a parent, him or herself a party, is entitled to be present at the adjudicatory hearing.<sup>157</sup>

Sometimes matters are heard by appellate courts involving issues that ought to be, at first glance, obvious. One such case is *R.O. v. State*.<sup>158</sup> In *R.O.*, the State filed a delinquency petition charging the child with possession of cocaine and other offenses.<sup>159</sup> "[T]he State put on one police officer, who testified [to the] charges."<sup>160</sup> Then, the defense put the child on "who testified that he did not realize that the men stopping him were police, and [that] he ran because he was afraid [of somebody] trying to rob him."<sup>161</sup> The defense asked the child no further questions.<sup>162</sup> The court then began asking questions in matters covered neither by the direct examination of the police officer nor the direct examination by defense counsel, especially the cocaine charge.<sup>163</sup> "After the court questioned [the child], the State commenced

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151. 48 So. 3d 167, 168 (Fla. 4th Dist. Ct. App. 2010).

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*; see FLA. STAT. § 90.616 (2011) (governing sequestration).

156. *L.E.D.*, 48 So. 3d at 169 (citing FLA. STAT. § 985.219; FLA. R. JUV. P. 8.010(a), 8.030(b)).

157. *Id.* (citing FLA. STAT. § 985.319; *J.R. v. State*, 923 So. 2d 1269, 1272 (Fla. 1st Dist. Ct. App. 2006)); *L.B. v. State*, 675 N.E.2d 1104, 1107 (Ind. Ct. App. 1996)); see *Interest of Hopkins v. Youth Court of Issaquena Cnty.*, 227 So. 2d 282, 284 (Miss. 1969). *But see* *People v. Akers (In re Interest of Akers)*, 307 N.E.2d 630, 631–32 (Ill. App. Ct. 1974).

158. 46 So. 3d 124 (Fla. 3d Dist. Ct. App. 2010).

159. *Id.* at 125.

160. *Id.*

161. *Id.*

162. *Id.*

163. *R.O.*, 46 So. 3d at 125.

cross-examination [as to the cocaine charge].”<sup>164</sup> On appeal, the child argued “that the trial court departed from [its] role of neutrality when questioning [the child] about the cocaine possession.”<sup>165</sup> The appellate court held, citing earlier authority, that “[a] court may not ask questions or make comments in an attempt to supply essential elements to the State’s case.”<sup>166</sup> The appellate court held that the trial court, “*sua sponte* questioned [the child] to supply essential elements of the prosecution’s case.”<sup>167</sup> The trial court went to the ultimate issue of guilt on its own.<sup>168</sup> Thus, as the appellate court said, “the trial court became an advocate for the prosecution, thus depriving [the child] of his right to a fair and impartial trial.”<sup>169</sup> The court thus reversed.<sup>170</sup>

In *D.F.J. v. State*,<sup>171</sup> the child appealed an adjudication of delinquency for aggravated battery and robbery with a weapon.<sup>172</sup> The child contended on appeal that the only evidence against him presented by the State was that “he was present at the scene of the commission of the crimes and that he fled.”<sup>173</sup> There was no evidence that the child assisted in the perpetration of the crimes or that he had intent to join.<sup>174</sup> Thus, the child “argu[ed] that the State [had] failed to present evidence from which the judge could exclude the reasonable hypothesis that [the child] was merely a witness” and thus not guilty of the charges.<sup>175</sup> The appellate court recognized that the trial court evidence was circumstantial.<sup>176</sup> However, despite the strength of the circumstantial evidence pointing toward guilt, the appellate court held that such “evidence must, nonetheless, rebut any hypothesis of innocence, including [the fact] that [the child] was present [but] was merely a witness.”<sup>177</sup> “[T]he only witness to the crime was the victim and he could not definitively state who attacked him . . . .”<sup>178</sup> Thus, “the State was unable to overcome [the respondent’s] reasonable hypothesis of innocence,” and reversal was required.<sup>179</sup>

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164. *Id.* at 126.

165. *Id.*

166. *Id.* (citing *Sears v. State*, 889 So. 2d 956, 959 (Fla. 5th Dist. Ct. App. 2004)).

167. *Id.* (alteration in original).

168. *R.O.*, 46 So. 3d at 126.

169. *Id.*

170. *Id.*

171. 60 So. 3d 1183 (Fla. 4th Dist. Ct. App. 2011).

172. *Id.* at 1184.

173. *Id.* at 1185.

174. *Id.*

175. *Id.*

176. *D.F.J.*, 60 So. 3d at 1185.

177. *Id.*

178. *Id.*

179. *Id.*

The need for vigorous representation by defense counsel on behalf of juvenile defendants is demonstrated in the second district case, *Henderson v. State*.<sup>180</sup> There, a sixteen year-old was convicted of both battery on a person over sixty-five and robbery.<sup>181</sup> He appealed the judgment and sentence including the trial court's failure to transfer him to the Department of Juvenile Justice for dispositional placement.<sup>182</sup> The Department of Juvenile Justice Multidisciplinary Panel recommended that the child remain in the juvenile justice system, but the trial court rejected that alternative.<sup>183</sup> In affirming the adult sanction of ten years in prison, the appellate court noted that the trial lawyer did not advocate strenuously for the juvenile sentence.<sup>184</sup> The appellate court then affirmed, finding that "[t]he presumption of appropriateness of adult sanctions *compels* us to conclude that this record provides no basis for reversal on direct appeal."<sup>185</sup> One might infer from the court's language, its reference to the trial lawyer's lack of strenuous representation, the detailed nature of the Department of Juvenile Justice Multidisciplinary Panel report, and the appellate lawyer's citation to *Anders v. California*,<sup>186</sup> that had there been vigorous representation, its appellate ruling might have been different.<sup>187</sup>

Practitioners know that cases are often continued because of the inability of parties to proceed for a number of reasons, including lack of witness availability. The issue of court discretion to therefore dismiss the charges in juvenile delinquency cases came before the Fifth District Court of Appeal in two cases: *State v. S.M.M.*<sup>188</sup> and *State v. A.D.C.*,<sup>189</sup> both involving problems in the same circuit.<sup>190</sup> In *A.D.C.*, the State appealed an order denying its motion to continue a restitution hearing.<sup>191</sup> In that case and in others, the State did not have witnesses present at the trial, duly noticed on evidentiary hearing time.<sup>192</sup> In *A.D.C.*, the appellate court held "that the State was diligent in its [efforts] to prepare for the hearing and secure the attendance of its neces-

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180. 61 So. 3d 494, 495 (Fla. 2d Dist. Ct. App. 2011).

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Henderson*, 61 So. 3d at 496 (emphasis added).

186. 386 U.S. 738, 744 (1967) (setting forth the method for appellate brief filing when counsel does not believe there is a meritorious issue on appeal).

187. *See Henderson*, 61 So. 3d at 495-96.

188. 59 So. 3d 1210 (Fla. 5th Dist. Ct. App. 2011).

189. 59 So. 3d 1209 (Fla. 5th Dist. Ct. App. 2011).

190. *Id.* at 1209; *S.M.M.*, 59 So. 3d at 1211.

191. *A.D.C.*, 59 So. 3d at 1209.

192. *Id.*



sary witnesses” and that it had not sought a prior continuance of the case.<sup>193</sup> Furthermore, the respondent did not establish that he was “suffer[ing] any prejudice as a result of [the] resetting.”<sup>194</sup> For these reasons, the appellate court held that it was abuse of discretion to deny the motion to continue.<sup>195</sup> However, in *S.M.M.*, a case involving an order dismissing a delinquency petition, the appellate court held there was no abuse of discretion and thus affirmed the dismissal.<sup>196</sup> In that case, while recognizing that “dismissal is an extreme sanction that should be employed only when lesser sanctions” are not available, the appellate court held that the facts in that case did not involve an isolated incident.<sup>197</sup> There was “a systemic problem involving a pattern of repeated failures by the State to [provide] witnesses for properly noticed trials [and] other evidentiary hearings,” and in the case at bar, there had been at least one prior continuance of the date of trial, and “almost three hours after the trial was scheduled to start the State had no definitive estimate of when its witnesses might appear,” nor any “explanation [for] why they had not appeared.”<sup>198</sup> The court thus affirmed the dismissal.<sup>199</sup>

In Florida, when a discovery violation occurs, the trial court is required to hold what is known as a *Richardson* hearing.<sup>200</sup> *Richardson v. State*<sup>201</sup> provides a test to determine whether a discovery violation is harmless or whether there is a reasonable probability that the discovery violation procedurally prejudiced the defense.<sup>202</sup> In *T.J. v. State*,<sup>203</sup> the issue was whether the trial court complied with *Richardson* where a juvenile was charged as a “delinquen[t] with burglary of an unoccupied dwelling, third degree grand theft, and criminal mischief.”<sup>204</sup> The juvenile appealed seeking to reverse the adjudication on the ground that there was a *Richardson* violation in that the State, on the first day of trial, listed two witnesses that were not known to the defense.<sup>205</sup> He argued that the late submission was error and not harmless.<sup>206</sup> The witnesses were a crime scene investigator and a latent fingerprint analyst

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193. *Id.* at 1210.

194. *Id.*

195. *Id.*

196. *State v. S.M.M.*, 59 So. 3d 1210, 1211 (Fla. 5th Dist. Ct. App. 2011).

197. *Id.* at 1212.

198. *Id.*

199. *Id.*

200. *See Richardson v. State*, 246 So. 2d 771, 775 (Fla. 1971).

201. 246 So. 2d 771 (Fla. 1971).

202. *Id.* at 775.

203. 57 So. 3d 975 (Fla. 3d Dist. Ct. App. 2011).

204. *Id.* at 976.

205. *Id.*

206. *Id.*

and expert witness.<sup>207</sup> The appellate court reversed on the grounds that “the trial court [had] failed to hold an adequate *Richardson* inquiry” by failing to ask “whether the discovery violation was willful or inadvertent, whether it was substantial or [minor], and whether [it] had a prejudicial [impact] on the defense’s trial preparation.”<sup>208</sup> “[F]ailure to make an adequate inquiry is not harmless error,” the appellate court held.<sup>209</sup> It thus reversed.<sup>210</sup>

Timely filing of motions to suppress is required under the Florida Rules of Juvenile Procedure.<sup>211</sup> In *C.M. v. State*,<sup>212</sup> a child appealed from an adjudication of delinquency for possession of cannabis on the ground “that the trial court erred [in] denying his oral motion to suppress.”<sup>213</sup> When at trial, the State attempted to admit into evidence the cannabis, which was found near the child, counsel for the child objected on grounds of lack of chain of custody and that the search was illegal.<sup>214</sup> The State responded that the child’s counsel had not filed a motion to suppress.<sup>215</sup> “The trial court refused to consider [the] oral motion to suppress . . . [as] no written motion to suppress had been filed.”<sup>216</sup> The appellate court affirmed on grounds that in the absence of the “lack[] [of] opportunity to make a motion to suppress prior to the date of the adjudicatory hearing,” it was not an abuse of discretion to deny the motion.<sup>217</sup>

Being a disrespectful teenager is not grounds for adjudication as a delinquent for resisting a police officer without violence.<sup>218</sup> In *M.M. v. State*<sup>219</sup> this was exactly the issue.<sup>220</sup> A juvenile who was “neither under arrest nor being detained when he refused to give his name or identification to [a] requesting officer” appealed his adjudication for resisting without violence when the youngster walked away slowly from the officer, subsequently “refused to give his name and claimed he had no identification on him.”<sup>221</sup> At no time was the child “under arrest or otherwise lawfully detained when he

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207. *Id.*

208. *T.J.*, 57 So. 3d at 977 (citing *Richardson v. State*, 246 So. 2d 771, 775 (Fla. 1971)).

209. *Id.*

210. *Id.*

211. *See* FLA. R. JUV. P. 8.085(a)(5) (2011).

212. 51 So. 3d 540 (Fla. 5th Dist. Ct. App. 2010).

213. *Id.* at 541.

214. *Id.*

215. *Id.*

216. *Id.*

217. *C.M.*, 51 So. 3d at 541.

218. *See* *M.M. v. State*, 51 So. 3d 614, 615 (Fla. 1st Dist. Ct. App. 2011).

219. 51 So. 3d 614 (Fla. 1st Dist. Ct. App. 2011).

220. *See id.* at 615–16.

221. *Id.* at 615.

[refused] to give [the officer] his name or provide identification.”<sup>222</sup> The appellate court reversed the adjudication finding that the youngster “did not obstruct the officer in executing a legal duty.”<sup>223</sup>

## VI. OTHER MATTERS

Two other cases require analysis in this survey. The first is *Statewide Guardian ad Litem Office v. State Attorney Twentieth Judicial Circuit*.<sup>224</sup> The specific issue before the appellate court in *Statewide Guardian ad Litem Office* was whether the circuit court in the Twentieth Judicial Circuit could order the Guardian ad Litem Program to act as guardians ad litem in criminal proceedings where children, allegedly “victims or witnesses of abuse [and] neglect or sexual offenses,” were expected to testify as witnesses.<sup>225</sup> Apparently, this had been an ongoing procedure in that circuit for some time pursuant to a local administrative order.<sup>226</sup> Initially, the policy applied while the Guardian ad Litem Program “was under the jurisdiction of the judiciary.”<sup>227</sup> However, in 2003, the Statewide Guardian ad Litem Program was placed within the Justice Administrative Commission of the State of Florida, an office of the executive branch of government.<sup>228</sup> As the appellate court put it:

When the guardian ad litem program was under the auspices of the circuit court, no one disputed that the court had authority to appoint guardians from its own program to represent any child that needed a guardian ad litem under any statute authorizing such an appointment. Now that the Statewide [Guardian ad Litem] is an office in the executive branch, we conclude that the circuit court can no longer compel the Statewide [Guardian ad Litem] to appear and assist children in the absence of a statute that gives the court such authority over an agency in another branch of government.<sup>229</sup>

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222. *Id.* at 616.

223. *Id.*

224. 55 So. 3d 747 (Fla. 2d Dist. Ct. App. 2011).

225. *Id.* at 748.

226. *Id.*

227. *Id.* at 749.

228. *Id.* (citing FLA. STAT. § 39.8296(2) (2011)).

229. *Statewide Guardian ad Litem Office*, 55 So. 3d at 750.

As things now stand, both the Guardian ad Litem Program and DCF exist in the executive branch, both with roles that would appear at first glance to be quite similar in the context of dependency proceedings.<sup>230</sup>

The second case is *Department of Children & Families v. D.B.D.*<sup>231</sup> In that case, DCF appealed from “an order dismissing an *ex parte* injunction entered against a father of minor children” under Florida’s dependency statute.<sup>232</sup> The appellate court held that the father was denied due process because “DCF failed to justify the continuation of the injunction.”<sup>233</sup> The underlying facts are disturbing. In *D.B.D.*, the mother who was an attorney for the DCF in Miami-Dade County and the father, also an attorney, had what the appellate court described as “an ongoing, contentious divorce case in Broward County.”<sup>234</sup> The family court in the divorce case had “ruled against the mother on some of the allegations she made against the father.”<sup>235</sup> Six months after the family court “denied the mother an injunction she had sought on behalf of her children, . . . the mother filed a pro se emergency motion to suspend visitation, . . . [but] never called [the] motion up for hearing before the family court judge.”<sup>236</sup> A month later, DCF filed a petition seeking an injunction under Florida’s dependency statute, making many of the same allegations contained in the DCF attorney mother’s pro se emergency motion to suspend visitation.<sup>237</sup> On the day the dependency petition was filed, “a hearing was held before [a judge] who was not the family court judge familiar with the hostile dynamics of this family.”<sup>238</sup> The father received two hours notice of the hearing, but was in the Florida Keys and asked to appear by telephone.<sup>239</sup> When DCF objected, the court would not allow the appearance.<sup>240</sup> Present were the mother, two lawyers, and three DCF representatives.<sup>241</sup> None of them, all professionals according to the appellate court, “advised [the judge] of the pending proceedings in the family court,” nor did he ask.<sup>242</sup> At a short hearing, the DCF attorney sought and received “an injunction that remained in effect until further order of the court

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230. See Dale & Reidenberg, *supra* note 2, at 327, 333.

231. 42 So. 3d 916 (Fla. 4th Dist. Ct. App. 2010).

232. *Id.* at 917 (citing FLA. STAT. § 39.504).

233. *Id.*

234. *Id.*

235. *Id.*

236. *D.B.D.*, 42 So. 3d at 917.

237. *Id.* (citing FLA. STAT. § 39.504(1) (2011)).

238. *Id.*

239. *Id.*

240. *Id.* at 918.

241. *D.B.D.*, 42 So. 3d at 918.

242. *Id.*

without . . . any further hearing.”<sup>243</sup> The trial court entered the injunction which took effect immediately so that, according to the Fourth District Court of Appeal, “the mother could leave [the] court with it in hand.”<sup>244</sup> According to the appellate court, although the trial court “had never seen [n]or heard from the father, the injunction also ordered the father to undergo two evaluations—for substance abuse and by a psychologist.”<sup>245</sup>

A month later, before the family court judge,

[t]he judge found that the DCF petition for injunction was filed in bad faith, and [that] the mother used her position as an attorney with [DCF] to bypass [the] proceeding before [the family] court [in order to] obtain an injunction before a dependency [court] judge who ha[d] no knowledge [of] the history of the parties.<sup>246</sup>

The trial court dismissed the injunction and DCF then appealed, claiming that the trial judge in the family court “improperly placed the burden of proof on the Department to maintain the injunction [and] that the father was not entitled to an immediate hearing to dissolve the injunction. [B]ecause the husband had ‘actual notice,’ the injunction did not qualify as an immediate injunction.”<sup>247</sup> The appellate court rejected these arguments, finding first that DCF’s position “ignore[d] basic principles of due process.”<sup>248</sup> Citing an expansive body of law which rejects the positions asserted by DCF, the appellate court affirmed the family court dissolution of the injunction.<sup>249</sup> In rendering its opinion, the appellate court was unusually blunt:

To anyone familiar with the concept of due process, the abbreviated September 18 “hearing,” consuming but eight pages of transcript, is shocking. Three attorneys were present—Ali Vazquez, on behalf of DCF, Lee Seidlin, for the Guardian Ad Litem [P]rogram, and the mother. None of the[se] attorneys made Judge Rebollo aware of the ongoing proceedings in family court. None of the[se] attorneys mentioned the mother’s August 21 emergency motion. None of the attorneys brought up the mother’s previous

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243. *Id.*

244. *Id.*

245. *Id.*

246. *D.B.D.*, 42 So. 3d at 919–20.

247. *Id.* at 920.

248. *Id.*

249. *Id.* at 920–21.

attempt to secure an injunction on behalf of the children, which was denied.<sup>250</sup>

The appellate court then added: “A primary focus of DCF’s attorney at the hearing was how to avoid further scrutiny of the injunction at a time when the person enjoined could have a meaningful opportunity to be heard.”<sup>251</sup>

Perhaps to emphasize the severity of the attorneys’ failure to act properly, the appellate court cited to the Florida Rules of Professional Conduct concerning *ex parte* proceedings, which state that “[i]n an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that [would] enable the tribunal to make an informed decision, whether or not the facts are adverse.”<sup>252</sup>

## VII. STATUS OFFENSES—CHILDREN IN NEED OF SERVICES

Chapter 984 of the *Florida Statutes* governs intervention in the lives of families and children in need of supervision, known commonly as status offenders.<sup>253</sup> Cases involving status offenders do not come up regularly in the appellate case law in Florida.<sup>254</sup> *A.B.S. v. State*<sup>255</sup> is an exception. In that case, a juvenile who was charged as a delinquent for possession of a controlled substance “admitted . . . the charge while reserving the right to appeal [based upon] the denial of his motion to suppress.”<sup>256</sup> The child had been “taken into custody as a possible runaway in need of services,” one of the status offense categories under chapter 984.<sup>257</sup> The police officer took the youngster into custody, told him that he would take the child home, but before he placed the child into the police cruiser, he handcuffed and searched the child as was the officer’s practice.<sup>258</sup> He found a key chain in the youngster’s pocket with “an aluminum screw-top container” which the police officer believed was of the “type [usually] used to store illegal drugs.”<sup>259</sup>

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250. *Id.* at 918.

251. *D.B.D.*, 42 So. 3d at 919.

252. *Id.* at 919 n.2 (quoting FLA. R. PROF’L CONDUCT 4-3.3(c) (2010)).

253. FLA. STAT. ch. 984 (2011); *see generally* DALE, *supra* note 36, at ¶ 5.02.

254. Michael J. Dale, *Juvenile Law in Florida in 1998*, 23 NOVA L. REV. 819, 831 (1999) (discussing the rarity of opinions regarding the Children in Need of Services/Families in Need of Services Statute).

255. 51 So. 3d 1181 (Fla. 2d Dist. Ct. App. 2010).

256. *Id.* at 1182.

257. *Id.*; FLA. STAT. § 984.13(1)(a).

258. *A.B.S.*, 51 So. 3d at 1182.

259. *Id.*

When the officer shook it, it rattled.<sup>260</sup> That made the police officer suspicious, and when the officer opened the container, the officer found a controlled substance.<sup>261</sup> The appellate court reversed the denial of the motion to suppress “because the [police] officer did not have a legal basis to search.”<sup>262</sup> It held that the circumstances under which “a juvenile [may] be taken into custody [pursuant to] section 984.13 are not crimes.”<sup>263</sup> “[T]herefore, [a] search incident to [an] arrest exception to the warrant requirement d[id] not apply.”<sup>264</sup> There having been “no indication that [the child] was in possession of either a weapon or contraband when [the police officer] searched [him] . . . the search was conducted without a legal basis, [and] the trial court erred in denying the motion to suppress.”<sup>265</sup>

### VIII. CONCLUSION

The intermediate appellate courts were quite busy during the past survey year in the areas of dependency, termination of parental rights, and juvenile delinquency, ruling on a number of procedural matters as well as refining definitional language within the relevant statutes. The courts decided one important case outside of these areas, affirming the proposition that the Guardian ad Litem Program, like the DCF Services, is a division within the Executive Department.<sup>266</sup> And, in one particularly troubling case, casting a shadow on the legal profession, one appellate court castigated attorneys within the DCF Services and Guardian ad Litem Program for their behavior in an ill-conceived dependency matter.<sup>267</sup>

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260. *Id.*

261. *Id.*

262. *Id.* (citing *L.C. v. State*, 23 So. 3d 1215, 1218 (Fla. 3d Dist. Ct. App. 2009).

263. *A.B.S.*, 51 So. 3d at 1182 (citing *L.C.*, 23 So. 3d at 1218; FLA. STAT. § 984.13 (2011).

264. *Id.* (citing *L.C.*, 23 So. 3d at 1218).

265. *Id.*

266. *Statewide Guardian ad Litem Office v. State Att’y Twentieth Judicial Circuit*, 55 So. 3d 747, 749 (Fla. 2d Dist. Ct. App. 2011).

267. *Dep’t of Children & Families v. D.B.D.*, 42 So. 3d 916, 917–20 (Fla. 4th Dist. Ct. App. 2010).