

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC02-261

**N.S.H., Mother of A.M., A.M., A.H.,
Minor Children,**

Appellant,

vs.

**DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,**

Appellee.

APPELLANT'S REPLY BRIEF

**On review from a question certified by the Fifth District Court
of Appeal, *en banc*, in Case No. 5D01-1595**

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The Mother relies on the arguments in the initial brief except for a few brief points. The Department argues on page 12 of its answer brief that the *Anders* procedure should not apply because it only benefits indigent appellants (and does not benefit those who hire private attorneys). This is an argument against the *Anders* procedure itself and has nothing to do with applying *Anders* to termination of parental rights proceedings. Clearly, *Anders* is well-established. The Department's argument that it is somehow an equal protection violation has been rejected.

An additional reason as to why *Anders* should apply is that there is no 3.850 or similar motion to seek relief from ineffectiveness of counsel (trial and appellate counsel) in termination of parental rights proceedings. Applying *Anders* is therefore a necessary safeguard.

The Department even admits on page 9 of its answer brief that both the child and the Department itself have "an interest in an accurate and just resolution of the parent's appeal (*Santosky*)." Clearly, the interests at stake are too important to allow the current procedure to continue.

The undersigned attorney has unsuccessfully attempted to pursue this *Anders* issue before. See L.C. v. Department of Children & Families, 773 So.2d 56 (Table) (Fla. 2000) (*jurisdiction declined*, SC00-2029, October 5, 2000).

APPLYING ANDERS TO JUVENILE DEPENDENCY PROCEEDINGS

The Department seeks to expand the issue at hand by arguing that this Court must also decide whether *Anders* should apply to juvenile dependency proceedings. This issue is *not* ripe and *not* essential to the resolution of this case. However, even if it was, *Anders* should also apply to juvenile dependency appeals:

A juvenile dependency proceeding has within it the potential to alter substantially the fundamental right to parent and the right of association with one's offspring. Although due process required in the juvenile dependency context is not amenable to precise definition, it is viewed as expressing the requirement of "fundamental fairness". *Lassiter v. Department of Social Services of Durham County*, 452 U.S. 18, 23, 101 S.Ct. 2153, 2158, 68 L.Ed.2d 640 (1981).

L.W. v. Department of Health & Rehabilitative Services, 695 So.2d 724, 726 (Fla. 1st DCA 1996).

Most states have not addressed the issue of whether to apply *Anders* to dependency proceedings. But see J.K. v. Lee County Department of Human Resources, 668 So.2d 813 (Ala. Civ. App. 1995) (applying *Anders* to juvenile dependency).

The Florida legislature has mandated that a parent has an absolute right to appeal any order that affects them, whether in the dependency or termination context. The legislature has made no distinction between the two. The intent is clear that Florida places a premium on due process in the realm of the family and seeks to provide the maximum appellate protections.

The Department also aptly notes that there are seventeen (17) different statutes and three (3) rules of procedure protecting the right to counsel. These statutes can only be viewed as the legislature's recognition that due process and fundamental fairness require *Anders* in these proceedings.

Moreover, the record in dependency appeals is very brief and not nearly as extensive as in termination cases. The pleadings are sparse and usually only extend over a few months before the trial occurs and the trials themselves are usually short. It would not take long for a district court to ensure that no reversible error occurred.

In sum, full *Anders* procedures must apply to termination of parental rights and juvenile dependency proceedings (if ripe) because the fundamental right of liberty is implicated in both proceedings.

CONCLUSION

For all the foregoing arguments and authorities, the Appellant/Mother, N.S.H., respectfully requests this Honorable Court to reverse the Fifth District's decision to dismiss her appeal and allow counsel to file an *Anders* brief and require the Fifth District to independently review the whole record-on-appeal to determine whether error is present, and answer the certified question accordingly.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by First Class U.S. Mail to: CHARLES D. PETERS, ESQ., Attorney for Department of Children & Families, 400 West Robinson St., Suite S-1106, South Tower, Orlando, Fl. 32801 on this 19th day of March 2002.

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the instant brief has been prepared with Times New Roman 14-point font in compliance with Fla.R.App.P. 9.210(a)(2) on this 19th day of March 2002.

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Attorney for Appellant/Mother