

Supreme Court of Florida

No. SC05-950

**COMMENT ON
IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE
PROCEDURE; FORMS FOR USE WITH RULES OF JUVENILE
PROCEDURE; AND THE FLORIDA RULES OF APPELLATE
PROCEDURE – JUDICIAL WAIVER OF PARENTAL NOTICE OF
TERMINATION OF PREGNANCY**

Scott Bernstein, *in propria persona*, files this comment to the Court's June 30, 2005 opinion amending the Florida Rules of Juvenile Procedure.

My only comment concerns Rule 8.820(a) regarding terminations of pregnancy. The Emergency Rule adopted by this Court states:

A judge shall conduct an informal hearing on the petition within the time limits provided by law and these rules. General magistrates and special magistrates shall not hear petitions for a judicial waiver of parental notice of termination of pregnancy.

Fla. R. Juv. P. 8.820(a). This rule attempts to implement the provision of Florida Statute 390.01114(4)(b) which requires the judge to issue written findings of fact and conclusions of law within 48 hours of the filing of a petition for judicial waiver of parental notice of termination of pregnancy. I

believe this Court's rule should require the trial judge to conduct the hearing the same day the petition is filed.

The legislature clearly intended these proceedings be treated on an emergency basis. The legislature recognized the sensitive nature of these cases and the medical necessity for expedited results. In fact, the statute only provides the court 48 hours to complete the entire process.

The Emergency Rule adopted by this Court would permit a trial judge to wait two days to conduct a hearing on the petition as long as an immediate written order were prepared. This has the potential for a devastating impact on the juveniles affected by this rule.

As a Circuit Court Judge who spent many years in the Juvenile Division of the trial court, I have seen many young women who were victims of horrendous sexual abuse by fathers or step-fathers. These and other domestic violence victims are the juveniles most likely to file petitions for judicial waiver of the parental notice statute. The fact that these juveniles have the wherewithal to find their way to a courthouse, miss school or work undetected, navigate a complicated statute, file a legally appropriate petition and subject themselves to the questioning of strangers on this vulnerable

topic is nothing short of amazing.¹ Making these juveniles come to the courthouse to file the petition and then come back all over again for a hearing one or two days later places an undue burden on these vulnerable victims. If these cases truly are the emergency the legislature says they are, then judges should treat them as such. Every Circuit already has a system of emergency duty judges in place. It would therefore be no additional burden on the trial courts to conduct hearings on these cases the same day they are filed.

This Court has already noted in Rule 8.820(d)(1), Fla. R. Juv. P., that these cases “take precedence over other pending matters as necessary” to meet the 48 hour written order deadline imposed by statute. Requiring the hearing to be conducted on the same day the petition is filed will not encompass any greater interruption in a trial judge’s busy schedule than is already imposed by the statute and the Emergency Rule this Court adopted. A trial judge typically has a calendar set many days in advance; whether the hearing on an emergency petition is set the same day the petition is filed or the next day will cause a similar interruption to an already set schedule. If the judge will be interrupted whenever the emergency hearing is set, the only

¹ For an overview of the impact such obstacles have on the juveniles involved, see Helena Silverstein and Leanne Speitel, “*Honey, I Have No Idea*”: Court Readiness to Handle Petitions To Waive Parental Consent for Abortion, 88 Iowa L. Rev. 75 (2002); Helena Silverstein, *Road Closed: Evaluating the Judicial Bypass Provisions of the Pennsylvania Abortion Control Act*, 24 Law & Soc. Inquiry 3 (1999).

one who will suffer if the hearing is not set on the same day as filing is the victim/child. Moreover, if the hearing were set on the same day as filing, the trial judge would then have more time to issue well-reasoned written findings of fact and conclusions of law and still meet the statutory mandate of completion within 48 hours.

I recognize some of these judicial waiver petitions may well be filed after regular business hours or over the weekend. As a judge in the juvenile division, I frequently handled emergency matters at night and even conducted hearings on holidays. That is part of the job of public service. But true public service requires us to be mindful of the people we are attempting to serve. These especially troublesome cases should spend as little time waiting for a judge's attention as possible.

Therefore, I would recommend this Court amend Rule 8.820(a) as follows:

A judge shall conduct an informal hearing on the petition on the same day the petition is filed so that the judge can render a ruling within the time limits provided by law and these rules. General magistrates and special magistrates shall not hear a petition for a judicial waiver of parental notice of termination of pregnancy.

I appreciate the opportunity this Court provided for public input.

Respectfully submitted,

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