

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE

CASE NO. SC06-159

IN RE: AMENDMENTS TO FLORIDA RULES
OF APPELLATE PROCEDURE (OUT OF CYCLE),

**COMMENT ON PROPOSED FLORIDA RULE OF APPELLATE
PROCEDURE 9.130(a)(3)(C)(iii)**

COMES NOW, the undersigned attorney, the proponent of the rule in question (non-final appeals concerning child custody in dependency and tpr cases), hereby files this comment in response to the comments filed by other interested parties in this case, and would hereby state:

1. That the undersigned is filing this response comment after receiving the comments of the Legal Aid Society of Palm Beach County (dated 3/17/06) and the Juvenile Rules Committee (dated 3/21/06). These were the only two comments received.

2. Both comments reflect a fundamental misunderstanding of the appellate process in juvenile dependency and termination of parental rights cases.

3. Simply put, a non-final appeal does absolutely nothing to delay permanency for the child. This is so because the trial court proceeds with the case as if there has been no appeal at all. The trial court retains jurisdiction to

continue the case as normal. See Fla.R.App.P. 9.146(d). Only appeals from final orders delay permanency.

4. The undersigned attorney has completed over 350 appeals, most of which are dependency and termination cases. Speaking from practical experience, when there is a non-final appeal pending absolutely nothing changes in the trial court. The case proceeds as if there was no appeal at all. There is no delay to permanency.

5. The juvenile rules committee states that it is concerned that allowing non-final appeals would eliminate the ability of parties to seek expedited review by writ.

6. First, the proposition that the preferred remedy should be by writ is absurd. Extraordinary writs impose a very high burden on the petitioner and district courts of appeal have the discretion to dismiss writs that are meritorious.

7. Further, a district court of appeal can always hold that the petitioner has an adequate remedy by appealing the final judgment. (Of course, during this interim time before a final order is entered the parent/child bond will deteriorate).

8. In any event, if the problem is speed, district courts of appeal should be deciding this type of non-final appeal just as fast as it decides a writ. There is certainly no impediment to this. See also Fla.R.App.P. 9.146(g), holding that these appeals should be given expedited review.

9. The comment of the Legal Aid Society Palm Beach County Bar Association is equally misguided. They state that the biggest obstacle to

permanency for children are appeals of termination of parental rights orders. This is a final order that has nothing to do with non-final appeals.

10. The Legal Aid Society then complains that this would give the “green light to anyone adversely affected by a child custody order to appeal,” and this would conflict with existing law. This is a patently erroneous legal analysis. To the contrary, the proposed amendment is in full accord with existing law.

11. Florida Statute Sections 39.510(1) [dependency] and 39.815(1) [termination of parental rights], each hold that a party has the right to appeal any order that affects him or her. There are no restrictions. It is the unambiguous intent of the legislature that parents have the right to appeal all orders that affect them.

12. The legislature could not have used broader language. In sum, the proposed rule is in full accord with Florida law. Moreover, forcing parents to file extraordinary writs is contrary to unambiguous legislative intent.

13. Legal Aid then posits two hypothetical horrors as reasons to deny the amendment. The first scenario with the out-of-state relative has absolutely nothing to do with non-final appeals. The second scenario about an aggrieved relative being able to appeal also does not apply because the relative is not a party. Both scenarios have no effect on this issue.

14. Allowing non-final appeals only acts as a double-check on the accuracy of the trial court’s decision. The child remains in the placement ordered by the trial court while the appeal is pending and there is no delay to the permanency of the child because everything proceeds as if there was no appeal.

15. Among the most important of these non-final appeals would be the trial court's initial shelter order removing the child from the parents and placing the child into an out-of-home placement [Fla. Stat. § 39.402]. It will be at least a full year before a termination of parental rights petition will be filed to establish permanency [Fla. Stat. § 39.806(1)(e)]. A non-final appeal as to the correct placement of the child in the interim period does nothing to inhibit this.

16. In fact, most changes of placement occur before there is an adjudication of dependency. As a result, there is little risk of delaying permanency because the placement issue arises so early on in the case.

17. Lastly, the fact that the workloads of the district courts of appeal may increase does not trump the fundamental liberty interest parents enjoy in maintaining the parent/child bond. Further, the Florida due process clause, in the area of termination of parental rights, provides higher due process standards than the federal due process clause. M.E.K. v. R.L.K., 2006 WL 435722 at *3 (Fla. 5th DCA, February 24, 2006).

18. In sum, allowing non-final appeals as to child custody does not delay permanency for the child but only serves to ensure the accuracy of the trial court's decision. Allowing such appeals is especially imperative when the child is being placed into foster care. The child has nothing to lose and all to gain.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Jack Roy Reiter, Esq., Chair of Appellate Rules Committee, Adorno & Ross, P.A., 2525 Ponce De Leon Blvd., Suite 400, Miami, FL 33134-6012 on this 30th day of March 2006.

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