

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

DEPARTMENT OF  
CHILDREN AND FAMILIES,

Appellant,

v.

CASE NO. 5D21-1300

M.C., MOTHER OF M.C., G.C.,  
F.C., AND C.C., CHILDREN,

Appellee.

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Opinion filed September 13, 2021

Appeal from the Circuit Court  
for Marion County,  
S. Sue Robbins, Judge.

Rachel Batten, Children's Legal Services,  
Brooksville, for Appellant.

Shannon Reynolds, Ocala, for Appellee.

PER CURIAM.

The Department of Children and Families ("DCF") appeals<sup>1</sup> an order

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<sup>1</sup> See *Dep't of Child. & Fams. v. H.M.R.*, 161 So. 3d 477, 478 (Fla. 5th DCA 2014); *S.M. v. Dep't of Child. & Fams.*, 890 So. 2d 552 (Fla. 5th DCA 2005); cf. *In re B.F.*, 283 So. 3d 990, 993 (Fla. 2d DCA 2019) ("The order in

denying a shelter petition filed pursuant to section 39.402, Florida Statutes (2020). The petition sought to shelter M.C., G.C., F.C. and C.C. (“the Children”) from their mother, M.C. (“the Mother”). DCF argues that the trial court erred when it denied the petition, despite making legally sufficient findings, because DCF utilized an out-of-home safety plan prior to filing the shelter petition. We reverse.

DCF opened an investigation in this case after the Children’s father committed suicide near the family home. The Mother, who has a long history of mental health issues, threatened to commit suicide to demonstrate her fidelity to the father and was Baker Acted. While at a treatment facility, the Mother told evaluators she was thinking about ways for her and her Children to be with their father in heaven.

The Mother was eventually discharged with a plan for the Children to remain with the paternal grandparents and any interaction between the Mother and her Children to be monitored by family. The Mother also had a follow-up appointment to address her mental health issues. After her discharge, the Mother told a neighbor that she went where the father's body

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this appeal—a denial of a shelter petition and nothing else—is a final order; judicial labor ended once the court denied the Department's shelter petition.” (citation omitted)).

was found and asked the father if it would make him happy if she killed herself and the Children.

Based on its investigation, DCF determined there was an immediate danger to the Children and offered the Mother an out-of-home safety plan, pursuant to section 39.301(9)(a)6., Florida Statutes (2020), requiring the Children to stay with their grandparents and allowing the Mother supervised visitation. The Mother initially agreed and signed the plan but later changed her mind. After learning that the Mother failed to attend her follow-up mental health appointment, DCF filed the shelter petition at issue.

After a hearing on the petition, the trial court entered a written order finding, among other things, probable cause for dependency and that an emergency required DCF's involvement. Nevertheless, the court denied the shelter petition apparently on the grounds that DCF had not made reasonable efforts to prevent or eliminate the need for removal. This appeal follows.

On appeal, DCF argues, *inter alia*, that the trial court erred when it determined that DCF had not demonstrated reasonable efforts. We agree.

One of the many statutorily required factual findings for an order granting a shelter petition is that "the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the

home.” § 39.402(8)(h)5., Fla. Stat. (2020). Importantly, however, the statute provides that DCF is “deemed to have made reasonable efforts” if, among other things, “[t]he first contact of the department with the family occurs during an emergency.” *Id.*

According to the plain language of section 39.402(8)(h)5., once the trial court determined that DCF first became involved due to an emergency, the requirement that DCF use reasonable efforts to prevent or eliminate the need for removal of the Children was established. As such, the trial court’s denial of the petition on this ground is in error.

REVERSED and REMANDED.

LAMBERT, C.J., EISNAUGLE and TRAVER, JJ., concur.