

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DEPARTMENT OF REVENUE,
CHILD SUPPORT ENFORCEMENT
PROGRAM, on behalf of:
Regina Gardner,

Petitioner,

v.

TYLER LONG,

Respondent.

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

CASE NO. 1D06-925

Opinion filed June 29, 2006.

Petition for Writ of Certiorari - Original Jurisdiction.

Charlie Crist, Attorney General, and William H. Branch, Assistant Attorney General,
Child Support Enforcement, Tallahassee, for Petitioner.

No appearance for Respondent.

PER CURIAM.

In this petition for writ of certiorari, the Department of Revenue (“DOR”) seeks review of the Division of Administrative Hearing’s (“DOAH”) order directing Respondent, Mother, and Child to submit to DNA testing to establish paternity even though Respondent previously signed an acknowledgment of paternity. The hearing

below was conducted under section 409.2563, Florida Statutes (2005). Because the Administrative Law Judge (ALJ) departed from the essential requirements of law and an irreparable harm will result, we grant the petition.

After receiving a proposed administrative order from DOR, Respondent timely requested a hearing by letter. As part of his request, Respondent wrote, “Need DNA test.” Respondent received no response from DOR regarding circuit court action. Instead, his case was referred to DOAH and, subsequent to a hearing, DOAH issued a temporary administrative support order requiring Respondent to pay child support pending the results of genetic testing, which DOAH also ordered.

We find that neither DOR nor DOAH has jurisdiction to hear or determine issues of disputed paternity under section 409.2563(2)(b), Florida Statutes (2005). Mendez v. Dep’t of Revenue, 898 So. 2d 1060 (Fla. 2d DCA 2005). Moreover, section 409.2563(2)(f), Florida Statutes (2005), makes it clear that DOR must terminate a pending administrative proceeding and file an action in circuit court when the non-custodial parent makes a written request for paternity testing.

As the Second District found in Mendez, we find that it was clear that Respondent was seeking a paternity determination which the administrative court could not statutorily order; therefore, upon receipt of Respondent’s written request, DOR was obligated to terminate the administrative proceeding and proceed with this

action in circuit court. Due to the foregoing, the ALJ departed from the essential requirements of law when she ordered genetic testing instead of following the proper procedure under section 409.2563, Florida Statutes (2005). See Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 890 (Fla. 2003) (explaining that failure of a court to follow a controlling statute can be a departure from the essential requirements of law and a basis to grant a petition for certiorari). We find that subjecting Mother and Child to a potentially intrusive test that is outside the court's jurisdiction is enough to constitute irreparable harm.

We, therefore, GRANT the petition for writ of certiorari and QUASH both the order for genetic testing and the temporary administrative support order.

ALLEN, DAVIS, and THOMAS, JJ., CONCUR.