

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

J.C., the mother,
Appellant,

v.

DEPARTMENT OF CHILDREN AND FAMILIES,
Appellee.

No. 4D06-5029

[June 27, 2007]

PER CURIAM.

The trial court entered a final order terminating J.C.'s parental rights to her child, D.H. We affirm the final order terminating J.C.'s parental rights in all respects except one. DCF concedes that the trial court erred by terminating J.C.'s parental rights based on abandonment, as set forth in Florida Statutes section 39.806(1)(b), where this ground was not pleaded as a basis for termination in the petition and DCF failed to seek amendment of the petition to include this ground as to J.C. *See R.S. v. Dep't of Children & Families*, 872 So. 2d 412, 413 (Fla. 4th DCA 2004). However, despite this error, the termination of J.C.'s parental rights itself is affirmed, because two other grounds supporting termination were established by DCF. *See S.S. v. D.L.*, 944 So. 2d 553, 557 (Fla. 4th DCA 2007)(explaining that DCF must "present clear and convincing evidence of a statutory ground for terminating and clear and convincing evidence that terminating parental rights is in the best interests of the child")(emphasis added). Consequently, we reverse only the portion of the order terminating J.C.'s parental rights on the ground of abandonment and remand for this finding to be stricken from the order.

Affirmed In Part, Reversed In Part, And Remanded.

GUNTHER, HAZOURI, JJ., and METZGER, ELIZABETH A., Associate Judge,
concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit,

Broward County; Dale C. Cohen, Judge; L.T. Case No. 96-12651 CJD.P.

Patricia A. Gainer-Gaddis of the Law Offices of Patricia A. Gainer-Gaddis, Fort Lauderdale, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Jeffrey P. Bassett, Assistant Attorney General, Children's Legal Services, Fort Lauderdale, for appellee.

Patricia M. Propheter, Appellate Counsel, Orlando, for Guardian ad Litem Program.

Not final until disposition of timely filed motion for rehearing