

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-458

E.S., Father of R.S., a Minor
Child,

Appellant,

v.

L.G., Mother of R.S., a Minor
Child, and DEPARTMENT OF
CHILDREN AND FAMILIES,

Appellees.

On appeal from the Circuit Court for Columbia County.
Leandra G. Johnson, Judge.

August 10, 2020

PER CURIAM.

E.S., father of R.S., a minor child, appeals the order changing placement in a dependency action. After the mother's four children were taken into protective custody, R.S. was placed with his father. After the three other children were reunified with their mother, the mother filed a post-disposition motion to change R.S.'s placement under section 39.522, Florida Statutes. After a hearing, the court below granted the motion, finding that it was in the child's best interest. We affirm and write to address one of the father's arguments.

As a matter of first impression, the father argues the court below should have applied the factors found in section 61.13, Florida Statutes in determining the best interest of the child in changing placement in a chapter 39 dependency case. Section 61.13 establishes factors to be used in determining responsibility for children, specifically time-sharing, related to a dissolution proceeding and indicates that “the best interest of the child shall be the primary consideration.” *See* § 61.13(3), Fla. Stat. We reject the father’s argument.

Section 39.013(1) specifically provides that all procedures in chapter 39 shall be conducted according to the Florida Rules of Juvenile Procedure unless otherwise provided by law. Neither chapter 39 nor the rules of juvenile procedure provides for consideration of the section 61.13 factors in dependency cases. “Chapter 39 of the Florida Statutes is the sole and exclusive means by which a court can declare a child dependent.” *In the interest of J.H.*, 535 So. 2d 669, 670 (Fla. 2d DCA 1988). Section 39.522 is entitled, “Post-disposition change of custody” and provides procedures for changing placement after disposition in a dependency case. Consequently, the specific provisions of section 39.522 are solely applicable to this matter. We see no indication that a court must apply the chapter 61 time-sharing factors to best interest determinations in dependency cases.

AFFIRMED.

ROWE, WINOKUR, and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Robert A. Sandow, Lake City, for Appellant.

No appearance for Appellee L.G. Ward L. Metzger, Jacksonville, for Appellee Department of Children and Families. Thomasina F. Moore and Sara Goldfarb, Florida Statewide Guardian ad Litem Office, Tallahassee, for Guardian ad Litem.