

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

K.C., the mother,
Appellant,

v.

DEPARTMENT OF CHILDREN AND FAMILIES and
GUARDIAN AD LITEM PROGRAM,
Appellees.

No. 4D18-2345

[November 28, 2018]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; Yael Gamm, Judge; L.T. Case No. 2015-3090-CJ-DP.

Anthony P. Ryan, Regional Counsel, and Paul O'Neil, Assistant Regional
Counsel, Office of Criminal Conflict and Civil Regional Counsel, West Palm
Beach, for appellant.

Sarah Elizabeth Goldfarb of Statewide Florida Guardian ad Litem
Office, Tallahassee, for appellee Guardian Ad Litem Program.

Pamela Jo Bondi, Attorney General, Tallahassee, and Carolyn Schwarz,
Assistant Attorney General, Children's Legal Services, Fort Lauderdale, for
appellee Florida Department of Children and Families.

PER CURIAM.

We affirm the final judgment terminating appellant's parental rights to her child, as competent substantial evidence supports the trial court's findings. See *B.K. v. Dep't of Children & Families*, 166 So. 3d 866, 872-73 (Fla. 4th DCA 2015) (noting that the review of a trial court's findings in a termination proceeding is highly deferential, and a trial court's findings carry a presumption of correctness and will not be overturned unless clearly erroneous or lacking in evidentiary support). We remand, however, to correct the final judgment by removing the court's conclusion of law that clear and convincing evidence supported termination based upon section 39.806(1)(g), Florida Statutes. The parties all agree that the Department of Children and Families dismissed this ground as a basis for termination, which the trial court noted at the final hearing but

nevertheless included it in its final judgment. It would be a violation of appellant's due process rights of notice and a fair hearing to terminate her parental rights based on a ground which was not noticed or tried by implied consent. See *R.S. v. Dep't of Children and Families*, 872 So. 2d 412, 413 (Fla. 4th DCA 2004). However, the trial court also found that clear and convincing evidence supported termination pursuant to sections 39.806(1)(c) and 39.806(1)(f), Florida Statutes. Where the trial court's ruling on any ground for termination is supported by competent substantial evidence, the trial court's decision should be upheld. See *J.E. v. Dep't of Children & Families*, 126 So. 3d 424, 427-28 (Fla. 4th DCA 2013).

Affirmed and remanded with directions.

WARNER, DAMOORGIAN and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.