

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

In the Interest of L.W., a child.

M.M.W.,

Appellant,

v.

DEPARTMENT OF CHILDREN AND FAMILIES and
GUARDIAN AD LITEM PROGRAM,

Appellees.

R.W.,

Appellant,

v.

DEPARTMENT OF CHILDREN AND FAMILIES and
GUARDIAN AD LITEM PROGRAM,

Appellees.

Nos. 2D21-589, 2D21-592
CONSOLIDATED

October 27, 2021

Appeal from the Circuit Court for Hillsborough County; Cynthia S. Oster, Judge.

Toni A. Butler of Alderuccio & Butler, LLC, Naples, for Appellants.

Mary Soorus, Children's Legal Services, Tampa, for Appellee Department of Children and Families.

Thomasina F. Moore and Laura J. Lee, Statewide Guardian ad Litem Office, Tallahassee; and Beth Kathryn Roland, Statewide Guardian ad Litem Office Defending Best Interests Project, Family First Firm, Orlando, for Appellee Guardian ad Litem Program.

PER CURIAM.

In these appeals, which this court has consolidated for purposes of this opinion, M.M.W. (the Mother) and R.W. (the Father) challenge an order adjudicating their child (the Child) dependent with findings as to both parents. We affirm the adjudication of dependency of the Child as to the Mother¹ but reverse the order adjudicating the Child dependent with respect to the Father.²

Both parents contested the dependency petition, and the matter proceeded to an adjudicatory hearing. The circuit court concluded that the Child was at a "substantial risk of imminent neglect or abuse" under the parents' care based on several factual

¹ Case number 2D21-589.

² Case number 2D21-592.

findings. The circuit court's ruling turned on prospective neglect or abuse under section 39.01(15)(f), Florida Statutes (2020).

Although there is competent substantial evidence in the record to support that the Child was at a "substantial risk of imminent neglect or abuse" by the Mother, the evidence does not meet this standard as to the Father even based on a failure to act, such as a failure to protect the Child. Accordingly, we affirm the adjudication of dependency as to the Mother, reverse the adjudication of dependency as to the Father, and remand for the entry of a corrected adjudication of dependency.³

Affirmed in part, reversed in part, and remanded.

VILLANTI and SLEET, JJ., Concur.

KELLY, J., Concur in part and dissents in part with an opinion.

KELLY, Judge, Concurring in part and dissenting in part.

³ Although it appears that the Mother and the Father were living together as a family unit, at least at the time of the adjudicatory hearing, the reversal of the order as to the Father does not prevent this court from affirming the order as to the Mother. *See S.T. v. Dep't of Child. & Fam. Servs.*, 87 So. 3d 827 (Fla. 2d DCA 2012).

I agree that the adjudication of dependency must be reversed as to the Father. I would also reverse the adjudication of dependency as to the Mother.

Opinion subject to revision prior to official publication.