

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

In the Interest of M.C. and H.C., children.)
_____))
N.E.R.,))
Appellant,))
v.))
DEPARTMENT OF CHILDREN AND))
FAMILY SERVICES and GUARDIAN AD))
LITEM PROGRAM,))
Appellees.))
_____)

Case No. 2D08-3563

Opinion filed July 10, 2009.

Appeal from the Circuit Court for
Hillsborough County; Rex Martin Barbas,
Judge.

Kimberly Nolen Hopkins, Tampa, for
Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Kimberly G. Gore,
Assistant Attorney General, Tampa, for
Appellee Department of Children and
Family Services.

Ama N. Appiah, Orlando, for Appellee
Guardian ad Litem Program.

SILBERMAN, Judge.

N.E.R. appeals an order entitled "Order Withholding Adjudication and Disposition as to the Mother, [N.E.R.] (pursuant to § 39.507(5) Florida Statutes)." In the order, the trial court found the Mother's two children, M.C. and H.C., to be dependent but withheld adjudication of dependency. The Mother also appeals an order that requires her to participate in Family Dependency Treatment Court as a result of the dependency and disposition order. The Department concedes error, and we reverse.

We have jurisdiction to review the order finding the children to be dependent but withholding adjudication of dependency. See P.H. v. Dep't of Children & Families, 901 So. 2d 277, 277 (Fla. 5th DCA 2005); R.B. v. Dep't of Children & Families, 799 So. 2d 441, 442 (Fla. 5th DCA 2001); E.M.A. v. Dep't of Children & Families, 795 So. 2d 183, 184 (Fla. 1st DCA 2001); F.R. v. Dep't of Children & Families, 763 So. 2d 478, 479 (Fla. 5th DCA 2000).

The Mother argues, and the Department concedes, that the Department failed to prove abuse, abandonment or neglect, or imminent risk thereof. See § 39.01(14)(a), (f), Fla. Stat. (2007). The record supports the Department's concession and that it failed to prove the Mother's "[c]ontinued chronic and severe use of a controlled substance or alcohol" that "demonstrably adversely affected" her children. § 39.01(31)(g)(2); see also J.B.M. v. Dep't of Children & Families, 870 So. 2d 946, 950 (Fla. 1st DCA 2004).

We note that the Guardian ad Litem (GAL) does not concede error. With respect to the GAL's argument concerning prospective abuse or neglect, the substantial risk of abuse or neglect to the child must be imminent. See § 39.01(14)(f); N.D. v. Dep't of Children & Family Servs., 939 So. 2d 1192, 1194 (Fla. 2d DCA 2006). The trial court

did not make a finding of an imminent risk, and the Department failed to prove an imminent risk.

Therefore, we reverse the order finding the children dependent and withholding adjudication of dependency. We also reverse the order entered as a result of the dependency order that requires the Mother to participate in Family Dependency Treatment Court.

Reversed.

FULMER and NORTHCUTT, JJ., Concur.