

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 A.F., a child.)
_____))
L.K.,))
Appellant,))
v.))
DEPARTMENT OF CHILDREN AND))
FAMILY SERVICES and GUARDIAN))
AD LITEM PROGRAM,))
Appellees.))
_____)

Case No. 2D10-1168

Opinion filed August 4, 2010.

Appeal from the Circuit Court for Pasco
County; William Webb, Judge.

John E. Hendry, Regional Counsel, Second
District, and Robert D. Rosen, Assistant
Regional Counsel, Office of Criminal
Conflict and Civil Regional Counsel,
Bartow, for Appellant.

Jennifer S. Paullin, Tavares, for Appellee
Guardian ad Litem Program.

D. Jeannine Dalton, Clearwater, for
Appellee Department of Children and
Family Services.

VILLANTI, Judge.

L.K., the Mother, appeals the trial court's order that terminated protective supervision and awarded permanent custody of her daughter, A.F., to the child's father. She argues that the trial court erred by entering this order without determining whether she had substantially complied with her case plan and without considering the best interests of the child. Both the Department of Children and Family Services and the Guardian ad Litem have conceded error based on the plain language of section 39.522(2), Florida Statutes (2007), which provides that "[i]n cases where the issue before the court is whether a child should be reunited with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home." (Emphasis added.) See also M.M. v. Dep't of Children & Families, 29 So. 3d 1200, 1201 (Fla. 5th DCA 2010) ("[I]t is reversible error to permanently award custody to a non-offending parent when the offending parent has a case plan goal of reunification and has . . . substantially complied with the plan . . . without a finding that reunification would be detrimental to the children.").

Accordingly, we reverse the order on appeal and remand for further proceedings. On remand, the trial court must hold a hearing to determine whether the Mother has substantially complied with her case plan and, if so, whether reunification would be in the manifest best interests of A.F.

Reversed and remanded for further proceedings.

SILBERMAN and WALLACE, JJ., Concur.