

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 D.W., a child.)
_____))
R.W.,))
))
Appellant,))
v.))
))
DEPARTMENT OF CHILDREN AND))
FAMILY SERVICES and GUARDIAN AD))
LITEM PROGRAM,))
))
Appellees.))
_____))

Case No. 2D12-759

Opinion filed July 6, 2012.

Appeal from the Circuit Court for Charlotte
County; Lee Ann Schreiber, Judge.

Radha Rothrock of Rothrock Law Firm PL,
Bonita Springs, for Appellant.

Jeffrey Dana Gillen, West Palm Beach, for
Appellee Department of Children and
Family Services.

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

ALTENBERND, Judge.

The father, R.W., appeals an order of dependency as to his minor child,
D.W. The Department of Children and Family Services concedes error. Accordingly,

we reverse and remand for further proceedings.

The Department sheltered D.W. in September 2011, when the child was approximately eight years old. The child's mother was incarcerated at the time, and the Department maintained that R.W. had failed to protect the child from the mother's known substance abuse problems. The Department initiated a dependency proceeding as to both parents. The mother did not contest the proceeding. R.W., however, contested the proceeding and received an adjudicatory hearing.

R.W. testified that he had not lived with the mother for at least two years but that he had recently gone to Colorado with the mother to look for a job while the child stayed with the paternal grandmother. The Department concedes that the record does not contain competent, substantial evidence to support the allegations against R.W. in the petition for dependency. The Department notes that the case is similar to our recent decision in S.T. v. Department of Children and Family Services, 37 Fla. L. Weekly D1159 (Fla. 2d DCA May 16, 2012).

Unlike the facts in S.T., the child is not in the custody of a parent but is currently in an approved placement with a paternal aunt. While conceding error in this appeal, the Department has explained that it intends to file a new petition based on new events that it believes will support an adjudication of dependency as to the father. Accordingly, this opinion does not mandate that the trial court give immediate custody of the child to R.W.

Reversed and remanded.

WHATLEY and WALLACE, JJ., Concur.