

Supreme Court of Florida

THURSDAY, MAY 11, 2006

CASE NO.: SC06-740

Lower Tribunal No.: 5D05-242, 5D05-387
5D05-1621

T.D., ET AL.

vs. FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES,
ET AL.

Petitioner(s)

Respondent(s)

The Petitioners have filed a petition for a writ of prohibition, which has been treated as a petition for a writ of mandamus. See *Frankel v. Spainhour*, 31 So. 2d 535, 540 (Fla. 1947) (stating that mandamus is available to compel vacation of an order entered without jurisdiction); *State v. Wright*, 145 So. 598, 601 (Fla. 1932) (same). The petition is hereby denied. The order of the Fifth District Court of Appeal, dated March 27, 2006, granting the petition for a writ of prohibition filed by Respondents, I.B. and D.B., in that court clearly addressed only the issue of adoptive placement, and does not preclude the trial court from proceeding in accordance with chapters 39 and 63, Florida Statutes (2005).

Petitioners' request for a writ of habeas corpus prohibiting an alleged unlawful confinement of the child, T.A.T., is hereby denied.

Respondents I.B. and D.B.'s motion to dismiss is hereby denied.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, CANTERO, and BELL, JJ.,
concur.

PARIENTE, C.J., concurs with an opinion.

QUINCE, J., dissents with an opinion.

PARIENTE, C.J., concurring.

I concur with the denial of the petition in this case. In response to Justice Quince's dissent, our order specifically states that the trial court is not precluded from proceeding in accordance with chapters 39 and 63. Having reviewed the history of this case, I am very distressed with the amount of time this case was on appeal on two separate occasions. For the sake of this child, I hope that a final determination can be made expeditiously.

QUINCE, J., dissenting.

I respectfully dissent. I agree with the petitioners, the Department of Children and Families, and the guardian ad litem that the Fifth District Court of Appeal's order dated March 27, 2006, did more than enforce its mandate. The order went beyond what was decided in the earlier proceeding. The March 27, 2006, order effectively precludes the trial court from conducting a hearing pursuant to chapters 39 and 63, Florida Statutes, and requires the trial court to hear the adoption petition of the foster parents only. Therefore, I dissent because the issues surrounding the final adoption hearing were not before the district court in the 2005 proceeding.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



jn

Served:

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HON. FRANK MARRIOTT, JUDGE
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PHILIP B. PETERSON
HON. WINIFRED J. SHARP, JUDGE