

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed July 31, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-764  
Lower Tribunal No. 19-15073

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**E.P.V., the Mother,**  
Appellant,

vs.

**Department of Children and Families, et al.,**  
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Carlos Lopez,  
Judge.

Eugene F. Zenobi, Criminal Conflict and Civil Regional Counsel, Third  
Region and Kevin Coyle Colbert, Assistant Regional Counsel, for appellant.

Karla Perkins, for appellee Department of Children and Families; Thomasina  
F. Moore (Tallahassee); Craig Robert Lewis, for appellee Guardian ad Litem  
Program.

Before SALTER, LOGUE and GORDO, JJ.

GORDO, J.

E.P.V., the Mother, appeals the trial court's order requiring her to submit to a mental health evaluation following her consent plea to an adjudication of dependency of her minor child. The Department of Children and Families ("the Department") filed a verified petition for dependency containing allegations that the Mother acts dangerously in ways that harm the Child, does not meet the Child's basic needs, does not recognize or understand threats to children, does not understand her protective role as a caregiver, has a substance abuse problem and is unable to control her impulses.

The Mother entered a consent plea to an adjudication of dependency of the Child under sections 39.01(15)(a) and (f), Florida Statutes (2018), based on the Mother's lack of impulse control and substance abuse issues which place the Child at risk of harm. The plea agreement contained admissions that the Mother leaves the seven-year-old child home alone for hours, drinks every night and takes the Child with her to the homes of adult men where she then becomes drunk. The Mother admitted that on one such occasion she fell asleep with a man while other drunk men started to touch the Child everywhere and the Child, frightened and scared, fled the home alone after 11 p.m. to call her stepfather for help.

Based on the consent plea, the trial court adjudicated the Child dependent and rendered a disposition order requiring the Mother to submit to a mental health

assessment and a substance abuse assessment as part of her case plan.<sup>1</sup> The Mother argues the trial court committed reversible error in requiring her to submit to a mental health evaluation because her consent plea neither admitted nor denied the allegations in the dependency petition and the facts stipulated to by the plea did not indicate a mental health issue, thus her mental condition was not in controversy and no good cause was shown.

Under Florida Rule of Juvenile Procedure 8.250 and section 39.407(15), Florida Statutes (2018), where the Mother's mental condition is in controversy and good cause is shown, the trial court may order a mental health evaluation. "The granting or denying of an order for a [mental health] evaluation is a discretionary act." Bailey v. Bailey, 176 So. 3d 344, 346 (Fla. 4th DCA 2015) (quoting Pariser v. Pariser, 601 So. 2d 291, 292 (Fla. 4th DCA 1992)). We review such a ruling for abuse of discretion as it can be overturned "only upon a conclusion that no judge could reasonably have ordered such an evaluation." Id. (quoting Gordon v. Smith, 615 So. 2d 843, 844 (Fla. 4th DCA 1993)).

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<sup>1</sup> Although we recognize "there is support in the case law for challenging case plan tasks in a disposition order via certiorari jurisdiction," Florida district courts have appellate jurisdiction over disposition orders. M.P. v. Dep't of Children & Families, 159 So. 3d 341, 343 n.1 (Fla. 4th DCA 2015) (citing In re S.M., 136 So. 3d 1271 (Fla. 2d DCA 2014)). See J.P. v. Dep't of Children & Families, 855 So. 2d 175 (Fla. 5th DCA 2003).

Consistent with the requirements of rule 8.250 and section 39.407(15), we find the record before us contains competent, substantial evidence to support the trial court's order. We disagree with the Mother's assertion that the facts only show a need for a substance abuse assessment. The evidence of the Mother's behavior toward the Child, including leaving the Child home alone for hours even though she is not old enough to care for herself and neglecting the Child at adult men's homes, shows that even without drinking the Mother was doing things that endangered the Child. Based on the Mother's consent to the allegations in the dependency petition and admission in the plea agreement that she lacks impulse control in addition to having a substance abuse problem that places the Child at risk of harm, the record evidence supported the trial court's ruling. Accordingly, we do not find that the trial court abused its discretion in ordering the Mother to submit to a mental health assessment.

Affirmed.