

# Third District Court of Appeal

State of Florida, July Term, A.D. 2012

Opinion filed October 31, 2012.

Not final until disposition of timely filed motion for rehearing.

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No. 3D12-1554

Lower Tribunal No. 11-15131

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**G.O., the Mother,**  
Appellant,

vs.

**Department of Children and Families,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Mari Sampedro Iglesia, Judge.

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

Karla Perkins, Appellate Counsel, Department of Children and Families; Hillary S. Kambour, Appellate Counsel, the Guardian ad Litem Program.

Before SUAREZ, CORTIÑAS and EMAS, JJ.

CORTIÑAS, J.

The Department of Children and Family Services filed a Petition for Termination of Parental Rights against G.O. (Mother) and C.O. (Father). The general magistrate held an advisory hearing on March 27, 2012. Mother and Father did not appear, despite being served with a summons. Pursuant to section 39.808(d), Florida Statutes (2011), the general magistrate found constructive consent for termination of parental rights. On May 1, 2012, the general magistrate held a hearing where a guardian ad litem testified as to the best interests of the children. The general magistrate recommended that the trial court terminate parental rights, and the trial judge signed the order terminating parental rights. Mother now appeals.

Rule 8.257(h), Florida Rules of Juvenile Procedure (2011), prohibits general magistrates from presiding over adjudicatory hearings under section 39.809, Florida Statutes (2011). Section 39.809(3) also states, in pertinent part, “[t]he adjudicatory hearing must be conducted by the judge without a jury . . . .” Fla. Stat. § 39.809(3) (2011). The May 1, 2012 hearing was an adjudicatory hearing on the petition for termination of parental rights; therefore, the trial court should have presided over the hearing.

Accordingly, we reverse the order terminating parental rights and remand for proper re-notice to the mother for any further hearings, including a new advisory hearing. Reversed and remanded.