

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 K.W. and K.W., children.)
_____))
GUARDIAN AD LITEM PROGRAM,)
)
Appellant/Cross-Appellee,)
)
v.)
)
J.W. and M.W.,)
)
Appellees/Cross-Appellants,)
)
and)
)
DEPARTMENT OF CHILDREN AND)
FAMILIES,)
)
Appellee.)
_____))

Case No. 2D17-272

Opinion filed January 5, 2018.

Appeal from the Circuit Court for
Manatee County; Lee E. Haworth, Senior
Judge.

Matthew C. Wilson; and Sara E.
Goldfarb, Sanford (substituted as
counsel of record), for Appellant/Cross-
Appellee Guardian ad Litem Program.

C. Michael Kelly of C. Michael Kelly,
P.A., Bradenton, for Appellee/Cross-
Appellant J.W.

M.W., pro se.

Stephanie C. Zimmerman, Bradenton,
for Appellee Department of Children and
Families.

BLACK, Judge.

The Guardian ad Litem Program appeals and J.W. and M.W., the Father and Mother, cross appeal the "Final Judgment on Guardian ad Litem Program's Second Amended Petition for Termination of Parental Rights." The final judgment terminated the Mother's parental rights to K.W.(1) and K.W.(2); it terminated the Father's parental rights to K.W.(1) but not to K.W.(2); and it concluded that no grounds were proven to sustain a finding of dependency of K.W.(2). To the extent that the trial court terminated the Mother's parental rights to K.W.(1) and K.W.(2) and the Father's parental rights to K.W.(1) but not to K.W.(2), we affirm the final judgment without further comment. We reverse the portion of the final judgment in which the trial court declined to adjudicate K.W.(2) dependent.

When a trial court finds the requirements for termination of parental rights were not proven, the court must then determine, as part of its dispositional powers under section 39.811(1), Florida Statutes (2016), whether the evidence supports the child being adjudicated dependent. If grounds for dependency have been established, the trial court shall adjudicate or readjudicate the child dependent. § 39.811(1)(a); see also Fla. R. Juv. P. 8.525(i)(2) (2016). In this case, the trial court properly moved on to

a dependency determination, concluding that as to K.W.(2) "there were no grounds proven to sustain a finding of dependency."

However, although the final judgment is replete with findings of fact that explain the trial court's reasons for its decision in all other respects, the trial court's conclusion with respect to dependency is made without further explanation. When facts supporting a finding of dependency under any of the statutory grounds set forth in section 39.01(15) are sufficiently alleged, the trial court is required to make specific factual findings as to each ground in order to make a proper determination with regard to dependency. B.R.C.M. v. Fla. Dep't of Children & Families, 215 So. 3d 1219, 1223 (Fla. 2017).¹ But see In the Interest of D.H., 575 So. 2d 761, 762 (Fla. 4th DCA 1991) (concluding that while a trial court is required to make fact findings supporting an order of dependency, the statutory provision applicable when a court finds that the child is not dependent directs the trial court to "enter an order so finding and dismissing the case" but certifying a question of great public importance regarding whether findings of fact are required when denying a dependency petition (quoting section 39.409(1), Florida Statutes (1989))).² The record in this case contains evidence that could support an adjudication of dependency as to K.W.(2), and nothing in the record or on the face of

¹We recognize that the proceedings in B.R.C.M. were initiated by the filing of a petition for an adjudication of dependency and not a petition for the termination of parental rights. 215 So. 3d at 1221. Nonetheless, since section 39.811(1)(a) requires the trial court to make a dependency determination where the grounds for termination of parental rights have not been proven, we believe the supreme court's holding with regard to the adequacy of the trial court's findings when making a dependency determination is applicable to this case.

²Section 39.409(1) is the predecessor to section 39.507(4), Florida Statutes (2016), which provides that "[i]f the court finds at the adjudicatory hearing [on the dependency petition] that the child named in a petition is not dependent, it shall enter an order so finding and dismissing the case."

the final judgment indicates whether the trial court rejected this evidence as not credible in determining that no grounds were proven to sustain a finding of dependency with respect to K.W.(2). Under these circumstances, this court cannot conduct a meaningful review of the trial court's conclusion on dependency.

Accordingly, we reverse the portion of the trial court's order that determined there were no grounds proven to sustain a finding of dependency with respect to K.W.(2). See B.R.C.M., 215 So. 3d at 1223; cf. J.S. v. Dep't of Children & Families, 18 So. 3d 1170, 1178-79 (Fla. 1st DCA 2009) (reversing where the trial court's findings under section 39.810, Florida Statutes (2006), were insufficient to facilitate meaningful appellate review on the issue of whether the trial court abused its discretion in finding that termination of the father's parental rights was not in the manifest best interests of the child). On remand, the trial court may reconsider its determination on dependency based on the evidence presented at the final adjudicatory hearing and must make the requisite findings with regard to that determination. However, due to the passage of time, the trial court may in its discretion allow the presentation of additional evidence regarding this issue and K.W.(2)'s current circumstances.

Affirmed in part, reversed in part, and remanded.

SILBERMAN and ROTHSTEIN-YOUAKIM, JJ., Concur.