

THE OFFICE OF COURT IMPROVEMENT'S FACT SHEET: KEEPING SIBLINGS TOGETHER

November, 2008

GENERAL INFORMATION:

When children are removed from their homes in a dependency case, it is vital for the child to be placed with his/her siblings. William W. Patton, *Severing Hansel From Gretel: An Analysis Of Siblings' Association Rights*, 48 U. Miami L. Rev. (1994); Ellen Marrus, *Fostering Family Ties: The State As Maker And Breaker Of Kinship Relationships*, U. Chi. Legal F. 319 (2004). The federal government addressed sibling placement in H.R. 6893 which was signed into law by President Bush on October 7th, 2008. This bill includes Section 206, which amends Section 471(a) of the Social Security Act (42 U.S.C. 671(a)):

SEC. 206. SIBLING PLACEMENT.

(31) provides that reasonable efforts shall be made--

- (A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
- (B) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.'

The State of Florida also recognized the importance of this concept in dependency cases. It is the Florida Legislature's intent "(t)o make every possible effort, when two or more children who are in the care or under the supervision of the department are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated, to keep them in contact with each other." §39.001 (k), Florida Statutes. The term relative has also been defined to mean a grandparent, great- grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. §39.01(64), Florida Statutes. This year, the Legislature amended chapter 39 to ensure that even siblings that had been previously adopted did not have to be separated from new siblings that were entering the dependency system. Section 39.401(2)(a)(3), Florida Statutes, states that when a child is taken into custody, the child can be released to an adoptive parent of the child's sibling. This adoptive parent is even to be given priority consideration over a non-relative placement, such as a foster care placement, when this is in the best interests of the child. §§39.401(2)(a)(3), 39.401(3)(b), Florida Statutes.

WHAT CAN THE COURT DO?

At the shelter hearing:

Section 39.402(17), Florida Statutes, requires the court to ask the parent if the parent has any relatives who might be considered as a placement for the child, and the parent must also be told that he/she has a continuing duty to inform the department of any relative that might be a possible placement. The court should also inquire of the Department of Children and Families to discover if the parent has previously had children removed and adopted, and if so, if the adoptive parents had been contacted and considered as a possible placement so that siblings can be placed together. §39.401(3)(b), Florida Statutes. Even if a relative or a previously adopted sibling placement can't be found, the court should still make every effort to make sure that the community based care provider has placed siblings in the same home, if it is in the best interest of the children.

At the adjudicatory hearing:

The court should again ask the parents if they have any relatives who could be considered as possible placement for the dependent child. §39.507(7)(c), Florida Statutes.

At the disposition hearing:

If a previously adopted sibling is discovered and the adoptive parent is willing, the dependent child should be placed with the adoptive family. §39.521(3)(c), Florida Statutes.

At the permanency hearing: If a child is placed in permanent guardianship, the court must specify the frequency and nature of visitation between the child and the child's siblings in the written order. §39.6221(2)(e), Florida Statutes.

If the parents' rights have been terminated:

If the parents' rights have been terminated, siblings should also be placed together for adoption. §§63.022(3), 39.001(k), Florida Statutes. If previous siblings have already been adopted, then the newly available sibling should be placed with the same adoptive family. §§39.401(2)(a)(3), 39.401(3)(b), 39.521(3)(c) Florida Statutes. If no prior siblings were adopted, then the court and the community based care provider should make every effort to ensure that siblings are placed together in the same adoptive home. §§63.022(3), 39.001(k), Florida Statutes. If the Department is forced to separate siblings despite diligent efforts, the court may order post-adoption communication or contact among the siblings. §63.022(4)(m), Florida Statutes.

Conclusion:

As the Forth District Court of Appeal stated in In Interest of C.G., 612 So.2d 602, 603-4, (Fla. 4th DCA 1992), "When two or more children in foster care are siblings, every reasonable attempt shall be made to place them in the same foster home; in the event of permanent commitment of the siblings, to place them in the same adoptive home; and, if the siblings are separated, to

keep them in contact with each other.”