

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY,
FLORIDA

Case No: [REDACTED]

Judge: [REDACTED]

IN THE INTEREST OF:

[REDACTED]
DOB: [REDACTED]

A minor child

**MOTION FOR REHEARING
AND MOTION TO VACATE ORDER**

The minor child who is the subject of these proceedings, by and through her undersigned Attorney Ad Litem, respectfully files this Motion for Rehearing and Motion to Vacate this Court's Order of June 26, 2003 pursuant to Fla.R.Juv.P. 8.265(1)(2)(3) and as grounds therefore states that:

I. NO GUARDIAN AD LITEM WAS APPOINTED FOR THE CHILD

1. On June 18, 2003, the Department of Children and Families (the Department) filed a status report informing the court of the completion of the child's psychological evaluation.

2. On June 26, 2003, the court held a hearing on the Department's Motion to Place Child in Residential Treatment Facility and on the same day ordered that the child be placed in a residential treatment facility.

3. Pursuant to Rule 8.350(a)(3), Fla.R.Juv.P., "[w]henver the department [of Children and Families] believes that a child in its legal custody may require placement in a residential treatment center ..., the department shall arrange to have the child assessed by a qualified evaluator ... and shall file notice of this with the court and all parties."

4. Rule 8.350(a)(3) further states that "[u]pon the filing of this notice by the department, the court shall appoint a

guardian ad litem for the child, if one has not already been appointed, and may also appoint an attorney for the child."

5. In the interval between the Department's filing of the June 18, 2003 status report and the court's June 26, 2003 order, no guardian ad litem was appointed for the child as required by Fla.R.Juv.P. 8.350(a)(3).

6. Because no guardian ad litem was appointed prior to the June 26, 2003 placement hearing, the requirements of Fla.R.Juv.P. 8.350(a)(3) that the guardian ad litem "meet the child and ... have the opportunity to discuss the child's suitability for residential treatment with the qualified evaluator conducting the assessment" were not met by the time of the placement hearing.

7. Further, because no guardian ad litem was appointed for the child, the requirement of Fla.R.Juv.P. 8.350(a)(3) that "[t]he guardian ad litem ... provide a written report to the court and to all parties indicating the guardian ad litem's recommendation as to the child's placement in residential treatment and the child's wishes" was not met prior to the June 26, 2003 placement hearing.

8. In addition, pursuant to Fla.R.Juv.P. 8.350(a)(11)(A), "[a]t the hearing, the court shall consider, at a minimum, all of the following:...(ii) the recommendation of the guardian ad litem;..."

9. Because the court did not consider the recommendation of a guardian ad litem at the June 26, 2003 placement hearing, the requirements of Fla.R.Juv.P. 8.350(a)(11)(A)(ii) were not met at that hearing.

II. THE CHILD WAS NOT IN AGREEMENT WITH THE PLACEMENT

10. Pursuant to Fla.R.Juv.P. 8.350(a)(4), "[t]he motion [for placement of the child] shall state whether all parties, including the child, are in agreement."

11. The Department's Motion to Place Child in Residential Treatment Facility is facially deficient because it does not indicate whether the child is in agreement with the placement, and Dr. [REDACTED]'s June 16, 2003 evaluation of the child, which forms a part of the Department's Motion, indicates that the child wishes to be placed with a family member, and thus

constitutes evidence that the child is not in agreement with placement in a residential treatment facility.

12. Pursuant to Fla.R.Juv.P. 8.350(a)(6), prior to a placement hearing, "[i]f the department's motion, the guardian ad litem's report, or another party based on communication with the child indicates that the child does not agree with the department's motion, then the court shall appoint an attorney to represent the child, if one has not already been appointed."

13. Prior to the June 26, 2003 order that the child be placed in a residential treatment facility, no attorney was appointed for the child as required by Fla.R.Juv.P. 8.350(a)(6) when the child objects to the placement. The undersigned was appointed at the hearing on June 26, 2003, but was not present at the time. Therefore, the undersigned was not able to voice any of her concerns, on behalf of the child, to the Court.

III. PARTIES REQUIRED TO BE PRESENT AT THE HEARING WERE ABSENT

14. Pursuant to Fla.R.Juv.P. 8.350(a)(8), "[n]o hearing shall proceed without the presence of the child's guardian ad litem and attorney, unless excused by the court for good cause shown."

15. The June 26, 2003 hearing proceeded without the presence of the child's guardian ad litem, and the record does not reflect that the court found good cause for excusing the absence of a guardian ad litem.

16. Pursuant to Fla.R.Juv.P. 8.350(a)(10), "[t]he child shall be present at the hearing unless the court determines pursuant to subsection (c) that a court appearance is not in the child's best interest. In such circumstances, the child shall be provided the opportunity to express his or her views to the court by a method deemed appropriate by the court."

17. The child was not physically present at the June 26, 2003 hearing, and was not present by phone. Therefore, the child did not have the opportunity to express her views.

WHEREFORE, the undersigned Attorney Ad Litem respectfully requests based on Fla.R.Juv.P. 8.265(a)(1)(2)(3) that this Court vacate its order of June 26, 2003, grant the undersigned's Motion for Rehearing, and set this matter for a status hearing

within 24 hours, or as soon as practicable, in accordance with Fla.R.Juv.P. 8.350(a)(8).

Respectfully submitted,

by _____

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CERTIFICATE OF SERVICE

(redacted)