

# Third District Court of Appeal

State of Florida, January Term, A.D. 2008

Opinion filed February 6, 2008.  
Not final until disposition of timely filed motion for rehearing.

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Nos. 3D07-2374; 3D07-2882  
Lower Tribunal No. 06-15695

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**B.J.,**  
Appellant,

vs.

**Florida Department of Children and Families, and Guardian Ad  
Litem Program,**  
Appellees.

Appeals from non-final orders of the Circuit Court for Miami-Dade County,  
Marisa Tinkler-Mendez and Spencer Eig, Judges.

David S. Molansky, for appellant.

Karla Perkins; Hillary S. Kambour, for appellees.

Before GERSTEN, C.J., and CORTIÑAS, J., and SCHWARTZ, Senior Judge.

CORTIÑAS, J.

B.J. (the “Mother”), appeals the portion of the circuit court’s order on modification of placement (the “Modification Order”) denying her motion for reunification with her younger daughter, T.W. (the “Younger Daughter”), a minor, and the custody release order granting temporary custody of the Younger Daughter to D.W., a paternal aunt.

Section 39.521 of the Florida Statutes, provides in pertinent part:

3) When any child is adjudicated by a court to be dependent, the court shall determine the appropriate placement for the child as follows:

...

(b) If there is a parent with whom the child was not residing at the time the events or conditions arose that brought the child within the jurisdiction of the court who desires to assume custody of the child, the court shall place the child with that parent upon completion of a home study, unless the court finds that such placement would endanger the safety, well-being, or physical, mental, or emotional health of the child. Any party with knowledge of the facts may present to the court evidence regarding whether the placement will endanger the safety, well-being, or physical, mental, or emotional health of the child.

§ 39.521, Fla. Stat. (2006). We find insufficient evidence on the record to warrant a determination that placement of the Younger Daughter with the Mother “would endanger the safety, well-being, or physical, mental, or emotional health of the child.” See Id.; Roberts v. Fla. Dep’t of Children & Families, 687 So. 2d 51 (Fla.

3d DCA 1997). Accordingly, we reverse the portion of the Modification Order denying the Mother's motion for reunification with her Younger Daughter and vacate the custody release order.