

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2009

DAVID DUBOIS,

Appellant,

v.

Case No. 5D08-1474

MIGUEL LEON AND AIDA LEON,

Appellees.

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Opinion filed May 29, 2009

Non-Final Appeal from the Circuit Court  
for Orange County,  
Donald Grincewicz, Judge.

Robert J. Wheelock, Eric Lee Bensen, and  
Michael B. Jones, of The Wheelock Law  
Firm, LLC, Orlando, for Appellant.

Gary S. Israel of Gary S. Israel, P.A.,  
Orlando, for Appellees.

SAWAYA, J.

We reverse the nonfinal order awarding temporary custody of the minor child of David Dubois, the natural father, to the maternal grandparents because it is apparent from the face of the order that the trial court erroneously applied the best interests standard, rather than the applicable clear and convincing standard, when reviewing the evidence. See § 751.05(3), Fla. Stat. (2008) ("If one of the minor child's parents objects to the granting of temporary custody to the petitioner, the court shall grant the petition

only upon a finding, by clear and convincing evidence, that the child's parent or parents are unfit to provide the care and control of the child. In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child, as defined in chapter 39.”). Accordingly, we reverse the temporary custody order and remand for reconsideration under the appropriate standard.

REVERSED and REMANDED for further proceedings.

GRIFFIN and EVANDER, JJ., concur.