

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

JULY TERM 2010

B.D., MOTHER OF K.D., A CHILD,

Appellant,

v.

Case No. 5D10-1536

DEPARTMENT OF CHILDREN
AND FAMILIES,

Appellee.

/

Opinion filed October 26, 2010

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

Nickole E. Frederick, Orlando,
for Appellant.

Kelly A. Swartz, of Children's
Legal Services, Rockledge, for
Appellee.

Laurie Beechner of Beechner
& Englert, P.A, Orlando, for
Guardian ad Litem Program.

PER CURIAM.

We reverse the final judgment terminating appellant's parental rights, rendered after the entry of a consent by default. Constructive consent should be the disfavored result in a termination of parental rights proceeding. *A.H. v. Dep't of Children and Families*, 22 So. 3d 801 (Fla. 5th DCA 2009). The trial court should have either granted a short continuance or permitted appellant to appear by telephone where the record

reflects that appellant was making a reasonable effort to personally appear at the scheduled adjudicatory hearing. *D.M. v. Dep't of Children and Families*, 921 So. 2d 737 (Fla. 5th DCA 2006); see also *B.H. v. Dep't of Children and Families*, 882 So. 2d 1099, 1100-01 (Fla. 4th DCA 2004) ("Courts have made a distinction between parents who fail to appear at a hearing without a reasonable explanation versus those who have made some reasonable effort to be present.")

REVERSED and REMANDED for New Adjudicatory Hearing.

ORFINGER, LAWSON and EVANDER, JJ., concur.