

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND,
IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D., 2002

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner,

VS.

IN THE INTEREST OF J.C.,
et. al,

Respondents.

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CASE NO. 3D01-2620

LOWER
TRIBUNAL NO. 85-15825

Opinion filed September 23, 2002.

A Case of original Jurisdiction - Prohibition.

Linda Ann Wells, for petitioner.

Holland & Knight, and Robert K. Levenson; Mark Douthit; and
Alan I. Mishael, for respondents.

Before GERSTEN, GODERICH, and SORONDO, JJ.

GERSTEN, J.

The petitioner, the Department of Children and Families
("DCF"), petitions for writ of prohibition, or alternatively for

writ of certiorari or non-final appeal, seeking to quash an order finding good cause to review the appropriateness of adoptive placement of a child and to prohibit change of placement pending a hearing. We deny the petition.

Child, J.C. ("J.C."), was born cocaine exposed in November of 1998 and was placed in DCF's physical custody. In December of 1998, J.C. was released to the physical custody of Geraldine Scott ("Geraldine"), a non-relative. J.C.'s father was a friend of Geraldine's and asked her to take custody of the baby. Geraldine agreed and indicated her desire to adopt J.C.

In 1999, J.C.'s father's parental rights were terminated. His mother's parental rights were terminated in August of 2000. The trial judge's findings in support of termination noted:

The Child has the ability to form a significant relationship with a parental substitute, and it is likely that the Child will enter a more stable and permanent family relationship as a result of permanent termination of parental rights and duties. The Child is currently placed with Ms. Geraldine Scott, who wishes to adopt the child.

After Geraldine initiated the adoption paperwork, the DCF filed a judicial review social study report which advised the trial court that Geraldine was providing a stable and nurturing home for J.C. The DCF's report further noted that J.C. was in the process of being adopted and had developed a close and loving relationship with Geraldine.

In November of 2000, Geraldine and J.C. moved to Virginia with the approval of DCF. The DCF then requested that the Department of

Social Services in Virginia perform an adoption home study under the Interstate Compact On The Placement Of Children ("ICPC").¹ The Virginia home study report questioned Geraldine's financial ability to support J.C. and noted that Geraldine was not receiving financial assistance from the State of Florida. Significantly, the report stated "it is apparent that a definite bond between [J.C. and Geraldine] exists" and that "separating [the child] from [Geraldine] would have a mutually negative emotional affect on both." The report concluded that Geraldine required financial adoption assistance in order to maintain the placement. In June of 2001, the state of Virginia declined to accept adoptive placement of J.C. with Geraldine in that state, based upon concerns with Geraldine's financial status.

Since the state of Virginia did not accept the placement, the

¹ The Interstate Compact on the Placement of Children ("ICPC") enacted by Section 409.401, Florida Statutes (2001), requires DCF to send written notification to a receiving state that "the proposed placement does not appear to be contrary to the interests of the child" prior to authorizing a child to be sent to the receiving state. See § 409.401, Art. III(d), Fla. Stat. (2001). See also Dep't of Children and Families v. Benway, 745 So. 2d 437 (Fla. 5th DCA 1999)("A.B. should remain in Florida until the Vermont authorities indicate their agreement to A.B.'s placement in Vermont"); Matter of Jarrett, 660 N.Y.S. 2d 916, 920 (N.Y. App. Div. 1997) (ICPC requires prior cooperative agreement between states to limit interstate shifting of child care costs). The purpose of the ICPC is to "assure that placement will be in the child's best interest, and to preclude the sending State from exporting its foster care responsibilities to a receiving State." Williams v. Glass, 664 N.Y.S. 2d 792, 793 (N.Y. App. Div. 1997). We note that although the Florida DCF did authorize J.C.'s move to Virginia, it apparently did so without receiving prior approval from the state of Virginia, in violation of the ICPC.

DCF decided to remove J.C. from Geraldine. In August of 2001, while Geraldine was in Florida on vacation, the DCF requested that she come into the office with the child. J.C. was then taken away from Geraldine without notice or warning. A few days later, the DCF filed a detention petition, advising the trial court that it was seeking a change of custody and that J.C. had already been placed with a different guardian. The court found there was no probable cause to remove the child from Geraldine, but granted the DCF's request for an evidentiary hearing and a stay.

The evidentiary hearing was held on August 8, 2001. During the course of the hearing, the DCF stated it was withdrawing both the detention petition and its motion to change custody, contending it had exclusive jurisdiction to take J.C. away from Geraldine in order to choose adoptive parents. The Guardian Ad Litem then moved *ore tenus* for the court to conduct a good cause hearing to review the appropriateness of the placement under Section 39.812(4), Florida Statutes (2001).² The trial court granted the motion, reaffirmed its probable cause findings, ordered a childhood intervention

²Section 39.812(4), Florida Statutes (2001) provides: The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child.

specialist to see the child immediately, and ordered DCF to return the child to Geraldine pending the subsequent appropriateness hearing.

On August 30, 2001, an amended order was entered, which explained the basis for finding good cause to review the appropriateness of the adoptive placement and which detailed the facts supporting the trial court's decision to prohibit change of placement pending hearing. Judge Lederman's well-reasoned and detailed order found as follows:

(1) the Child which is now over two and a half years old, has lived since he was two months old with Ms. Scott, (2) the Child is emotionally bonded to Ms. Scott, who has provided a loving, nurturing home for the Child, (3) Ms. Scott believed that she was the pre-adoptive parent of the Child, (4) previous judicial placement review orders have found this home to be an appropriate placement, (5) the Court has a reasonable concern that the well being of the Child will be endangered by taking him from the only mother he has ever known and placing him with strangers (6) the adoption home study from the City of Portsmouth, dated June 1, 2001, did not recommend removal of the child, (7) the court is alarmed by the precipitous and insensitive manner in which the Department removed this child from Ms. Scott and by the Department's failure to recognize the importance of bonding and attachment in early childhood relationships, (8) the court is unable to understand why the Department of Children and Families chose to take the drastic and harmful action of abruptly removing the child from the woman who had appropriately and lovingly cared for him for two and a half years rather than make reasonable efforts to work with Ms. Scott and provide services and assistance to Ms. Scott to remedy the Department's concern about her finances, (9) the court, charged with the safe-guarding of the health, safety and well being of this Child, has serious concerns about the actions of the Department of Children and Families in this case and feels compelled based on all the foregoing facts to "review the appropriateness of the adoptive placement of the Child" pursuant to Florida Law. Based on the law, Florida Department of Children and

Families vs. In the Interest of M.A.P., 788 So. 2d 982 (Fla. 3d DCA 2001) and the aforesaid facts that form the basis for the Court's genuine concern about the potential harm to the Child, this Court orders that the Child be returned to Ms. Scott with whom he has lived for virtually his entire life and prohibits the Department of Children and Families from changing the child's placement, pending the outcome of the hearing to "review the appropriateness of the adoptive placement of the Child" scheduled for October 1, 2001, pursuant to F.S. 39.812(4).

The DCF thereafter filed this petition, essentially arguing the trial court acted in excess of its jurisdiction by preventing the DCF from changing J.C.'s placement and in maintaining the status quo for the child pending review of the appropriateness of adoptive placement under Chapter 39.

Under Chapter 39, the judicial and executive branches exercise concurrent jurisdiction over the welfare of foster children who have been placed in DCF's custody. See Simms v. State Dep't of Health and Rehab. Servs., 641 So. 2d 957 (Fla. 3d DCA), review denied, 649 So. 2d 870 (Fla. 1994).³ As part of its legislatively mandated

³This grant of concurrent power furthers the state's compelling interest in protecting children, based upon the recognition that there are instances in which the best interests of the child and the DCF may differ. See Simms v. State Dep't of Health and Rehab. Servs., 641 So. 2d at 957; Norris v. Spencer, 568 So. 2d 1316 (Fla. 5th DCA 1990). Judicial review is an important part of the "checks and balances" process and serves to ensure accountability from the DCF:

We cannot assume that the legislature intended the court to conduct a meaningless review. Therefore, we must conclude that the purpose of judicial review is to assure that the Department is complying with reasonable efforts to assure the protection of [a] child and to promote . . . adoptive placement as is the Department's duty. Where the court receives evidence that the Department is not complying with its duties and that the child is not

review authority, the judiciary is specifically authorized to exercise its review powers in analyzing the appropriateness of a DCF proposed adoptive placement. See § 39.812(4), Fla. Stat. (2001). See also, §§ 39.013(2), 39.812, 39.813, Fla. Stat. (2001).

This is evidenced by the plain language of Section 39.812(4), which states that the court "shall retain jurisdiction over any child placed in the custody of the department until the child is adopted" and provides for continuing jurisdiction so that "the court may review the appropriateness of the adoptive placement of the child." § 39.812(4), Fla. Stat. (2001). The language of Section 39.812(4) is clear and must be given its plain and ordinary meaning. See Canida v. Canida, 751 So. 2d 647 (Fla. 3d DCA 1999), review denied, 767 So. 2d 455 (Fla. 2000). The plain and ordinary meaning of Section 39.812(4) provides express statutory authority for the trial court to exercise judicial review of the appropriateness of adoptive placement. § 39.812(4), Fla. Stat. (2001).

In the context of exercising this review power, it is fundamentally recognized that our trial courts possess inherent authority to maintain the status quo and to prevent irreparable harm. See e.g. Art. V, Sec. 4, Fla. Const. ("The circuit courts shall have . . . the power to issue . . . all writs necessary or

being afforded the services and protections which the legislature expressly provided, then the trial court can act and order the Department to submit a plan which provides those services and will promote the child's adoption.

In The Interest of L.W., 615 So. 2d 834, 838 (Fla. 4th DCA 1993).

proper to complete exercise of their jurisdiction"); State Dep't of Health and Rehab. Servs. v. Hollis, 439 So. 2d 947 (Fla. 1st DCA 1983)(courts have inherent power to do all things reasonably necessary for the administration of justice). Especially in the context of children, our trial courts have a continuing responsibility to vigilantly protect the welfare and best interests of the child. See Brown v. Ripley, 119 So. 2d 712 (Fla. 1st DCA 1960).

Here, the trial judge was faced with a situation where a child had been placed with a loving and competent caregiver since birth, and thereafter under suspect circumstances was abruptly removed from that caregiver, the only mother he had ever known, to be placed with strangers.⁴ It is presumptively in the best interests of a child to remain in the home where he or she has spent the majority of his or her life. See Rumph v. V.D., 667 So. 2d 998 (Fla. 3d DCA 1996); S.J. ex rel. M.W. v. W.L., 755 So. 2d 753 (Fla. 4th DCA 2000).

⁴DCF continually references Geraldine's low finances as the main support for its decision to remove J.C., and subsequently claimed it feared Geraldine would flee with the child. However, Geraldine's financial status remained relatively unchanged since J.C. was first placed with her three years ago. DCF was fully aware during this entire time period that Geraldine was unemployed and had no real source of income. Despite this fact, DCF continued to give Geraldine satisfactory status reports and even authorized J.C.'s removal from Florida to Virginia. Moreover, there were no indications at the time of removal that Geraldine would flee. She had in fact always followed proper procedures and adhered to all of DCF's requests. For these reasons and the many others discussed in this opinion, we disagree with the dissent's suggestion that it was improper to use the phrase, "under suspect circumstances," in describing the events surrounding J.C.'s removal.

Clearly there was no error in the trial court's finding that it was in the best interests of J.C. to remain with Geraldine pending a determination of the appropriateness of J.C.'s adoptive placement.⁵

It is difficult to understand the DCF's position in this regard, since the risk of harm in removing J.C. from Geraldine at this stage of the proceedings is obviously greater than maintaining the status quo.⁶ In any event, we find no merit to the issues raised by the DCF in this proceeding and write further to clarify

⁵Trial courts have a duty to make placement decisions in the best interest of the child and to recognize the importance of bonding and attachments in early childhood relationships. See Di Giorgio v. Di Giorgio, 153 Fla. 24, 13 So. 2d 596 (Fla. 1943). As noted in In the Interest of D.J.S., 563 So. 2d 655, 670 (Fla. 1st DCA 1990):

It is a matter of human knowledge that every day in the life of a small child is important to his physical, mental, and emotional development. The Legislature has expressly recognized the need for prompt disposition of matters involving children in foster care and made clear its intent that in matters of permanent placement, "the best interests of the child's moral, emotional, mental, and physical welfare" is of paramount concern. See also Tenney v. Tenney, 147 Fla. 672, 3 So. 2d 375 (Fla. 1941)(trial courts are open at all times to hear matters concerning children, and for the purpose of "making and entering orders and decrees affecting or preserving the welfare of children").

⁶As we have already maintained, the issue before us involves J.C.'s temporary placement pending a future hearing, where J.C.'s permanent placement will be determined. The questions of who is best suited to adopt J.C. and DCF's authority to choose J.C.'s adoptive parents are not presently before this Court. For this reason, the recent case, Florida Dep't of Children and Families v. Adoption of B.G.J., 27 Fla. L. Weekly D 1491 (Fla. 4th DCA June 26, 2002), as cited by the dissent, does not apply in this case. The issue in Adoption of B.G.J. dealt with a trial court's power to intercede and override the decision making process at a later stage of the proceedings than here. Here, since we do not address the question of who would be best suited to adopt J.C., the dissent's citation to and reliance on Adoption of B.G.J., is inapplicable.

that attempts to circumvent a trial judge's authority through misuse of the appellate review process will not be countenanced.

Prohibition is an extraordinary remedy which will only be granted to restrain the exercise of judicial power where none exists. See Klein v. Smith, 366 So. 2d 1206 (Fla. 3d DCA 1979). It cannot be used to revoke an order that has already been entered or to prevent the lower court from determining questions of jurisdiction. See Hamlin v. East Coast Properties, Inc., 616 So. 2d 1175 (Fla. 1st DCA 1993); University of Miami v. Klein, 603 So. 2d 651 (Fla. 3d DCA 1992). The DCF's writ improperly seeks prohibition with regard to a previously entered (August 30, 2001) order and impermissibly seeks to divest the trial court of its inherent authority to determine the question of its own jurisdiction.

Prohibition is an extraordinary writ that is "meant to be very narrow in scope and operation and must be employed with caution and utilized only in emergency cases to prevent an impending injury where there is no other appropriate and adequate legal remedy." Mandico v. Taos Construction, 605 So. 2d 850, 853 (Fla. 1992). This Court will not condone use of the extraordinary writ procedure to circumvent established appellate rules.

More importantly, this Court will not condone an attempt to frustrate the trial court's exercise of its statutory authority to protect a young child from being abruptly taken away from the only parent he has ever known, until the appropriateness of so doing may

be ascertained. Accordingly, we deny the DCF's petition in all respects.

Petition denied.

Goderich, J., concurs.

Dept. of Children and Family Serv.
vs. in the interest of J.C., et al.
Case No. 3D01-2620

SORONDO, J. (dissenting)

I begin by observing that I do not perceive this petition for writ of prohibition or certiorari as an abuse of process, as suggested by the majority opinion. "Common law certiorari is the proper vehicle to review whether the lower court acted in excess of its jurisdiction." Hudson v. Hoffman, 471 So. 2d 117, 118 (Fla. 2d DCA 1985); see also Morse v. Moxley, 691 So. 2d 504 (Fla. 5th DCA 1997); Dep't of Juvenile Justice v. Soud, 685 So. 2d 1376 (Fla. 1st DCA 1997). Moreover, I do not perceive anything in this record that establishes, or even suggests, any nefarious motives on the part of the Department of Children and Families (the Department). The majority suggests that the child in this case was removed from his temporary custodian, Ms. Scott, "under suspect circumstances." Maj. Op. at 8. I disagree. The child was removed from Ms. Scott's physical custody after an adoptive home study performed by the State of Virginia, under the Interstate Compact On The Placement of Children, refused to approve his placement with Ms. Scott. In light of this study, the Department summoned Ms. Scott to its offices and, apparently fearing that she might flee with the child when she got the bad news, removed J.C. from her physical custody at that time. These circumstances are not suspect, indeed, all things considered,

they appear reasonable.⁷

The majority opinion accurately recites some of the facts of the case but does not completely relate its entire procedural history. On July 6, 2000, J.C. was adjudicated dependent and placed in the legal custody of the Department. This adjudication granted the Department "the right to determine where and with whom the child shall live." § 39.521(4), Fla. Stat. (2000). It was pursuant to this grant of authority that the Department allowed J.C. to remain in the **physical custody** of Ms. Scott.

On August 18, 2000, the lower court entered a Final Judgment terminating the parental rights of J.C.'s mother. That order reads, in pertinent part as follows:

FINAL JUDGMENT FOR TERMINATION OF PARENTAL RIGHTS AND DISPOSITION AS TO THE MOTHER . . .

It is in the manifest best interest of the Child that this Court terminate the Mother's parental rights to the Child and **permanently commit the Child to the custody of the Department for subsequent adoption**, and pursuant to Sections 39.802 and 39.810, Fla. Stat. (1998), permanently deprive the Mother of any rights that she may have to the Child

⁷ The majority further suggests at footnote four of its opinion that the best interest of the child requires recognition of "the importance of bonding and attachments in early childhood relationships." Although there is truth to this, the Florida Supreme Court has cautioned that we must be careful not to adopt a rule that "physical custody, because of substantial bonding, is determinative in contested adoptions." Matter of Adoption of Doe, 543 So. 2d 741, 744 (Fla. 1989). The court noted that the danger in assessing a child's "best interests" by the degree of bonding would make a tentative placement "effectively unreviewable." Id.

The Court FURTHER FINDS that the Florida Department of Children and Families is authorized under the laws of the State of Florida to accept the Child for the purpose of subsequent adoption, to place the Child in an adoptive home and to consent to the adoption of the Child, and that the Florida Department of Children and Families is willing to receive the Child.

It is THEREUPON ORDERED that:

The Child, [J.C.] is hereby adjudged to be dependent as to the Mother, [G.H.]; AND the parental rights of the Mother to the Child are terminated; AND the Mother is permanently deprived of any right that she may have to the Child; AND ***the Child is permanently committed to the custody of the Florida Department of Children and Families for subsequent Adoption.***

(Emphasis added). Under this order, the Department was awarded permanent custody of J.C. until such time as the child was adopted. The Department thereafter chose to award ***physical custody*** to Ms. Scott, pending permanent adoption.

In C.S. v. S.H., 671 So. 2d 260, 266-67 (Fla. 4th DCA 1996), the court reversed a final judgment of adoption in favor of a child's foster parents that was contrary to the Department's selection of the child's biological relatives as prospective parents. Writing for the court, then Judge, now Justice Pariente, said:

The jurisdiction granted to the trial court to review HRS's actions concerning permanent adoptive placement is derived from statutory authority. See In Interest of L.W., 615 So. 2d 834 (Fla. 4th DCA 1993). While the courts have supervisory authority under Chapter 39, the authority is circumscribed. In In Interest of K.A.B., 483 So. 2d 898 (Fla. 5th DCA 1986), the Fifth District held that the trial court could not order HRS, as legal custodian of the child, to place the child in the facility chosen by the trial court because the trial

court did not have supervisory authority over the agency's choice of where to place the child:

Thus, it is crystal clear that it is within the discretion of the agency to decide where to keep a child who is in its custody. The agency is, of course, better equipped to make day-to-day health and welfare decisions which concern the child.

(citations omitted). Historically, this has always been the case. See Dep't of Health and Rehab. Servs. v. State, 616 So. 2d 91 (Fla. 5th DCA 1993)(appellate court agreed with HRS's argument that a juvenile judge lacks authority under Chapter 39 to direct HRS to place any child committed to it, in a specific facility, or to require HRS to spend its funds in any particular manner); In the Interest of K.A.B., 483 So. 2d 898 (Fla. 5th DCA 1986)(it is crystal clear that it is within the discretion of [HRS] to decide where to keep a child in its custody); State ex rel. Dep't of Health and Rehab. Servs. v. Nourse, 437 So. 2d 221 (Fla. 4th DCA 1983)("The court had no jurisdiction to direct a specific placement and treatment of an individual committed to the Department of Health and Rehabilitative Services.").

The lower court and the majority base their conclusions on section 39.812(4), Florida Statutes (2000), which reads as follows:

The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. ***As part of this continuing jurisdiction, for good cause shown by the guardian ad***

litem for the child, the court may review the appropriateness of the adoptive placement of the child.

(Emphasis added). Understanding this subsection requires a careful reading of each sentence. The first sentence grants the trial court general jurisdiction over the child until adoption. The second sentence narrows that jurisdiction once custody has been given to the Department, and restricts it to review of the child's status, and review of "the progress being made towards permanent adoptive placement." As I read this sentence, where, as in this case, custody of the child has been given to the Department, the court's responsibilities are limited to ensuring that the child's general welfare ("status") is satisfactory, and further ensuring that bureaucratic inertia does not deter the promptest possible adoptive placement of the child.

The last sentence allows the court to review the "appropriateness" of the ultimate adoptive placement of the child. The court, however, is limited in this regard and cannot conduct such a review sua sponte. Instead, it can only do this upon a "good cause" showing by the child's guardian ad litem. The question then remaining is how the court is to determine the "appropriateness of the adoptive placement of the child."

In analyzing this issue, the Guardian Ad Litem observes that the Fourth District Court of Appeal's decision in C.S., upon which I rely, interpreted the 1993 version of the statute, which was amended in 1994. The present version of the statute is, in pertinent

part, identical to the 1994 version. A comparison of the 1993 and 1994 statutes follows:

Fla. Stat. §39.47(4)(1993)

The Court shall retain jurisdiction over any child for whom custody is given to a licensed child-placing agency or to the department **until the child is placed for adoption.** After custody of a child for subsequent adoption has been give to an agency or to the department the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement, pursuant to the provisions of Part V of this chapter [children in foster care], **but this jurisdiction does not include the exercise of any power or influence by the court over the selection of an adoptive parent.** (Emphasis added).

Fla. Stat. §39.453(1)(c)(1994)

The Court shall retain jurisdiction over any child for whom custody is given to a licensed child-placing agency or to the department **until the child is adopted.** After custody of a child for subsequent adoption has been given to an agency or to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. **As part of this continuing jurisdiction, for good cause shown by the guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child.** (Emphasis added).

The Guardian argues that the amended language requires a different conclusion than that reached in C.S.. Contrary to the Guardian's position, in Florida Dep't of Children and Families v. Adoption of B.G.J., 27 Fla. L. Weekly D1491 (Fla. 4th DCA June 26, 2002), the Fourth District Court of Appeal reiterated its belief that the language of the statute presently in question, section 39.812(4), does not give the trial court the power to nullify the Department's selection of adoptive parents. In reversing the trial court's order placing a child for adoption with the foster parents when that

decision was contrary to DCF's appropriate selection of two other people as adoptive parents, the court specifically said:

As found in C.S., a trial court cannot interfere with DCF's decision to select an adoptive family "where HRS's selection was appropriate, consonant with its policies and made in an expeditious manner."

(Citation omitted).

Contrary to the holding of B.G.J., the Guardian insists that the specific changes made by the legislature in 1994 evince an intent to expand the scope of the trial court's review. I concede that this is a reasonable interpretation of the amendment but find that it is not necessarily in conflict with B.G.J.. The difference revolves around the meaning ascribed to the word "appropriateness," as used in the statute. The Guardian appears to read this word to mean that the trial court is free to substitute its own judgment of who the best adoptive parent(s) will be for that of the Department's, thus acting as the ultimate authority on the "appropriateness" of the adoption. I disagree with this expansive view and find the Fourth District Court of Appeal's analysis to be far more persuasive. Accordingly, I believe that the trial court's review of the appropriateness of the child's adoptive placement is limited to a determination of whether the selection has been made in a manner consistent with the Department's own internal policies, and not in an arbitrary or capricious manner.

Nevertheless, the issue before this Court does not involve the final adoptive placement of the child. Rather, the issue is whether

this statute authorizes the judiciary to order the Department to place a child in a specific, temporary, pre-adoptive placement, after permanent custody of that child has been awarded to the Department pending a final adoptive placement for the child. In my judgment, it does not. As the Fifth District Court of Appeal said in K.A.B., "[i]t is up to the courts . . . to adjudicate legal rights and responsibilities, it is not within their province to manage the affairs of another branch of government." Id. at 899.

I respectfully dissent.