

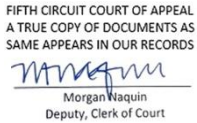
IN THE INTEREST OF J.K.

NO. 25-C-284

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA



July 01, 2025

Morgan Naquin
Deputy Clerk

IN RE J. K.

APPLYING FOR SUPERVISORY WRIT FROM THE JEFFERSON PARISH JUVENILE COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE BARRON C. BURMASTER, DIVISION "C", NUMBER 24-CC-117

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Timothy S. Marcel

WRIT GRANTED

Upon review of the writ application and the record before us, we find that the juvenile court erred in failing to enforce its order requiring the purported father to submit to paternity testing. For the following reasons, this writ application is granted, and the juvenile court's May 27, 2025 ruling authorizing visitation with A.F. is vacated. The matter is remanded for further proceedings pending DNA test results.

This matter originated from a Child In Need of Services proceeding involving a child (J.K.), who tested positive for cocaine at birth. Shortly after his birth, the Department of Children and Family Services (DCFS) was notified. DCFS received the case and applied for instant custody of the child. Early in the DCFS investigation, three possible fathers were identified: T.B., A.F., and W. DCFS was granted instant custody of J.K. In the December 5, 2024 continued custody hearing, the juvenile court found the child in need of immediate protection and care. Based on the representation of A.K. that J.K. is his child, the juvenile court ordered A.K. to submit to DNA paternity testing. DNA testing was scheduled for January 13, 2025.

On January 6, 2025, the State filed a child in need of care (CINC) petition, which identified J.K. as the child in need of care as to his mother and all three alleged possible fathers. The CINC petition referenced the juvenile court's order for DNA paternity testing of A.F. at the continued custody hearing. In his answer to the petition filed on January 7, 2025, A.F. objected to the juvenile court's order for him to submit to DNA paternity testing, asserting that he has acknowledged

paternity of J.K. by signing the birth certificate. At the conclusion of the hearing, the juvenile court authorized one hour per week supervised visitation until paternity was resolved and advised of the possibility of a formal acknowledgment.

On January 17, 2025, a joint motion to suspend visits pending results of DNA paternity testing was filed by the State and the child's attorney. In response to the motion, A.F. notified the juvenile court of his intention to not participate in DNA paternity testing, and admitted that he knowingly missed the January 13, 2025 appointment. The child's attorney and the State argued that it was in the best interest of the child to suspend visits pending DNA paternity testing. The juvenile court granted the motion, and visits were suspended.

The record reflects that in February 2025, A.F. again purported to acknowledge paternity of J.K., stating that he signed the birth certificate. He also stated that he had no intention to disavow J.K. or undergo DNA paternity testing. In response, the State moved the juvenile court to enforce its order for DNA paternity testing. The juvenile court denied the State's request for enforcement of the order for DNA paternity testing, and granted A.F.'s request to resume weekly supervised visits.

Thereafter, on March 7, 2025, a court report filed by DCFS listed A.F. as J.K.'s legal father, because he signed the birth certificate. However, A.F. was never adjudicated to be the child's father. He is not listed as the biological father.

Next, the record reflects that on May 20, 2025, A.F. filed a motion for status conference. The motion stated that A.F. has not been adjudicated the child's father. It further stated that A.F. was instructed to consult with DCFS about being fictive kin or becoming a certified foster home for J.K. Finally, the motion request a case status update from DCFS. The juvenile court set the motion for hearing on June 10, 2025.

Then, on May 23, 2025, the child's attorney filed an emergency motion to suspend extended visitation, arguing that allowing visitation before paternity is established by DNA testing risked irreparable psychological harm to the child, and could cause attachment disruptions. Counsel for the child also raised concerns that DCFS permitted an unsupervised visit between A.F. and J.K. On May 27, 2025, after a pre-trial conference, the juvenile court ordered an unsupervised one weekend visit between A.F. and J.K., and informed DCFS to file a motion to transfer custody to A.F. if the visit went well. A purported act of acknowledgment signed by A.F. was filed into the record. It is from that May 27, 2025 ruling which the child's attorney seeks supervisory review.

The writ application presented us shows that the establishment of paternity in this case is critical to ensure proper placement of this child. While we recognize that A.F. claims to be the father, signed the birth certificate, and executed a purported act of acknowledgement, the juvenile court clearly ordered A.F. to submit to DNA testing to establish his paternity. We also recognize that DCFS can place a child with an alleged parent based on biological connection, even if paternity has not been formally established through legal proceedings. However, in this case, at this time, no biological connection between A.F. and J.K. has been established, much less a judgment of paternity issued. This matter involves three possible fathers. We find the juvenile court's failure to enforce its order for DNA paternity testing of A.F., an alleged father, has delayed this essential determination to the detriment of the child's best interest.

Additionally, the child's attorney asserts she did not receive proper notice to appear for the May 27, 2025 hearing. Though the record is unclear, this raises due process concerns as procedural due process requires the child's attorney has an opportunity to be heard. The right of a juvenile to be represented by counsel in a child in need of care proceeding is a fundamental due process requirement. See, *In Interest of Von Rossum*, 515 So.2d 582 (1987). Adequate notice is one of the most elementary requirements of procedural due process.

Accordingly, the May 27, 2025 ruling of the juvenile court is vacated and the matter is remanded for further proceedings pending DNA test results.

Gretna, Louisiana, this 1st day of July, 2025.

TSM
FHW
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETN, LOUISIANA 70054
www.fifthcircuit.org

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CLERK OF COURT

25-C-284

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Hon. Barron C. Burmaster (DISTRICT JUDGE)
Brianna D. Walker (Relator)
Elaine Appleberry (Respondent)

MAILED

Katherine M. Dowling (Respondent)
Attorney at Law
Department of Children and Family
Services
1450 Poydras Street
Suite 1600
New Orleans, LA 70112

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