

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA** **CIVIL ACTION**

**M. A. K. and J. K.,  
Petitioners,**

vs.

**Case No. 00 DR XXXX**

**L. A. K. and R. K.,  
Respondents,**

**ORDER DENYING *EX PARTE* RELIEF**

This matter having come before the court today with a request for an *ex parte* order granting the petitioner's sworn "Petition for Emergency Temporary Custody of Minor Children by Extended Family" filed 6/3/2011, it is ordered:

1. Findings

This is a civil lawsuit under Chapter 751, in which the parties are those named above. It is concerned with two minor children, but they are not parties.

The sworn petition avers that L. A. K. is the mother and R. K. is the father of the minor children known as C. K., born (*Date omitted*), and L. K., born (*Date omitted*). The petitioners are the paternal grandparents of the children.

The petition avers that the children "have lived with the Petitioners since June 2008, ..." Before that date, it alleges that they lived with the parents from July 2006 to "July 2008."

The respondent L. A. K. has not been served with a summons and a copy of the petition. There is no proof of service of process on her. The father has filed a written consent to the petition in a "Consent for Guardianship (*sic*) by Father" filed 6/3/2011. So, the court has personal jurisdiction over the father but not the mother.

The petition alleges there are two other family division cases concerning these children, a DOR administrative support case, 09 DR 9216, and a domestic violence case between the mother and the father, in which the mother is the petitioner, 11 DR 1075.

In the administrative support case the DOR obtained a support order against the mother on 5/6/2010. That order requires the mother to pay child support of \$750.28 per month plus an arrearage payment of \$75.00. It finds an arrearage of \$19,760.26 and ordered support retroactive to 3/1/2008.

In the domestic violence case, the mother filed a petition against the father on 5/31/2011 and a temporary injunction was entered the same day. It sets a hearing on 6/13/2011 and it orders

that temporarily the children will reside 100% of the time with the mother. The paternal grandparents are not parties in the DV case. The D.V. petition alleges the existence of three D.V. misdemeanor cases in which the father was arrested and in one of which he was convicted. In all three of the misdemeanor cases, the D.V. petition alleges that the mother was the victim.

The petition alleges in paragraph 8 that the “children have lived with the Petitioners since July, 2008, with permission of the parents.” It alleges in paragraph 12 that the “mother periodically takes the children, ...” It alleges in paragraph 13 that the “children are in immediate danger of harm from the mother who is very emotionally unstable and may cause physical harm to the children. The mother has mental and substance abuse issues that do impair her judgment. The children do not feel safe in the mother’s home...”

The petition does not allege that the petitioners’ “[c]urrently have physical custody of the [children] and have had physical custody of the child for at least 10 days in any 30-day period within the last 12 months ...”

## 2. Ruling

The request for *ex parte* relief is denied because:

(A) The petition seeks relief under Chapter 751. However, because it does not allege the jurisdictional facts required by §751.02(2)(a), the court does not have subject matter jurisdiction under Chapter 751, that is, the petition does not allege that the petitioners’ “[c]urrently have physical custody of the child[ren] and have had physical custody of the child[ren] for at least 10 days in any 30-day period within the last 12 months ...”

(B) The court has no personal jurisdiction over the mother because she has not been served with process and she has not filed a written consent to the petition.

(C) There is no statutory authority in Chapter 751 for granting the petition *ex parte*, that is, without notice to the respondent mother as required by law and an opportunity to appear and contest the allegations of the petition, such as the statutory authority for *ex parte* relief under a petition filed under §741.30. Case law permits *ex parte* relief to protect children from a parent in very limited circumstances. The facts alleged in this petition do not amount to an emergency as defined by the case law that is sufficient to allow the court to enter an order *ex parte*, that is, without notice to the other party and an opportunity for the other party to be heard. *Williams v. Williams*, 845 So.2d 246 (Fla. 2d DCA 2003). *See also Loudermilk v. Loudermilk*, 693 So.2d 666 (Fla. 2d DCA 1997), in which “emergency” is defined as a threat of harm to a child or the improper removal of a child from the state.

For the foregoing reasons, the court denies the petitioner’s request for *ex parte* relief.

Done and ordered in Fort Myers, Lee County, Florida, this \_\_\_\_\_

R. Thomas Corbin, Circuit Judge, Division N, for  
Division A

Copies provided to:

, Esq.,

L. A. K., *pro se*, (Address omitted)

R. K., *pro se*, (Address omitted)