

Proper Service, Failure to Appear and Constructive Consent to Dependency-Trial court correctly ruled that the mother's presence at the shelter hearing obviated the need for service of process of the dependency petition and that mother's failure to attend the arraignment hearing constituted a constructive consent to the adjudication of dependency.

C.J.L-M. v. Department of Children and Families, --- So.3d ---- (2018)

Mother appeared at the shelter hearing and was appointed an attorney. After the court found probable cause for removal, mother signed and was given a copy of the shelter order and notice of hearing which listed the date, time, and location of the arraignment hearing. Mother failed to appear at the arraignment hearing and the judge entered a default. Mother's attorney filed a motion to set aside the default, arguing mother was not personally served with the petition for dependency. The trial court denied the motion to set aside, concluding that mother's presence at the shelter hearing obviated the need for service of process of the dependency petition pursuant to §39.505(2). Mother appealed the order for adjudication of dependency and order denying her motion to vacate the default order.

On appeal the Department confessed error, but the Guardian ad Litem fought for the best interest of the child to uphold the default to avoid more unnecessary delays to permanency. The Fourth DCA refused to accept the Department's concession of error and adopted the position of the GAL Program. The DCA affirmed the order below, finding that the trial court correctly ruled that the mother's presence at the shelter hearing obviated the need for service of process of the dependency petition and that her failure to appear the arraignment hearing, of which she had actual notice through the shelter order, constituted a constructive consent to the adjudication of dependency.