

Legal Lines

A Publication of the Worcester County Bar Association

November 2020 Issue

Volume 21, Number 3

PRESIDENT'S MESSAGE

By Terry J. McLaughlin

Let me begin once more by sending my best wishes that everyone and their families are healthy and safe and remain that way, now and through the upcoming holidays.

I also want to thank everyone that has suggested, planned, presented or participated in one of our virtual events over the last month. They continue to be a great success and very well attended. My additional thanks to Sandra DiLuzio, who has taken over the technological aspects of most, if not all, of our programming, including scheduling, hosting, recording and uploading all of our content. Please take the time to watch some of the recorded programs if you did not have a chance to see them live.

The CARE Committee and the subgroup on Education and Awareness have continued their great start. The "21-Day Racial Equity Habit-Building Challenge" finished on November 23rd with its third and final roundtable. Thank you to everyone who participated in the challenge and/or roundtables. The pieces, lectures, podcasts, information and discussions were excellent and very thought provoking. Thank you to Attorneys Rubby Wuabu, Areille Sharma and Weayonnoh Nelson-Davies for hosting one of the roundtables and for their honesty and courage.

The CARE Committee is working on several more great ideas for content and programming in the very near future. The Education and Awareness subgroup is planning panel discussions on Developments in the Law, Race and Equality in Juvenile Court, and Qualified Immunity. The Community Engagement subgroup is developing panel discussions on the recent SJC Study on Racial Disparities in the Massachusetts Criminal System and on Human Rights. They also have several ideas involving the local school communities, including Civic Education in the schools and an Introduction to the Court for High School Students. If you have an idea or would like to participate in the planning or presentation of these events, please reach out to co-chairs Adrian Angus and Courtney Mayo.

The next First Monday Series program, The Return of the Jury Trial, will be on December 7th from 1 to 2 pm. The program will be moderated by the Honorable Judge Daniel Wrenn. The panelists will be Judge Hillman, Judge Wrenn, Judge Kenton-Walker and Judge Despotopulos. They will be discussing their recent jury trial experiences, as well as plans for restarting jury trials in both federal and state court. A special thank you to all of the judges.

Please participate if you have the chance. These are meaningful programs that pack a lot of useful information into a short period of time. If you can't attend, the program will be recorded and uploaded on to the Association's website.

The Discovering Justice After School Mock Trial and Mock Appellate Program has reached out to the WCBA and invited us to participate in their Mentor Program in Spring, 2021. The Discovering Justice Program is a Community Outreach and Mentoring Program attached to the federal court. I have had a number of conversations with their Executive Director and I think this would be a great opportunity for our Association to collaborate with the Discovering Justice organization. Discovering Justice is asking the WCBA to mentor three middle school teams from the Worcester County area. The program is intensive, so we are hoping to fill three mentor teams with multiple people on them. This is the first time the Worcester County Bar Association has been asked to participate. Please reach out me or Geoff Spofford if you are interested.

As I write this, our new website is expected to launch over the weekend of November 21st and 22nd. Again, please be patient for the first few days as everyone works through the transition. When you have a moment, please visit the webpage and explore the new site. Thank you again to Sandra DiLuzio, Candice Staples and Rob White for all of their efforts to make this happen.

As I have asked before and will continue to ask, please reach out, be active and get involved. Despite the current circumstances, we continue to make progress together towards becoming a stronger Association and a stronger Bar.

I hope that everyone has a happy, healthy and small Thanksgiving holiday.

Submitted on Behalf of the WCBA – Bench-Bar Committee: Juvenile Court Division
Case Summary: Adoption of Helga, 97 Mass. App. Ct. 521 (2020), rev. denied, 485 Mass. 1101 (2020)
By Kevin J. Powers¹

I. Issues

1. In a care and protection matter, does the Juvenile Court abuse its discretion by drawing an adverse inference against a parent who appears for some trial days and testifies but then, without good and credible explanation, fails to appear for additional trial days?
2. Does the Juvenile Court abuse its discretion by terminating parental rights where less drastic alternatives exist?
3. Does the Juvenile Court abuse its discretion by refusing to order post-termination and post-adoption visitation where the biological parent has demonstrated belligerence in dealing with the adoptive parent?

II. Procedural History

In a care and protection matter, the Mother attended the first five days of trial and testified, but did not appear for the last two days of trial, during which DCF personnel testified and counsel closed. On the last day of trial, the Mother's counsel presented conflicting information about where the Mother, whose credibility had been an issue throughout the case, was working that day. The Mother's employer informed the DCF adoption social worker that the Mother had not shown up for work that day. The Mother told her counsel that she was working from home.

The Juvenile Court drew an adverse inference against the Mother, approved DCF's adoption plan, and declined to order post-termination or post-adoption visitation. The Mother appealed.

III. Rules of Law and Policies

1. Adverse inference.

Rule. The Juvenile Court has discretion to draw an adverse inference against a parent's fitness based upon the parent attending trial but refusing to testify. The Juvenile Court may also draw an adverse inference against a parent who has notice of the proceedings but is absent without adequate excuse. Adoption of Talik, 92 Mass. App. Ct. 367, 371 (2017). The Juvenile Court may also draw an adverse inference against a parent who appears at trial and testifies, but is then absent from additional trial days without adequate explanation.

2. No least restrictive alternative requirement.

Rule. The Juvenile Court need not investigate adoption plans not proposed by DCF or a parent, or choose a placement least restrictive of familial rights. Petition of Dep't of Pub. Welfare, 376 Mass. 252, 266 (1978).

Policy. Although parental rights are at stake, the best interests of the child are paramount.

3. Visitation.

Rule. An order mandating post-termination and/or post-adoption visitation requires both (1) that visitation would be in the best interests of the child and (2) that those interests will not be adequately served by the adoptive parent's discretion. Adoption of Ilona, 459 Mass. 53, 63 (2011); Adoption of Cadence, 81 Mass. App. Ct. 162, 168 (2012).

Policy. The purpose of post-termination and/or post-adoption visitation is not to strengthen bonds between the child and the biological parent, but to assist the child as he or she negotiates the tortuous path from one family to another.

IV. Reasoning

Justice Massing, writing for the Court and reviewing the decision of the trial judge for clear error or abuse of discretion, observed that:

1. Adverse inference. Although the Mother testified at trial, the Juvenile Court could reasonably conclude that her failure to appear for the last two days, without adequate explanation, was evidence that she was not making efforts toward reunification. The Juvenile Court could also conclude that the Mother gave a false reason for her absence, permitting a reasonable inference that the true reason, whatever it was, would not bear favorably on her fitness.

2. No least restrictive alternative requirement. The Juvenile Court gave full and fair consideration to the DCF adoption plan, which was the only plan suggested by any party.

3. Visitation. The evidence gave no indication that visits with the Mother would assist one of the children in transitioning to adoption but, rather, indicated that visitation would make that transition more difficult.

V. Holding

The Juvenile Court did not abuse its discretion as to any of the issues on appeal.

VI. Disposition

The Appeals Court affirmed the termination of the Mother's parental rights, the approval of the DCF adoption plan, and the refusal of the Juvenile Court to order post-termination or post-adoption visitation.

VII. Subsequent History

The Supreme Judicial Court denied further appellate review.

¹ The author handles appeals and complex trial motions for busy trial lawyers who love going into court but who lack the time to decamp to a law library. He can be reached at kpowers@kevinpowerslaw.com.