Adoption of Beatrix, 89 Mass. App. Ct. 1132 (2016) (Mass. App. Ct. Rule 1:28)

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\*\*PLEASE NOTE: A Summary decision issue by the Appeals Court pursuant to its Rule 1:28 is issued by a panel of the Court. Thus it may be cited for its persuasive value, not as binding precedent\*\*

The Massachusetts Appeals Court vacated a termination of parental rights decree in this July 2016 1:28 decision, citing various judicial errors in her treatment of the evidence. Because it is a 1:28 decision, it can be cited for persuasive value only (not as binding precedent).

*Facts*:    A mother with mild cognitive limitations lost custody of her newborn daughter in the spring of 2014. At the time, there were no allegations of abuse or neglect, just concerns by DCF due to Mother’s past history involving older children and her cognitive limitations. Nearly eight years earlier, the mother had lost custody due to leaving a baby without a caregiver.

The evidence at trial showed the mother had developed numerous positive parenting skills. But, DCF and the trial judge chose to reject this considerable evidence of the mother’s current fitness. For example, DCF asked the mother to participate in a clinical parenting assessment, which she did. The evaluator testified, and wrote in his report, that the mother had the “necessary skills” to parent the baby. Similarly, experienced visitation supervisors from the local YMCA provided extensive visitation notes and testified that the mother’s parenting skills were extensive.

Given DCF’s concerns that the mother not be alone with the child, the mother developed a supportive parenting plan. The mother nominated her long-term partner to be the child’s legal guardian and be responsible for the child’s safety and supervision. DCF rejected the mother’s plan, citing a policy in its area office that the mother would have to leave the home for DCF to support a guardianship. Numerous friends and families testified that they would be there to support the family but nobody from DCF ever reached out to them in order to develop this plan. Therefore, according to the Appeals Court, the evidence simply did not establish a basis for the judge to overlook the mother’s positive parenting evaluation and reject Mother’s supportive parenting plan.

*Summary:* This 1:28 decision is significant in cases where a client has a disability. In deciding to reverse the Juvenile Court’s decision, the Appeals Court cited that “any failure by the department to make reasonable efforts to accommodate the mother’s cognitive impairment may be considered ‘in deciding whether [the mother’s] unfitness is merely temporary.” In making this analysis, the Appeals Court connected the lack of reasonable efforts with possible temporary unfitness. This is a nice argument to make when faced with a parent whom DCF failed to provide services that would actually address the parenting deficiencies. It provides a legal footing for the question: How do we know that the mother’s unfitness isn’t temporary if she hasn’t been given the opportunity to improve?

The Appeals Court also noted that DCF has an affirmative obligation to make reasonable efforts to strengthen families. The Department must accommodate the special needs of a parent who has cognitive limitations. In this case, the Appeals Court cited that the service plan “failed to include services which could assist the mother in light of her impairment.” For example, the court cites how a journaling requirement for a cognitively impaired parent “seems particularly inappropriate.” The Appeals Court ordered that DCF, on remand, is required to follow its regulations and create an appropriate service plan, reinforcing that the court has the authority to order DCF to comply with its regulations. This case therefore provides a helpful citation in a motion for an order for services, visitation schedule, or placement consistent with DCF’s regulations.

The Appeals Court ultimately reversed the trial judge’s decision because: (1) the findings did not reflect an evenhanded analysis of the evidence at trial; (2) the focus was not on the mother’s current fitness and instead on her history from years prior; (3) the findings lacked a “well-founded reason for rejecting the parenting assessment performed at the department’s request;” and (4) the findings were internally inconsistent.

In its decision, the Appeals Court acknowledged that the purview of whether the weight of the evidence was sufficient falls to the trial judge. However, in its review of the evidence, the Appeals Court decided that the Judge’s assessment was error. Moreover, because the evidence that the trial court relied on was “dated,” it was “unduly speculative, without more, to conclude that the mother’s past conduct is predictive of the mother’s current, significantly changed, circumstances.”

In Care and Protection cases, this 1:28 case can therefore be cited for the proposition that the judge cannot simply overlook positive evidence of your client’s improvement. Doing so reflects an incomplete review of the evidence. “The failure to explicate the rationale for this [visitation] finding reflects an incomplete characterization of the uncontroverted evidence before her.” Because this error was compounded in that the judge “failed to adequately address the stride the mother made,” remand was required.