Adoption of Yadira, 476 Mass. 491 (2017)

Summary by Katy Krywonis, Esq., CAFL Training Unit

In this case, the SJC was asked to decide whether federal regulation allows DCF to petition for termination of parental rights on behalf of unaccompanied refugee minors whose parents are also present in the U.S. The SJC held that it does. The Court stated that although unaccompanied refugee minors “are different from other children in foster care because they are separated from their parents by war, natural disaster, or other forces beyond their parents’ control…where parents of unaccompanied refugee minors arrive in the U.S. but make no attempt to reunite with their children (or are otherwise found to be unfit), their children deserve safety and permanency just like any other child.” The SJC affirmed the interlocutory order denying the mother’s motion to deny DCF’s termination petition, and remanded the matter to the trial court.

Facts: The children arrived in Massachusetts from a Nepalese refugee camp through the Federal Unaccompanied Refugee Minors Program, and were placed in foster care. Their mother and father later entered the U.S. Since coming to the U.S., both parents have had “very limited contact” with the children. DCF petitioned the Probate and Family Court to terminate parental rights. The mother moved to deny DCF’s petition. The trial judge denied the mother’s motion and reported the matter to the Appeals Court. The SJC granted an application for direct appellate review.

Discussion: 45 C.F.R. § 400.115(c) provides that the purpose of the minor refugee program is “family reunification.” However, adoption of unaccompanied refugee minors is possible “in certain rare cases…provided a court finds that: (1) [a]doption would be in the best interest of the child; and (2) there is termination of parental rights (for example, in situations where the parents are dead or are missing and presumed dead) as determined by the appropriate State court.”

The parents argued that the use of the passive voice in the phrase “there is termination of parental rights…as determined by the appropriate State court” indicates that qualifying terminations must occur through nonjudicial means, such as parental death, and that the court is to determine only whether such termination occurred, not act to terminate rights itself. The parents further argued that the use of the present tense means that DCF cannot petition for what would be a future termination; rather, the termination must already be in effect. The SJC rejected this reading of the regulation, instead concluding it simply directs the court to determine the issue of termination according to its own state laws. The SJC reasoned that the provision of examples indicates that there are more applicable situations than those listed. Additionally, the Court stated that the parents’ interpretation means there would be no mechanism for a court ever to make a determination of parental unfitness and terminate parental rights to unaccompanied refugee minors. This would leave a whole category of children without protection, and would be in direct conflict with the Adoption and Safe Families Act.

The SJC also rejected the parents’ argument that the minor refugee program and ASFA conflict, instead concluding that the two are “well-aligned.” The SJC reasoned that there are three exceptions to ASFA’s termination of parental rights provision, including if there is a documented “compelling reason” not to file a termination petition. A compelling reason not to file a termination petition could include the child’s unaccompanied refugee minor status. ASFA applies to *all* children in foster care, whether or not they are unaccompanied refugee minors.

This is a very unique case. Counsel involved in a matter concerning unaccompanied refugee minors should read the full opinion, available [here](http://masscases.com/cases/sjc/476/476mass491.html).