Adoption of Zak, 90 Mass. App. Ct. 840 (2017)

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In this case, the Appeals Court was asked to decide whether the parents had standing to participate in a remand hearing on posttermination/adoption visits resulting from an appeal which also affirmed termination of their parental rights. The Appeals Court rejected the argument that the parents had no standing because their parental rights had been terminated. The Appeals Court concluded that the parents had standing to participate because the remand hearing was part of the same proceeding to which they were parties.

Facts: At trial, the parties litigated both termination and posttermination/adoption visits. On appeal, the Appeals Court affirmed termination, and remanded to the trial court on the question of visits.[[1]](#footnote-1) The parents were not notified of, and therefore did not participate in, the remand hearing. On remand, the judge considered previously admitted evidence and heard new evidence of the children’s current circumstances (a combined remand and modification hearing), and entered an amended visitation order. The parents again appealed.

Discussion: Citing *Adoption of Douglas*, 473 Mass. 1024, 1029 (2016), the parents claimed that they were entitled to notice of, and to participate in, the remand hearing because it was part of the same adjudication as the termination proceeding. The children and DCF, citing *Adoption of Malik*, 84 Mass. App. Ct. 436, 438-39 (2013), claimed that because their rights were terminated, the parents had no standing to participate in the remand hearing. The Appeals Court vacated the visitation order resulting from the remand hearing, and again remanded the matter to the trial court.

The Appeals Court noted that while existing case law had not addressed standing in the context of a remand rather than an appeal, the rationale of *Adoption of Rico*, 453 Mass. 749, 757 n. 16 (2009) and *Adoption of Douglas*, supra at 1029, apply fully. In those cases, the parents were permitted to appeal visitation orders, although termination was final, because the visitation issues were part of the termination proceeding to which they were parties. The Court found “no principled distinction which would permit a parent to appeal a visitation order, but bar that parent from participating in a remand hearing ordered by the very appellate court that heard the appeal.” Here, as in *Rico* and *Douglas*, the parents participated in a trial of both their parental fitness and their right to visits. The first appeal affirmed termination, but did not result in a final order with respect to visits. Because the judge weighed and considered the evidence adduced at trial in the remand hearing, it was a continuation of the proceeding to which the parents were parties. Therefore, the fact that termination was no longer at issue did not divest the parents of standing to participate in the remand hearing.

1. A summary of that opinion is available [here](https://www.publiccounsel.net/cafl/professional/relevant-statutes-and-case-law/summaries-of-recent-decisions/). *Adoption of Zak*, 87 Mass. App. Ct. 540 (2015). [↑](#footnote-ref-1)