Care and Protection of Vieri, 92 Mass. App. Ct. 402 (2017)

Summary by Katy Krywonis, CAFL Training Unit

The trial judge adjudicated Vieri in need of care and protection and found his mother unfit because her home was unsafe and unsanitary, she was unable to meet Vieri’s escalating needs, and she refused to cooperate with DCF. At trial, the evidence showed that the home had been in “deplorable” condition for an extended period.  The mother testified that the home was now clean, but she refused to let the social worker inside because she did not “have a very good relationship” with DCF.  On appeal, the mother argued that the evidence was insufficient to prove that she was currently unfit because there was no current evidence that her home was in “chaos.” The Appeals Court disagreed and affirmed, noting that the evidence was not “fully current” only because the mother refused to let the social worker inside. The judge was permitted to draw a negative inference – that the home remained in poor condition – from the mother’s refusal to allow anyone into the home to report on its condition. The judge could rely on the evidence that was available, including the probation officer’s and health department agent’s earlier observations of the home. The judge was not required to credit the mother’s testimony that there was nothing amiss in the home.

The negative inference language from the Appeals Court is ambiguous.  However, the holding that the judge could draw a negative inference from the mother’s refusal to cooperate refers to the mother’s refusal to allow the social worker access to the home; it is not about the mother’s participation in other service plan tasks.

*Practice Tip:* If DCF has ample evidence of your parent client’s dangerously dirty or chaotic home, your client cannot avoid a finding of current unfitness by preventing others from observing the home.  The judge will be able to draw a negative inference that the home remains in dangerously dirty or chaotic condition.  To avoid that negative inference, you must urge your client to clean the home and give the DCF caseworker and/or other collaterals access.  If your client refuses to allow them access, she must have an extremely credible reason for doing so.  But whatever her reasons, she still must be able to rebut DCF’s evidence of past filth by presenting evidence (beyond her own testimony) that the home is currently clean.