

IMPOUNDED

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

Docket [REDACTED]

---

ADOPTION OF [REDACTED]

---

ON APPEAL FROM THE [REDACTED] JUVENILE COURT

---

Brief for Appellee-Child

---

[REDACTED]  
[REDACTED]  
Attorney for Appellee-Child,

[REDACTED]  
Committee for Public Counsel Services  
Children and Family Law Division  
Appellate Unit  
340 Main Street, Suite 7037  
Worcester, MA 01608  
[REDACTED]  
[REDACTED]

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	i
ISSUES PRESENTED	1
I.    Mother had only seen [REDACTED] once since her birth and failed to participate in any services to improve her parenting skills. Did the trial court appropriately find Mother unfit to parent and properly exercise its discretion in concluding that [REDACTED] best interests would be furthered by DCF's plan of adoption by her maternal grandparents?	1
II.   DCF was required to change the goal for [REDACTED] to adoption when it appeared that Mother had abandoned her. That the termination trial took place six months after [REDACTED]'s placement in DCF custody did not violate federal or state law. Did the trial court proceeding comply with Mother's due process right to a fair and meaningful hearing?	1
Statement of the Case	1
Nature of the Case	1
Prior Proceedings	2
Statement of the Facts	3
<u>Mother leaves newborn [REDACTED] at the hospital</u>	3
<u>Mother's history of drug abuse and its effect on her care and custody of her elder daughter, [REDACTED]</u>	5
<u>Mother's incarceration and pending charges</u>	8
<u>[REDACTED]'s placement and well-being</u>	9

TABLE OF CONTENTS (cont'd)

ARGUMENT

- I. The trial court's decision to terminate Mother's parental rights was supported by clear and convincing evidence of her unfitness, and its determination that [REDACTED]'s best interests were served by being adopted by her grandparents was fully within its discretion. 11
- A. That DCF failed to make reasonable efforts to reunite Mother with [REDACTED] is not a colorable claim upon appeal, and even if it were, DCF's efforts in this case were certainly reasonable in light of Mother's disappearance and subsequent incarceration. 12
- B. [REDACTED]'s best interests are furthered through adoption by her maternal grandparents. 16
- II. Mother was not denied due process when the juvenile court terminated her parental rights only six months after [REDACTED] was born, as the proceeding comported with all applicable statutory and procedural due process requirements. 19
- A. Entering a termination decree six months after [REDACTED] was placed in DCF custody does not violate ASFA or G.L. c. 210, § 3. 19
- B. Mother was afforded the opportunity to be heard in a meaningful time and in a meaningful manner. 21

CONCLUSION

23

RULE 16(k) CERTIFICATION

24

STATUTORY ADDENDUM

FINDINGS OF FACT, RULINGS OF LAW AND ORDER

TABLE OF AUTHORITIES

Cases

Adoption of Carla, 416 Mass. 510 (1993) ..... 14

Adoption of Carlos, 413 Mass. 339 (1992) ..... 18

Adoption of Hugo, 428 Mass. 219 (1998) ..... 12, 13, 17

Adoption of Ilona, 459 Mass. 53 (2011) ..... 13

Adoption of Katharine, 42 Mass. App. Ct. 25 (1997) . 15

Adoption of Mario, 43 Mass. App. Ct. 767 (1997) . 13-14

Adoption of Mary, 414 Mass. 705 (1993) ..... 13

Adoption of Nancy, 443 Mass. 512 (2005) ..... 11, 17

Adoption of Quentin, 424 Mass. 882 (1997) ..... 23

Adoption of Zoltan, 71 Mass. App. Ct. 185 (2008) .... 15

Care & Protection of Robert, 408 Mass. 52 (1990)  
..... 11, 21

Custody of Eleanor, 414 Mass. 795 (1993) ..... 12

Custody of Two Minors, 396 Mass. 610 (1986) ..... 12

Dept. of Public Welfare v. J.K.B., 379 Mass. 1 (1979)  
..... 21

In re Guardianship of K.H.O., 736 A.2d 1246 (N.J.  
1999) ..... 20

Petition of the New England Home for Little Wanderers,  
367 Mass. 631 (1975) ..... 14-15

Statutes

G. L. c. 119, § 29B .....	22
G. L. c. 119, § 29C .....	22
G. L. c. 210, § 3(c) .....	17, 19, 20, 22
42 U.S.C. § 671-673 .....	19, 20

## ISSUES PRESENTED

- I. Mother had only seen [REDACTED] once since her birth and failed to participate in any services to improve her parenting skills. Did the trial court appropriately find Mother unfit to parent and properly exercise its discretion in concluding that [REDACTED]'s best interests would be furthered by DCF's plan of adoption by her maternal grandparents?
- II. DCF was required to change the goal for [REDACTED] to adoption when it appeared that Mother had abandoned her. That the termination trial took place six months after [REDACTED]'s placement in DCF custody did not violate federal or state law. Did the trial court proceeding comply with Mother's due process right to a fair and meaningful hearing?

## STATEMENT OF THE CASE

### Nature of the Case

The [REDACTED] Juvenile Court ("court") entered a decree under G. L. c. 210, § 3 that freed a baby girl, [REDACTED] ("[REDACTED]") for adoption. [REDACTED]'s mother, [REDACTED] ("Mother"), now appeals from the court's entry of the decree. For the reasons that follow, [REDACTED] requests this Honorable Court uphold the decree so that she may be adopted by her grandparents.

Prior Proceedings

[REDACTED] was born on [REDACTED] F1, A9. On April 24, a mandated reporter filed a report under G. L. c. 119, § 51A,<sup>1</sup> alleging neglect of [REDACTED]. F28, A11. When the allegations in the § 51A report were supported, the Department of Children and Families ("DCF" or "department") filed a G. L. c. 119, § 24 petition on behalf of [REDACTED] and was granted emergency custody of the child. F47, A15.<sup>2</sup> A temporary custody hearing took place on May 24, 2012; Mother failed to attend. F47, A15. DCF was awarded continued temporary custody of [REDACTED]. F47, A15. The department placed [REDACTED] in the care of her maternal grandparents on May 15, 2012. F51, A15. She has remained there ever since. F51, A15.

A trial conducted under G. L. c. 210, § 3 was held on November 1, 2012. A5. At the conclusion of

---

<sup>1</sup> Under G. L. c. 119, § 51A, certain persons must, and others may, report to DCF instances of suspected child maltreatment. G. L. c. 119, § 51A.

<sup>2</sup> The court's factual findings are referenced by number with an "F" and its conclusions of law with a "CL" each followed by the Record Appendix page. References to the Record Appendix are denoted "A." References to the trial transcript are denoted "T" followed by the page number. Mother's Brief is referenced as "MB" followed by the page number.

the hearing, the court ([REDACTED] J.) adjudicated [REDACTED] to be in need of care and protection, committed her to DCF's permanent custody, and dispensed with the need for Mother's consent to [REDACTED]'s adoption.<sup>3</sup> A5. Mother timely filed a notice of appeal of the decree on November 29, 2012. A5. The court issued its Findings of Fact, Rulings of Law, and Order on June 14, 2013. A6.

#### Statement of the Facts

##### Mother leaves newborn [REDACTED] at the hospital

Mother was taken by ambulance to [REDACTED] General Hospital on [REDACTED]. F30, A12. Half an hour after her arrival, she gave birth to a baby girl. F30, A12. The attending nurse described Mother as 'filthy' with needle marks along her arms. F30, A12. Both Mother and the baby tested positive for cocaine and opiates. F30, A12. The baby was transferred to the Special Care Nursery in the pediatric wing, where she was given a morphine drip in order to cope with withdrawal. F95, A19. A § 51A report was filed on

---

<sup>3</sup> Also on November 1, 2012, the juvenile court terminated the rights of [REDACTED]'s father, whose identity is unknown. A5.



April 24, alleging neglect of the child based on her positive substance test. F28, A12.

Four days after giving birth, Mother had still not given the child a name. F31, A12. Mother spent those days sleeping; she did not visit with the baby or express any interest in her well-being. F31, A12. She told the DCF investigator that she had received no prenatal care and admitted that she had shot-up heroin ten hours before delivery. F30, A12. She further stated that she had smoked crack two days prior to that. F35, A13. Mother was discharged sometime between April 25 and April 29. F32, A12; F45, A14. Before leaving the hospital, Mother named the baby "[REDACTED]" F45, A14. [REDACTED] remained in the special neonatal unit as doctors weaned her off morphine. F45, A14.

Mother returned to the hospital on [REDACTED] to visit [REDACTED]. F45, A14. She stayed for thirty minutes. F45, A14. The next day, doctors tried to contact Mother, as [REDACTED] was being weaned off the morphine drip and needed to make a physical connection with a caregiver. F45, A14. Neither the hospital staff nor the DCF investigator could locate Mother, so DCF petitioned the juvenile court for emergency

custody of [REDACTED]. F46-47, A14-15. The court granted emergency custody to the department and continued its custody three days later, on May 4, 2012, when Mother failed to attend the 72-hour hearing. F47, A15. On May 7, DCF learned through the local newspaper that Mother had been arrested. F48, A15.

When DCF had no success in locating Mother, the investigator contacted Mother's parents - [REDACTED]'s grandparents ("grandparents" or "Grandmother" and "Grandfather") - and asked them if they were willing to take care of [REDACTED]. F49-50, A15. Grandmother told the investigator that "she would absolutely be willing to take baby [REDACTED]" and that she was "so grateful" to DCF for locating her and Grandfather. F50, A15.

[REDACTED] went home with her grandparents on May 15, 2012. F51, A15.

Mother's history of drug abuse and its effect on her care and custody of her elder daughter, [REDACTED]

Mother had her first child, [REDACTED] (D.O.B.

[REDACTED]), when she was in high school. F7, A9.

[REDACTED]'s father, [REDACTED], left Mother and [REDACTED] when

[REDACTED] was one-year-old. F7, A9. Mother finished high school and became certified as a home health aide.

F8-9, A9-10. She worked for a period of time but then lost her job and applied for housing assistance, moving first to Lowell and then Lawrence. F9-10, A10.

In Lawrence, Mother became involved with [REDACTED] F11, A10. [REDACTED] was extremely violent towards Mother. F11, A10. Their relationship ended when [REDACTED] kidnapped Mother and [REDACTED] in Mother's car. F11, A10. Every time Mother refused to follow [REDACTED]'s driving instruction, he punched Mother in the face, while [REDACTED] watched from the back seat. F11, A10. Eventually, Mother fled the car with [REDACTED] and began running down the street. F11, A10. [REDACTED] grabbed [REDACTED] and refused to let her go, even as several police officers who had been called to the scene tried to extricate the child from his grip. F11, A10. [REDACTED] was arrested, and when brought before the court, threatened to kill Mother when he was released from jail. F11, A10.

At the age of thirty, Mother began abusing substances. F12, A10. Mother's sister took Mother to a rehabilitation program for heroin addiction in 2007. F13, A10. Mother attended the program for a couple of weeks, obtained a sponsor, and told her sister she did not need any more help and left the program. F13,

A10. Not long after, Mother approached her brother and asked him to take her to another substance abuse program. F14, A10. She was terminated from the program less than two weeks later for fighting, and her brother was called to pick her up. F14, A10. That same day, the brother caught Mother injecting heroin in his bathroom. F14, A10. These events caused Mother's siblings to distance themselves from her. F14, 16, A10.

In June 2010, [REDACTED] confided to Grandmother that she did not feel safe at Mother's home. F17, 23, A10-11. [REDACTED] described Mother's habit of coming home and immediately going into the bathroom, presumably to inject heroin, and then to sleep. F17, A10-11. [REDACTED] also said that she had not attended school the year before. F23, A11. When Grandmother heard this, she refused to let [REDACTED] return to Mother's house. F17, A10-11. Mother's entire family attempted to stage an intervention with her over her drug abuse. F17, A10-11. Mother was not receptive to her family's efforts and cut off all contact with them. F17, A10-11. The grandparents received temporary guardianship of [REDACTED] from the probate court and

proceeded to enroll her in school. F23, A11. Mother has not seen [REDACTED] since 2010. F24, A11.

Mother's incarceration and pending charges

Mother's whereabouts remained unknown to both DCF and her family after she failed to return to the hospital to visit [REDACTED] in May 2012. F56, A16. By September 5, 2012, DCF still was unable to contact her. F60, A16. The agency thus changed its goal for [REDACTED] to adoption. F60, A16.

The DCF social worker assigned to the case, [REDACTED], finally spoke with Mother at the end of September, when it was discovered that Mother was being held at MCI Framingham. F62, A16. Grandmother visited Mother and told Mother that [REDACTED] was in her care. F63, A16. Yet, when Mother met with Ms. [REDACTED] several weeks after Grandmother's visit, Mother told Ms. [REDACTED] that she thought [REDACTED] was still hospitalized. F64, A16.

Mother was being held at MCI Framingham after being arrested on August 6, 2012 for her alleged participation in an armed robbery. F70, A17; A45. Mother understood that an armed robbery charge could carry as much as a 25-year sentence if she were to be found guilty. F70, A17. In addition, Mother had been

arrested in May 2012 for trespassing and later, in July, for possession of a Class B substance, both of which remained open charges at trial. F78, 89, A18, 19.

At the time of trial, Mother had not been sentenced and therefore had limited access to services at MCI Framingham. F72, A17. But she was eligible to participate in parenting classes and AA meetings. F72, A17. Despite Ms. [REDACTED]'s advice to Mother that participating in AA and obtaining a sponsor were part of her service plan, Mother chose not to participate. F69, 76, A17, 18. Mother also refused visits with [REDACTED], stating that she did not want the child to see her in the prison environment. F74, A17. Thus, from the time of Mother's leaving the hospital after giving birth to the time of trial, Mother had seen her daughter only once. F87, A18-19.

[REDACTED]'s placement and well-being

[REDACTED] was born with a substance addiction as a result of Mother's drug use during her pregnancy. F93, 95, A19. Mother reported that [REDACTED]'s father was HIV positive, however [REDACTED] tested negative for the virus. F94, A19. In order to withdraw from the drugs to which Mother exposed her, [REDACTED] spent her first few

days of life in the special prenatal unit receiving a morphine drip. F95, A19. Because drug addicted babies may have withdrawal symptoms for several months after birth, it was recommended that [REDACTED]'s caregiver be trained to manage those symptoms and that [REDACTED] receive Early Intervention services. F97, A19.

Grandparents have demonstrated that they are able to meet [REDACTED]'s needs, and she has flourished in their care. F104, A20. After coming into their home, [REDACTED] was able to gain weight, adapt to new formula, and sleep well. F101, A20. When the court investigator paid a visit to the grandparents' home, she observed that [REDACTED] seemed "calm and happy" while being held by Grandfather. F99, A20.

Both grandparents have been actively engaged with various service providers to aid in [REDACTED]'s development. F100-102, A20. They have ensured that [REDACTED] uses a specialized formula for colic and have brought her to all her pediatrician appointments. F99-100, A20. At one appointment on May 18, 2012, the doctor noted that [REDACTED] "was doing great." F100, A20. When [REDACTED] was referred to the Visiting Nurse Association, her grandparents learned from the nurse how to switch [REDACTED]'s formula and to swaddle her.

F101, A20. Several weeks later, a worker from Early Intervention noted that [REDACTED] was "making all her developmental milestones" and that Early Intervention was needed only to make sure she stayed on target.

F102, A20. The court found that [REDACTED]'s grandparents show her much love and affection and have met all her needs. F104, A20. If continued in their home, [REDACTED]

would also have the benefit of being in a home with her half-sister, [REDACTED], who was still living with the grandparents. F105, A20.

#### ARGUMENT

- I. The trial court's decision to terminate Mother's parental rights was supported by clear and convincing evidence of her unfitness, and its determination that [REDACTED]'s best interests were served by being adopted by her grandparents was fully within its discretion.

A parent's constitutionally-derived interest in the care and custody of her child must yield to the child's right to be free of abuse and neglect. Care & Protection of Robert, 408 Mass. 52, 62 (1990). When the court determines that the parent is currently unfit to further the child's best interests, the court may legally end the parent/child relationship. Adoption of Nancy, 443 Mass. 512, 514 (2005) (court's



inquiries into fitness of the parent and best interests of the child are interrelated yet distinct).

On appeal, the trial court's decision is given "substantial deference." Adoption of Hugo, 428 Mass. 219, 225 (1998); Custody of Two Minors, 396 Mass. 610, 618 (1986) (trial "judge's assessment of the weight of the evidence and the credibility of the witnesses is entitled to deference"). The judgment may be vacated only where there has been an abuse of discretion or error of law. Custody of Eleanor, 414 Mass. 795, 802 (1993). Here, the court committed no error of law or abuse of discretion, and the decree terminating Mother's parental rights should be upheld.

A. That DCF failed to make reasonable efforts to reunite Mother with [REDACTED] is not a colorable claim upon appeal, and even if it were, DCF's efforts in this case were certainly reasonable in light of Mother's disappearance and subsequent incarceration.

Mother argues that the court terminated her rights without sufficient evidence because DCF did not provide her with access or enough time to engage in services. MB19-21. This claim cannot succeed where the court found no fault with DCF's attempts to engage Mother in services and Mother's unfitness was demonstrably overwhelming.

In rendering its decision, the court must make subsidiary findings of fact, which collectively amount to clear and convincing proof of a parent's unfitness, before it may terminate that parent's rights. Adoption of Mary, 414 Mass. 705, 710 (1993). The judge may consider DCF's failure to make reasonable efforts to assess whether a parent's unfitness is only temporary, but even if the judge finds that DCF did not meet its obligation, the court ultimately must rule in the child's best interests. Adoption of Ilona, 459 Mass. 53, 61 (2011). Here, the court found no fault with DCF's interaction with Mother, and the court's subsidiary findings cumulatively amount to clear and convincing evidence of Mother's unfitness. Because Mother makes no claim that any of the court's findings was clearly erroneous, they should not be disturbed on appeal. Adoption of Hugo, 428 Mass. at 225.

Contrary to what Mother posits (MB19-21), it was not a lack of reasonable effort by DCF to engage Mother in services, but rather her refusal to participate in them, that the court found was indicative of Mother's unfitness. F72, 75-77, A17-18. See Adoption of Mario, 43 Mass. App. Ct. 767, 774

(1997) (DCF's obligation to make reasonable efforts is "contingent upon [the parent's] fulfillment of [his] own parental responsibilities" to seek and use services). The DCF social worker acknowledged that Mother's ability to participate in the services listed in her service plan was limited while she was being held at MCI Framingham; however, Mother was able to access a parenting group and AA meetings, both of which the social worker advised Mother to join multiple times. F72, 75, A17-18. Mother testified that she had not participated in either by the time of trial - claiming that she was unaware that she could join a parenting class and that she had no time for AA meetings. F76-77, A18. Given Mother's stance during trial, the court made no error in concluding that Mother's lack of effort was "probative of parental unfitness." CL15, A24, citing Adoption of Carla, 416 Mass. 510, 519 (1993).

Moreover, the court did not find Mother unfit solely because of her failure to participate in services while incarcerated; the court made numerous findings detailing the "grievous shortcomings" that led it to conclude Mother was currently unfit and would remain so indefinitely. Petition of the New

England Home for Little Wanderers, 367 Mass. 631, 646 (1975). In particular, the court found that Mother had an extensive history of substance abuse that had negatively impacted both of her children. CL26, A28. A parent's drug use is relevant to the court's fitness inquiry if there is a nexus linking it to the parent's ability to keep the child free from abuse and neglect. Adoption of Zoltan, 71 Mass. App. Ct. 185, 190 (2008).

[REDACTED] was harmed by her mother's drug use both directly and indirectly. First, due to exposure to drugs in utero, [REDACTED] had to spend the first weeks of her life connected to a morphine drip as she went through withdrawal. F97-98, A19. During the detoxification process, Mother denied [REDACTED] medically-necessary physical comfort. F45, A14. Second, as a result of Mother's drug use, Mother remained unavailable to [REDACTED] and deprived her of the ability to bond with her mother during the first months of her life. F89, A19; CL25(i), A26.

Mother's drug problem has also prevented her from parenting in the past. Adoption of Katharine, 42 Mass. App. Ct. 25, 33 (1997) (court "may consider [parent's] past conduct to predict future ability and performance"). Mother's older child, [REDACTED], had been

in the care of Mother's parents for over two years at the time of trial, after [REDACTED] reported to Grandmother that she did not feel safe in Mother's home due to Mother's drug use and that Mother had not enrolled her in school the year before. F17, A10-11. Mother admitted that she has not seen [REDACTED] since 2010, and that she has made no effort to do so even though she knew [REDACTED] was living with her grandparents. T31.<sup>4</sup> The court therefore appropriately concluded that "Mother's history with [REDACTED] has prognostic value." CL18, A24.

These facts, in the aggregate, clearly and convincingly support the court's conclusion that Mother was "not fit or ready to assume parental responsibility" for [REDACTED]. CL22, A25.

B. [REDACTED]'s best interests are furthered through adoption by her maternal grandparents.

After concluding that a parent is unfit, the court must undertake an inquiry into the best interests of the child before it may enter a decree

---

<sup>4</sup> Mother supplements the trial court's factual findings with uncontested evidence introduced at trial. See Care and Protection of Elaine, 54 Mass. App. Ct. 266, 267 (2002). (Court bases review upon trial court's findings of fact and uncontested evidence in the record).

terminating the parent's rights. Adoption of Nancy, 443 Mass. at 515-516. "In determining whether the best interests of the children will be served by issuing a decree dispensing with the need for consent, a court shall consider the ability, capacity, fitness and readiness of the child's parents . . . and shall also consider the plan proposed by the department or other agency initiating the petition." Id., quoting G. L. c. 210, § 3(c). Because "best interests of a child' is a question that presents the trial judge 'with a classic example of a discretionary decision,'" this Court should give the trial judge's decision "substantial deference." Adoption of Hugo, 428 Mass. at 225. The court's determination that [REDACTED]'s best interests are furthered by the department's plan of adoption by her grandparents was fully within its discretion and should be deferred to upon appeal.

Because [REDACTED] was born substance dependent, she needed special treatment as she weaned off morphine. F95, A19. The DCF nurse noted that [REDACTED] should be placed in a specialized foster home because babies with withdrawal symptoms need extra attention and trained caretakers. F97, A19. Yet [REDACTED] did not need a specialized foster home, because once her

grandparents were notified of her medical needs, they immediately engaged in the services and training recommended by the hospital. F99, A20. They kept her on a strict diet and made sure she went to all her physician's appointments. F99, A20. They worked with the visiting nurse to learn how to help her gain weight and to swaddle her. F101, A20. As a result, [REDACTED] was observed to be meeting "all her developmental milestones" in the care of her grandparents. F102, A20. [REDACTED]'s doctor stated that she "was doing great." F100, A20.

On the other hand, the court found that Mother had continued to abuse substances after [REDACTED]'s birth (F89, A19), was refusing visits with the child (F74, 87, A17-18), and had not engaged in any services (F76, A18). Thus, the court's weighing of Mother's prospective unfitness against the progress [REDACTED] was making in her grandparents' care led it to conclude that "[REDACTED]'s best interests will be served by a termination decree." CL22, A25. See Adoption of Carlos, 413 Mass. 339, 350 (1992) (court must consider parent's capacity for future fitness before terminating parental rights). There was no abuse of

discretion in the judge's determination that DCF's goal of adoption was appropriate.

II. Mother was not denied due process when the juvenile court terminated her parental rights only six months after [REDACTED] was born, as the proceeding comported with all applicable statutory and procedural due process requirements.

Mother contends that the swiftness with which DCF changed its goal for [REDACTED] to adoption and the subsequent rapidity of the termination hearing were violative of both state and federal law and her due process rights. MB8-15. These arguments fail under the express provisions of the applicable statutory law, and the record at trial shows that Mother was provided with a fair and meaningful hearing.

A. Entering a termination decree six months after [REDACTED] was placed in DCF custody does not violate ASFA or G.L. c. 210, § 3.

Mother first alleges that the timeline of the care and protection proceeding violated the federal Adoption and Safe Families Act ("ASFA"), 42 U.S.C. §§ 671-673. MB9-12. She states that ASFA does not set a minimum time for termination hearings but claims that G. L. c. 210, § 3 did so when incorporating the federal law into the state jurisprudence. MB11. In fact, neither statute sets minimum time standards, and



the proceeding involving Mother and [REDACTED] comported with both laws.

Congress's explicit goal in passing ASFA was to ensure that children who were placed in the custody of state child welfare agencies did not linger in foster care for years waiting for their parents to become fit. In re Guardianship of K.H.O., 736 A.2d 1246, 1257 (N.J. 1999) ([ASFA] "legislation requires that a court hold a dispositional hearing for children who have been in foster care for more than twelve months"). Rather than set minimum time standards, ASFA sets a maximum length of time federal funds will be provided to agencies like DCF to make reunification efforts. 42 U.S.C. § 671.

Nor does G. L. c. 210, § 3 proscribe the juvenile court from holding a hearing to dispense with parental consent to adoption before a certain time mark. As Mother points out, § 3(c) requires the court to consider whether the child has been in DCF custody for six out of the preceding twelve months when making a termination decision. G. L. c. 210, § 3(c)(v). However, the statute does not state that termination cannot occur unless the child has been in DCF custody for that time, it merely acts as one factor out of

fourteen that a court may use to justify why termination is in the child's best interests. In any event, [REDACTED] had been in DCF custody for six months at the time of trial and thus the termination proceeding would not have violated a six month time standard had one been provided in the statute. F99, 105, A20 (DCF filed care and protection petition on May 1, 2012; trial was held on November 1, 2012).

B. Mother was afforded the opportunity to be heard in a meaningful time and in a meaningful manner.

A proceeding that dispenses with a parent's right to care and custody of her child must comport with due process. Care & Protection of Robert, 408 Mass. at 58. Due process generally requires that a parent be afforded the "right to be heard at a meaningful time in a meaningful manner." Department of Public Welfare v. J.K.B., 379 Mass. 1, 4 (1979) (citation omitted). Neither DCF's goal change to adoption nor the date or length of the care and protection hearing violated Mother's due process rights.

Mother argues that DCF's goal change for [REDACTED] (from reunification with Mother to adoption) ten weeks after the care and protection petition was filed was

error. MB10. The goal change, however, was in compliance with DCF's responsibilities for permanency planning under G. L. c. 119, §§ 29B-29C. Mother's disappearance from the hospital after [REDACTED]'s birth fits the definition of "abandoned" under G. L. c. 210, § 3(c).<sup>5</sup> CL25(i), A26 ("Mother, for all intents and purposes, abandoned [REDACTED] at the hospital"). DCF had an obligation to conduct a permanency hearing and decide on a goal for [REDACTED] that served her best interests in light of Mother's unknown whereabouts. G. L. c. 119, § 29B.

The termination hearing was also timely given Mother's incarceration and failure to cooperate with DCF. At the time of trial, Mother had had two months to engage in the services recommended by the DCF social worker and to visit with [REDACTED]. F74-76, A17-18. She chose to do neither. CL15, A24. Mother was afforded competent representation by her trial

---

<sup>5</sup> G. L. c. 210, § 3(c) provides, in part:

For the purposes of this section "abandoned" shall mean being left without any provision for support and without any person responsible to maintain care, custody and control because the whereabouts of the person responsible therefor is unknown and reasonable efforts to locate the person have been unsuccessful. A brief and temporary absence from the home without intent to abandon the child shall not constitute abandonment.

counsel, who examined witnesses and presented evidence in Mother's favor, and Mother testified on her own behalf. Adoption of Quentin, 424 Mass. 882, 892 (1997) (parents must have opportunity to refute allegations of unfitness for due process to be provided). That the trial lasted just an hour and a half cannot, where no limitation was placed on Mother's ability to present her case, be said to have infringed on her due process rights.

CONCLUSION

For all the reasons set forth above, the decree dispensing with Mother's consent to [REDACTED]'s adoption should be AFFIRMED.

Respectfully submitted,

[REDACTED]  
By her attorney,

[REDACTED]  
Committee for Public Counsel Services  
Children and Family Law Division  
Appellate Unit  
340 Main Street, 7<sup>th</sup> Floor  
Worcester, MA 01608  
[REDACTED]  
[REDACTED]

Date: September 17, 2013