

November 12, 2004

R. Marc Kantrowitz
Associate Justice
Appeals Court
3 Center Plaza, Seventh Floor
Boston, MA 02108

Re: Adoption of Roberta
Appeals Court Docket No. 2004-P-548
Panel Members: Kantrowitz, Mills, Trainor

Dear Justice Kantrowitz:

Please accept this letter as the appellant-father's Petition for Rehearing in the above-captioned case pursuant to Mass. R. App. P. 27. The Memorandum and Order pursuant to Rule 1:28 (the "decision") in this matter affirmed the decrees finding father's three children in need of care and protection and terminating his parental rights. This is not the subject of this Petition for Rehearing. Rather, this is a request for the panel to reconsider its decision to modify the decrees to provide that father receive *only* a photograph of the children once per year. For the reasons outlined below, father asks that this Court effect the trial judge's intent to provide father with a "picture/letter" arrangement by modifying the decree accordingly.

This Court decided to modify the decrees to include a yearly picture in large measure due to the trial judge's representation to the parties that he would include such a requirement in the decrees. See Decision at 3. The trial judge's discussion of this issue is recorded in the transcript of the October 22, 2003 hearing as follows:

The findings that I have is [sic] going to contain a provision on it for a termination visit, and I will order that the adoptive parents participate *in the picture, in whatever arrangement* with Mr. T----- . (See Transcript, page 2 attached hereto) (emphasis added).

Further explanation of what the trial judge meant by "in the

picture, in whatever arrangement" can be found in the closing argument of DSS trial counsel as follows:

I am certainly willing, your Honor, to put the preadoptive family on, but I can also represent to you, your Honor, that neither one of these preadoptive families can or are able to tolerate postadoption visitation, your Honor. They have been willing to and continue to be willing to offer a *picture letter*, your Honor. They have been willing to provide a one time only video. (See Transcript, page 44, attached hereto) (emphasis added).

The customary arrangement in the Juvenile Courts for this sort of post-adoptive contact is a picture accompanied by a short update on the child. This was the arrangement suggested to the trial court by the DSS trial lawyer. This was undoubtedly what the trial judge meant by "in the picture, in whatever arrangement". In order for this Court truly to effect the trial judge's intention in this regard, the father respectfully requests that this Court include a requirement for a brief letter with the picture in its modification of the decree.

In view of all the evidence of father's clear and sincere interest in his children and his love for them, and the representation by DSS to the trial court that the preadoptive families were willing to provide a "picture letter," the granting of this request would further the interests of justice and would not prejudice or burden any party.

Please be advised that father, through his trial counsel, has attempted to resolve this issue directly with trial counsel for the Department of Social Services in order to avoid the need to take up this Court's valuable time with this matter. Such attempts were to no avail. This Petition for Rehearing is the father's only opportunity to rectify this situation.

For the foregoing reasons, the appellant-father respectfully requests that this Court allow his Petition for Rehearing, and revise the decision in order to provide father with "an updated photograph of the children and a brief letter once a year."

Sincerely,

Claudia Leis Bolgen

cc All counsel of record