***Adoption of Xarina*, No. 18-P-82 (Mass. App. Ct. August 22, 2018)**

Prepared by the CPCS CAFL Training Unit

In *Adoption of Xarina*, the Appeals Court affirmed a judgment terminating the rights of Xarina’s mother and not her father, while also approving a plan of guardianship with Xarina’s foster parents.

*Facts:* At an initial proceeding, one year earlier, the father stipulated to unfitness. The judge found the mother unfit, gave permanent custody of Xarina to DCF, and did not terminate parental rights.  DCF subsequently changed the goal from reunification with the father to adoption by Xarina’s foster parents. In between the first proceeding and the termination trial, the mother did not visit with Xarina or engage in services.  On the day of trial, DCF announced that it was changing the goal to guardianship and was no longer seeking to terminate the father’s rights.

*Discussion:* The mother argued that once the goal changed from adoption to guardianship, termination of her rights was no longer necessary and that the Department sought termination to punish her for failing to visit with Xarina and cooperating with DCF.  The Appeals Court disagreed, noting that absent termination the mother would have the right to notice of, and to participate in further proceedings involving the child’s custody.  As such, termination of the mother’s rights was in the child’s best interests because, among other things, it “significantly eases the [child’s] path to a stable placement.”*(Citing Adoption of Willow, 433 Mass. 636, 647 (2001)* and *Adoption* of *Nancy*, 443 Mass. 512, 517-518 (2005).  The Appeals Court further noted that the Department’s decision not to seek termination of the father’s rights was supported by the lengthy period of time the child lived with him, his partial compliance with the service plan, the consistency of visits with Xarina, and his bond with her.   In contrast, the mother only visited Xarina once during the approximately three year pendency of the case, did not engage in any services, failed to attend many of the court proceedings, including trial, and had history of homelessness, substance use disorder, domestic violence, and untreated mental health issues.