

1:28 DECISION OF THE WEEK

November 1, 2019

CAFL APPELLATE PANEL SUPPORT UNIT

Adoption of Zelden, _ Mass. App. Ct. _, 18-P-1223 (Mass. App. Ct. Rule 1:28) (Rubin, Massing, and Englander, JJ).

Zelden lived with his mother and siblings for the first five years of his life. When Zelden was five, he and his siblings were taken into DCF custody due to his mother's substance use disorder. The children ultimately went home and the case was closed. A couple of years later, when he was seven, Zelden was removed again and placed back in foster care. Mother continued to struggle with her substance use disorder.

While he was in foster care, Zelden visited with his mother weekly and maintained a strong bond with her. Although he did well with his foster family, he testified at trial that his first choice would be to go home to his mother, but if he could not, he wanted to see his mother twice a week.

After the trial, the judge terminated the mother's rights and ordered four post-adoption visits between them annually. Both Mother and Zelden challenged this post-adoption visitation order. They argued that four visits a year was a random number and not enough to meet Zelden's needs and serve his best interests.

The panel agreed and reversed the trial judge's decision concerning post-adoption visits, because the trial judge "did not provide a rationale, or specific findings, as to this part of the decree." In other words, nowhere in the judge's findings did he explain *why* four visits was best for Zelden. (Does this sound familiar? How often do trial judges order one or two post-adoption visits annually, as if pulling those numbers out of thin air?)

The panel reversed, noting that the best interest of the child is the overarching consideration when dealing with visitation issues. The court must consider the child's age and also the child's emotional bond with his parent. Although the court found a strong bond between Zelden and his mother, and that it was in Zelden's best interest to visit her, the judge created a "significant reduction in Zelden's contact with the mother, from 52 visits a year to only four[,]” without explanation.

There are two key take-aways from Zelden on the subject of post-adoption contact. First, Zelden testified at trial and told the judge

that he wanted to see his mother frequently after adoption. This was important to the panel. If you have a child client who wants lots of post-adoption contact, get that information on the record, preferably via live testimony from the child. If live testimony is impossible, but you know the child wants more contact, ask the court to appoint a GAL (or send the probation officer) to interview the child for the express purpose of getting that information before the court.

Second, where the child wants more visits than the pre-adoptive family seems willing to allow, a visitation order is likely necessary. The panel was concerned that the pre-adoptive parents only favored two visits per year. The second prong of Ilona—that an order for post-adoption visits is necessary—is satisfied if the judge lacks assurance that the child's need for contact will be met by his adoptive parents.

Congratulations to Myra Orlen, counsel for the appellant-child, and Madeline Weaver Blanchette, counsel for the appellant-mother, for their great work on this appeal and for securing a remand for their clients!