*Adoption of Darlene*, 99 Mass. App. Ct. 696 (June 9, 2021) (Grant, J.) [[slip opinion](http://masscases.com/cases/app/99/99massappct696.html)]

Summary by Rebecca Amdemariam, CAFL Training Unit

In *Adoption of Darlene*, the Appeals Court affirmed a judgment finding Darlene’s mother unfit and terminating her parental rights. A central issue in the case was whether DCF made reasonable efforts to reunite Darlene with her mother. While two justices on the panel held DCF had done so, Justice Ditkoff wrote a lengthy dissent criticizing DCF’s failure to provide services to the mother and to accommodate her disabilities.

In the underlying case, Darlene’s mother was diagnosed with bipolar disorder along with a cognitive disability that qualified her for DDS services. DCF obtained temporary custody of Darlene shortly after her birth due to concerns about mother’s mental health and competency. Following the first trial, the Court granted permanent custody to DCF yet did not terminate mother’s parental rights. Of note, the trial judge found DCF failed to make reasonable accommodations for the mother’s cognitive and developmental disabilities as required by the Americans with Disabilities Act, 42 U.S.C. sec 12132. The judge “specifically criticized DCF’s failure to provide mother with a parent aide, DCF provided the mother with a parent aide for slightly less than six months.” Further, the judge ordered that visits “occur as frequently as logistically possible and shall progress to unsupervised and overnights when appropriate.”

The mother later filed for a review and redetermination hearing. This second trial resulted in termination of the mother’s parental rights where the judge found that, although mother had “made progress in achieving more independent housing and had complied with her service plan tasks, her shortcomings in decision-making and tendency to focus on issues that run contrary to Darlene’s safety and needs render her unfit.” The mother appealed arguing that the judge’s findings lacked the specificity and detail required to support the conclusion that she was unfit to parent the child, and that the judge erred in concluding DCF had made reasonable efforts to reunify her with her daughter. The Appeals Court affirmed, finding that while DCF had failed to make reasonable efforts before the first trial, DCF’s actions subsequent to the first trial met the reasonable efforts standard. The Appeals Court acknowledged that, “To the best of her ability the mother has tried to equip herself to parent Darlene, complying with nearly every task that DCF has set for her. Even so, there was clear and convincing evidence to support the judge’s conclusions that the mother was not fit to parent Darlene, given the mother’s challenges and Darlene’s behavioral issues and attachment to the foster mother….”

In his dissent, Justice Ditkoff sharply criticized DCF efforts to reunify the family and accommodate the mother’s disabilities. “DCF consistently failed to provide services to the mother except when ordered to do so by a judge, because of DCF’s view that the mother’s cognitive and developmental disabilities disqualified her from being a parent. Even when the Juvenile Court judge declined to terminate parental rights on this basis and ordered additional services, DCF provided minimal services, which it soon withdrew. Because of this, there is no way to know whether the mother, if properly supported by services, could safely parent the child.”

Justice Ditkoff continued, “the proper test is whether there is clear and convincing evidence that the mother’s unfitness would continue indefinitely if she were provided with appropriate services.” In making this assessment, a judge should “evaluate the likelihood of the mother’s remaining unfit indefinitely through the lens of whether that would occur if DCF provided appropriate services, not whether she will remain unfit if DCF continues to fail to provide appropriate services”. Judge Ditkoff concluded: “It may be the case that, with appropriate services, the mother will become fit to parent the child safely. It may be the case that, even with appropriate services, she will not be able to parent the child safely. Now we will never know.”