*Adoption of Gertrude*, [99 Mass. App. Ct. 817](http://masscases.com/cases/app/99/99massappct817.html) (June 29, 2021) (Milkey, J.)

Summary by Rebecca Amdemariam, CAFL Training Unit

In *Adoption of Gertrude*, the Court addressed the issue of “legal orphans” where counsel for mother and children appealed termination of parental rights. Without challenging the unfitness finding, the children, aged 9 and 12 years old, argued that it was not in the children’s best interest to terminate parental rights as they would become legal orphans without any realistic chance of being adopted. Unfortunately, the Appeals court did not find that this risk outweighed the benefits of the permanency they perceived that termination offered the children. Especially in this case where neither mother nor children challenged the unfitness finding, nor the fact that the mother had minimal contact and bonds with the children. The Court stated that “…we recognize that even in circumstances where termination will render children legal orphans, the children may benefit from the permanence and stability that termination creates.”

While this case is limited to circumstances where no familial bonds were established, it does offer practitioners some guidance in preparing cases facing termination. For example, in its reasoning the Court pointed out that it did not find any evidence in the record of the reduced chances for adoption of older children to further mother’s and children’s arguments on appeal. This decision while affirming termination, leaves unanswered how courts would respond if presented with evidence establishing the low likelihood of adoption for older children in DCF custody. If you have a similar case, consider the possibility of having your 12-year-old child client testify and offer evidence to the detrimental effects of termination and their wish not to be adopted. You may also want to consider offering data on the likelihood of those particular children being adopted because of their age, sibling group, or special needs requirements. Whether through established reports or through a hired expert, the Court could use this information in its best interest analysis rather than leaving the record absent any supporting evidence for your argument against termination.