*Adoption of Yalena*, [100 Mass. App. Ct. 542](http://masscases.com/cases/app/100/100massappct542.html) (December 3, 2021) (Blake, J.)

Summary by Rebecca Amdemariam, CAFL Training Unit

In a case involving allegations of physical abuse, *Adoption of Yalena* resulted in the Appeals Court affirming termination of parental rights. Yalena was removed from her mother when she was four-months old after she was found with facial bruises and eleven bone fractures at the hospital. When the trial court terminated parental rights, Yalena’s mother appealed claiming the following: 1) that the trial judge improperly shifted the burden of proof when the judge required her to prove that she did not injure Yalena or did not know who did; 2) that the trial judge erroneously speculated about the cause of Yalena’s injuries without any expert testimony offered on the issue; 3) that the trial judge ignored expert witnesses who testified that they did not believe mother would injure Yalena; and 4) that DCF violated her due process rights by failing to provide her with a meaningful pathway to reunification.

In mother’s first claim arguing she was required to show proof of innocence or lack of knowledge, the Court found some merit to that point when looking at the Department’s action plan requirement that mother “will acknowledge responsibility for abusing the child.” The Court found this task problematic stating that, “the department should reconsider the usefulness of including a task that requires the mother ‘to acknowledge responsibility for abusing’ the child. If the mother is telling the truth, the task is impossible. If she is not, the task has important Fifth Amendment to the United States Constitution implications for the mother.”

The Court did not support mother’s second claim of erroneous speculation, referring to the record reflecting “multiple bases upon which the judge relied in reaching his conclusion.” And as to the third claim, the Court found enough evidence in the record to support the trial court’s finding that mother demonstrated minimal insight into her parenting deficits. Of import is the Court’s ruling on mother’s due process argument finding that the “mother did not raise this claim in the trial court, and therefore it is waived.” This holding reinforces the need to raise all inadequate service claims as they come while the case is pending in the trial court.