

**[J-106-2010]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN JJ.**

IN RE: ADOPTION OF L.J.B.	:	No. 42 MAP 2010
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	:	Appeal from the Order of the Superior
	:	Court at No. 1097 MDA 2009 dated March
	:	10, 2010, affirming the Decree of the
	:	Court of Common Pleas, Clinton County
	:	dated May 27, 2009, at No. 21-2008
APPEAL OF: C.L.F., NATURAL	:	
MOTHER	:	
	:	SUBMITTED: October 15, 2010

**OPINION ANNOUNCING THE JUDGMENT OF THE COURT**

**MR. JUSTICE BAER<sup>1</sup>**

**DECIDED: April 29, 2011**

We granted allowance of appeal in this case to examine whether the Clinton County Court of Common Pleas erred in terminating the parental rights of a biological mother to her child, and, in so doing, further erred in determining that no bond existed between mother and child. For the reasons that follow, we vacate the order of the Superior Court, and remand this case to the court of common pleas for an immediate evidentiary hearing to determine if the instant action is now moot, in light of evidence placed on the record while this appeal was pending before the Superior Court, as discussed herein. Moreover, we order that any future proceedings concerning this

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<sup>1</sup> This matter was reassigned to this author.

child, regardless of their nature, be conducted by a jurist from a different judicial district, as appointed via the Administrative Office of Pennsylvania Courts.

## **I. Factual and Procedural Histories**

### **A. Custody Proceedings**

The child in question, L.J.B., was born to C.L.F. (Mother) and S.M.B. (Father) on August 27, 2001. Mother and Father were living together but not married at the time of L.J.B.'s birth, and separated when L.J.B. was eleven months old. Upon their separation, in accord with a written agreement between Mother and Father, L.J.B. lived primarily with Mother and her half-siblings, while Father enjoyed physical custody on, essentially, alternating weekends. Four months after the separation, in November of 2002, Father married W.B. (Stepmother), and soon thereafter filed a custody complaint in the Clinton County Court of Common Pleas, seeking increased physical custody. After substantial proceedings, on November 19, 2003, the Honorable J. Michael Williamson, President Judge of Clinton County, granted Father's request for increased physical custody of L.J.B., awarding him six consecutive days during each two-week period.

Before proceeding further, it is necessary to detail what was Father's irresponsible conduct involving the child in his quest to undermine Mother's custodial and parental rights. It is also necessary as part of this discussion to specify what we respectfully view as an appearance of impropriety by Judge Williamson, who presided over the custody proceedings.

During the approximate year (November 2002 through November 2003) that the custody proceedings between Father (and, essentially, Stepmother) and Mother were ongoing, the relationship between Father and Mother deteriorated significantly. In fact, on approximately six occasions during the year, Father took L.J.B. to medical

professionals claiming that Mother had sexually abused the child, subjecting her to pelvic examinations and pelvic cleaning.<sup>2</sup> Additionally, Father reported Mother to Clinton County Children and Youth Services (CYS) making the same allegations. In due course, the physicians and CYS caseworkers involved determined that Father's allegations were without merit. Eventually, Judge Williamson entered an order, on October 20, 2003, enjoining further unnecessary medical examinations of L.J.B.<sup>3</sup>

As noted, upon conclusion of the 2002-2003 proceedings, Judge Williamson entered a final order on November 19, 2003, granting Father's petition for increased custody, and awarding him six continuous days out of every two-week period. Mother appealed this order to the Superior Court. During the course of the appeal, Father again accused Mother of sexually abusing L.J.B., this time by way of an *ex parte* letter sent to Judge Williamson on November 9, 2004.<sup>4</sup> Rather than disregard the *ex parte* communication, Judge Williamson held a hearing on November 24, 2004 to entertain

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<sup>2</sup> We say "approximately six" medical visits for pelvic exams and cleaning because the record does not specify the exact number. Moreover, the record does not specify how many of these exams occurred in hospital emergency rooms and how many in doctors' offices. In this regard, we also note that this is an appeal from the termination of Mother's parental rights, rather than from a custody determination. Thus, the record concerning the extensive custody proceedings, including that of these medical examinations, is before us only because portions of the custody record were entered as an exhibit during the termination action. Of course, we recite only from that which is in the record presently before us.

<sup>3</sup> We note that on one occasion, Mother took L.J.B. to a physician for a pelvic examination; according to Mother, however, she did this only at Father's insistence. Accordingly, the order was directed to Mother, as well as to Father.

<sup>4</sup> By this point, the Superior Court, by way of an unpublished memorandum opinion filed October 21, 2004, had affirmed the order granting Father increased custody, finding that Judge Williamson did not abuse his discretion. Mother subsequently filed a timely petition for reargument, which was pending when Father sent the November 9 *ex parte* communication. Eventually, on December 17, 2004, the Superior Court denied the reargument petition.

Father's allegations.<sup>5</sup> As part of the hearing, a memorandum from a CYS caseworker to Judge Williamson concluding that Father's accusations were unfounded was entered into the record. Nevertheless, in an order dated November 30, 2004, Judge Williamson revoked his previous order to cease the continuous pelvic examinations of L.J.B., and permitted Father (and it appears only Father) to subject L.J.B. to such examinations by an agreed upon pediatrician, Dr. Henry Detrich.

According to Mother, over the course of the next year, Father continued to exhibit aggressive behavior toward her. Mother related that Father repeatedly threatened her over the telephone, followed her home, and arrived at a custody exchange of L.J.B. with a loaded .357 handgun. On January 25, 2006, Father again sought custody modification, this time filing a petition with Judge Williamson for primary physical custody of the child. Two days later, and despite the order of November 30, 2004, that any further medical examinations were only to be conducted by Dr. Detrich, Father took L.J.B. to an emergency room at 11:00 p.m. for what would be the child's eighth vaginal examination since November 2002. The record reveals that an intrusive examination, complete with color photographs, was undertaken. As with the prior exams, this one revealed no evidence of sexual or physical abuse.

After the January 2006 examination, CYS sent a second memorandum to Judge Williamson, in which it threatened to "open an abuse investigation if [Father and Stepmother] continue to have the child unnecessarily examined or cleaned." Moreover,

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<sup>5</sup> As noted, Mother's appeal before the Superior Court from the November 19, 2003 order was still pending at the time of this hearing. While this raises an obvious question concerning Judge Williamson's jurisdiction to hold the November 24, 2004 hearing, neither the transcript of that hearing nor the order stemming from it address this issue. We do note that Judge Williamson actually admonished Mother's counsel during the hearing to "stop fooling around with the Appellate Courts. . . ." Notes of Testimony (N.T.), Docket No. 802-02, Nov. 24, 2004 at 17.

the Agency stated that it would “also request a temporary change in visitation [e.g., the custody/partial custody arrangement] during the course of the investigation.” Notes of Testimony (N.T.), Docket No. 802-02, Feb. 10, 2006 at 43.

Notwithstanding CYS’s obvious concerns over Father’s conduct and L.J.B.’s well-being, on February 10 and March 2, 2006, Judge Williamson held a hearing concerning Father’s petition for primary physical custody. The court reserved ruling on the matter, instead referring Mother and Father to a court-appointed psychologist “for the purpose of enabling [the psychologist] to submit to the Court his observations and thoughts with regard to the psychological background of these parents.” C.L.F. v. S.M.B., No. 802-02, Order of Court (Mar. 6, 2006) (Williamson, P.J.).

While completion of the psychological evaluations and resumption of the custody hearing were pending, in late March 2006, Mother abruptly dropped L.J.B. off with Father and Stepmother, dropped her other children off with their fathers, and moved to Tennessee. In the subsequent termination proceedings, Mother explained that she felt she had no choice but to give up her custody battle and leave the area to protect L.J.B. from continued pelvic examinations. She elaborated that Father had continued to threaten her, in her view CYS had failed to take any action against Father or to protect L.J.B., and she believed Judge Williamson to be biased against her. Thus, according to Mother, in an effort to protect L.J.B., she surrendered physical custody of her to Father, and moved to Tennessee. Upon Mother’s relocation, Judge Williamson evidently viewed the litigation over primary physical and legal custody as moot, and entered an order granting Father sole physical and legal custody of L.J.B. In the court’s order, it explained that in its view Mother had “abruptly and without prior notice to anyone, dropped her children off with their various fathers, and moved to Tennessee.” Id., Order of Court (Apr. 3, 2006) (Williamson, P.J.).

Over the course of the next year, Mother attempted to maintain contact with L.J.B. from Tennessee through arranged weekly telephone conversations. She also accepted a proposed visitation arrangement (brokered by the court-appointed psychologist) of one weekend a month with the child. According to Mother, however, Father and Stepmother repeatedly cut short the telephone conversations, and circumvented Mother's attempts to visit. Indeed, it was not until December of 2006, after the psychologist and the court intervened, that Mother finally visited with L.J.B. This visit consisted of a two-hour meeting at a McDonald's in Clinton County, where Father and Stepmother remained present throughout the reunion of Mother and L.J.B.

Throughout 2007, Mother continued her attempts to remain in contact with L.J.B. Her efforts included the making of telephone calls, the sending of presents, and the arranging for "proxy calls" by L.J.B.'s half-siblings. According to Mother, however, these efforts were thwarted by Father and Stepmother. This led L.J.B.'s maternal Grandmother to petition for visitation in the summer of 2007. During the hearing on this petition, Judge Williamson continuously berated Grandmother for both her and Mother's actions over the course of L.J.B.'s life. As detailed infra, Part III, Judge Williamson voiced his disgust over what he viewed as Mother's abandonment of L.J.B., and went so far as to suggest that Father seek to terminate Mother's parental rights. See N.T., Docket No. 818-07, Jul. 11, 2007 at 9, 11. Despite his expressed viewpoint regarding Mother and, apparently by derivation, Grandmother, Judge Williamson granted Grandmother one supervised visit with L.J.B. See B.J.B. v. S.M.B., No. 818-07, Order of Court (Jul. 11, 2007) (Williamson, P.J.) (directing CYS to "arrange a supervised visit between Grandmother and the child; following which, we will consider the entry of a further Order.").

A meeting between Grandmother and L.J.B. did, in fact, occur and, afterwards, CYS memorialized to Judge Williamson that Father was not going to allow any further meetings. See Memorandum from CYS to Judge Williamson (Jul. 23, 2007) (“[CYS caseworker] attempted to schedule additional visits but [Father] refused. He said that he is unable to do so due to his work schedule. [Caseworker] pointed out that [Stepmother] can bring [L.J.B.] into the office, but [Father] said that he would speak to his lawyer. He left the visit angry. It is clear that some, if not all of [L.J.B.’s] reluctance to visit [with Grandmother] is because of [Father’s] attitude.”). Judge Williamson then placed another order on the record, directing that Father was to permit Grandmother visitation once a month.

Immediately thereafter, Father’s counsel submitted a letter to Judge Williamson, noting that Judge Williamson’s initial order pertaining to Grandmother’s visitation only directed Father to take L.J.B. to meet with Grandmother once. See Letter from Marc S. Drier, Esq., to Judge Williamson (Jul. 26, 2007). Counsel contended that Grandmother “disturbed” the child by stating that Mother and her half-siblings missed her. Id. Without a hearing, Judge Williamson terminated Grandmother’s visits. See B.J.B. v. S.M.B., No. 818-07, Order of Court (Sep. 4, 2007) (Williamson, P.J.). Following this order, Mother continued to attempt to contact L.J.B. by telephone and the sending of gifts; but Father and Stepmother refused or cut short the calls and apparently did not give L.J.B. the gifts.

#### B. Termination Trial

On December 18, 2008, Father and Stepmother petitioned to terminate Mother’s parental rights involuntarily, to make way for Stepmother’s adoption of L.J.B., pursuant

to 23 Pa.C.S. §§ 2511 and 2512.<sup>6</sup> Father and Stepmother alleged that Mother had abandoned L.J.B. for a period of at least six months, as provided in Section 2511(a), by

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<sup>6</sup> Sections 2511 and 2512 of the Pennsylvania Adoption Code provide, in relevant part:

**Section 2511. Grounds for involuntary termination**

**(a) General rule.** -- The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

\* \* \*

**(b) Other considerations.** -- The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

**Section 2512. Petition for involuntary termination**

**(a) Who may file.** -- A petition to terminate parental rights with respect to a child under the age of 18 years may be filed by any of the following:

- (1) Either parent when termination is sought with respect to the other parent.
- (2) An agency.

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**(b) Contents.**--The petition shall set forth specifically those grounds and facts alleged as the basis for terminating parental rights. The petition filed under this section shall also contain an

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not contacting or visiting L.J.B. from mid-2007 to the filing date of the petition for termination, and that the “other considerations,” as set forth at Section 2511(b) (i.e., the best interests of L.J.B), also favored termination.

Following the appointment of a guardian *ad litem* for L.J.B., a termination trial commenced before the Honorable Craig P. Miller on April 30, 2009.<sup>7</sup> Mother testified that Father continuously subjected L.J.B. to pelvic examinations and cleanings, and that Judge Williamson refused to put a stop to these procedures. Mother explained that she gave up the custody fight and moved to Tennessee because she believed that this was the only way to save L.J.B. from the continuing medical examinations. Mother stated that she intended to commence new custody proceedings in Clinton County once Judge Williamson retired because she believed that he was biased against her. In support of her contentions, Mother placed into evidence portions of the record of the custody proceedings.

During their testimony, Father and Stepmother repeatedly denied any wrongdoing or obstruction, and adamantly averred that Mother had abandoned L.J.B. without any justification whatsoever. Father further reiterated his belief that Mother may have abused L.J.B. After the close of the testimony, Judge Miller conducted an in

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(...continued)

avermment that the petitioner will assume custody of the child until such time as the child is adopted. If the petitioner is an agency it shall not be required to aver that an adoption is presently contemplated nor that a person with a present intention to adopt exists.

<sup>7</sup> Clinton County has only two jurists, Judges Williamson and Miller. Judge Williamson heard all the custody proceedings in this case, and Judge Miller presided over all of the involuntary termination proceedings.

chambers interview with L.J.B., in the presence of counsel, in an attempt to determine what bond, if any, existed between L.J.B. and Mother.

At the conclusion of the trial, Judge Miller issued an opinion and accompanying order, in which he found that Mother had abandoned L.J.B. for at least six months (as provided by Section 2511(a)) when Mother relocated to Tennessee and failed to keep in contact with L.J.B. Much of his reasoning concerned what Judge Miller termed as Mother's mistaken belief that Judge Williamson was biased against her. Judge Miller thus decreed that Mother's parental rights to L.J.B. be permanently terminated, and that Father remain in sole physical and legal custody of L.J.B.

### C. Mother's Appeal of the Termination of Her Parental Rights

Mother appealed to the Superior Court, contending that Judge Miller erred in finding that Father proved, by clear and convincing evidence, that the totality of the circumstances supported the termination of parental rights. See In re B., N.M., 856 A.2d 847, 855 (Pa. Super. 2004) (providing that the entire history of a case must be examined when considering the termination of parental rights, which may only be granted "if the evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination."). Mother argued that Father and Stepmother actively obstructed her reasonable efforts to maintain the parental relationship with L.J.B., and that under the facts of this case, termination of Mother's parental rights was improper. See In re M.A.K., 414 A.2d 1052 (Pa. 1980) (where a parent exercises "reasonable firmness" in refusing to yield to obstacles, which prevent maintenance of the parental relationship, termination under Section 2511(a) is not proper).

While Mother's appeal was pending before the Superior Court, Judge Miller twice supplemented the record by way of orders of November 25, 2009 and January 29, 2010. The supplementations to the certified record reflected two pieces of

correspondence he received after he entered the final termination decree: one from L.J.B.'s guardian *ad litem*, Attorney David I. Lindsay, and the other from Stepmother.

By way of background, as reflected in the appendix to Mother's brief to this Court, Mother informed Attorney Lindsay on November 12, 2009, that Stepmother and Father were divorcing, and that Stepmother no longer wished to adopt L.J.B. While Attorney Lindsay initially responded to Mother that he found her claims without factual or legal basis, he subsequently wrote to Judge Miller on November 16, 2009, relating that, after speaking with Father and Stepmother, he learned: (1) Stepmother and Father had indeed separated and intended to divorce; (2) contact between Stepmother and L.J.B. had significantly decreased; and (3) Stepmother had reservations concerning her adoption of L.J.B. See Letter from David I. Lindsay, Esq. to Judge Craig P. Miller (Nov. 16, 2009) (found at Mother's Brief, Appendix E).

On January 22, 2010, Stepmother wrote a lengthy letter to Judge Miller (Judge Williamson, Father and Stepmother's jointly retained attorney, and Attorney Lindsay all received copies) detailing the animosity that had developed between Father and her since their separation, notably including averments that Father was "aggressive" toward her. Moreover, Stepmother noted that Father was no longer permitting her to visit with L.J.B. Accordingly, while Stepmother reiterated her desire to be a part of L.J.B.'s life and how she regarded L.J.B. as her own daughter, given the developments between her and Father, and further because of financial constraints, Stepmother averred, "at this time I feel it would be best to drop the adoption." Letter from Stepmother to Judge Miller, *et al.* (Jan. 22, 2010) (found at Mother's Brief, Appendix F.).

As noted above, Judge Miller ordered that the November 16 letter from Attorney Lindsay, and the January 22 letter from Stepmother, be forwarded to the Superior Court as supplements to the certified record. See In re Adoption of L.J.B., No. 21-2008, Order

Supplementing Certified Record (Nov. 29, 2009) (Miller, J.); Id., Order Supplementing Certified Record (filed Jan. 22, 2010) (Miller, J.). However, neither the certified record currently before us, nor the appendices to any of the parties' briefs, reflect that Stepmother has formally filed any petition, application, or praecipe to withdraw her petition to adopt L.J.B.

The Superior Court, in an unpublished opinion, unanimously affirmed the termination of Mother's parental rights, holding that the obstacles placed in Mother's path by Father, Judge Williamson, and CYS were not sufficient to overcome the evidence presented by Father that she abandoned L.J.B. for the statutory period of six months. It does not appear that the Superior Court considered the supplements to the certified record, and what effect they might have on the ultimate outcome of the appeal. Mother petitioned this court for allowance of appeal, which we granted to examine the propriety of the termination order.

## **II. Termination of Mother's Parental Rights**

In cases concerning the involuntary termination of parental rights, our review is limited to a determination of whether the decree of the termination court is supported by competent evidence. Adoption of B.D.S., 431 A.2d 203, 207 (Pa. 1981). The party petitioning for termination "must prove the statutory criteria for that termination by at least clear and convincing evidence." In re T.R., 465 A.2d 642, 644 (Pa. 1983). Clear and convincing evidence is defined as "testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." Matter of Sylvester, 555 A.2d 1202, 1203-04 (Pa. 1989). Concerning the termination of parental rights due to abandonment pursuant to Section 2511(a),

Where the evidence clearly establishes that the parent has failed to perform parental duties or has evidenced a settled purpose of relinquishing parental claim to the child for a period in excess of six months, the individual circumstances and any explanations offered by the parent must be examined to determine if that evidence, in light of the totality of the circumstances, clearly warrants the involuntary termination of parental rights.

Adoption of Atencio, 650 A.2d 1064, 1066 (Pa. 1994). Finally, should sufficient evidence not exist to support the termination decree, the trial court will be deemed to have committed an abuse of discretion, thus mandating reversal of the decree. See id. at 1068.

In Pennsylvania, a petition to terminate a natural parent's rights involuntarily when filed by one parent against the other is only cognizable when it is accompanied by a prospective stepparent's intention to adopt the child. See 23 Pa.C.S. § 2512(b) (providing that, only if a children and youth agency is moving for termination may such termination proceed without a concomitant intent to adopt the child by a prospective stepparent).<sup>8</sup> Under the predecessor to Section 2512, 1 P.S. § 312, repealed and replaced by 23 Pa.C.S. § 2512, effective Jan. 1, 1981,<sup>9</sup> this Court held that Pennsylvania adoption law "indicates that a parent may bring a petition for termination of the parental rights of the other parent only when adoption is contemplated." In re

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<sup>8</sup> This section of the Adoption Act deals only with petitions for involuntary termination, and, as detailed in the text, provides only that a petitioning agency shall not be required in the termination petition to aver that adoption is presently contemplated or that a person intending to adopt exists. This begs the question of whether the agency must intend subsequent to termination to seek out an adoptive parent. That issue is not before us, and we specifically leave it for another day.

<sup>9</sup> For purposes of this appeal, the re-codification of the Adoption Act, 1 P.S. § 101, *et seq.*, into the Domestic Relations Code, Title 23 of the Consolidated Statutes, 23 Pa.C.S. § 2101, *et seq.*, is of no moment, as no substantive amendments were made to the provisions relevant to this case.

B.E., 377 A.2d 153, 155 (Pa. 1977) ; see also In re Burns, 379 A.2d 535, 541 (Pa. 1977) (when initiated by a natural parent, termination of the other parent’s rights may only occur with a present contemplation of adoption, as the sole purpose of termination is to remove any hindrance to the potential adoption of a child).

In B.E., a child’s natural mother had sole custody of her child since birth, and had not remarried since her divorce from the child’s natural father. Id. at 154. In her petition to terminate father’s parental rights, she conceded that she had no plans to remarry or have the child adopted by a stepfather. Id. This Court held that termination of the father’s rights could not occur, as Section 312/2512 of the Adoption Act “provides for termination of parental rights only in connection with a plan for adoption.” Id.<sup>10</sup> Indeed, the Court noted that the legislative purpose behind permitting involuntary termination of parental rights:

is not to punish an ineffective or negligent parent, or provide a means for changing the surname of the child. Rather, the purpose of involuntary termination of parental rights is to dispense with the need for parental consent to an adoption when, by choice or neglect, a parent has failed to meet the continuing needs of the child.

Id. at 156.

Once a natural parent’s rights are terminated, the concomitant adoption fosters a “new parent-child relationship.” Id. Such a rule is sound because “[t]ermination of the natural parent’s rights prior to adoption and allowance of stepparent adoption is for

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<sup>10</sup> As noted throughout the opinions of the courts below, termination of Mother’s parental rights occurred pursuant to Section 2511. While Section 2511 delineates the grounds for involuntary termination of parental rights, Section 2512 governs the requisites for a valid petition for termination, and accordingly is equally relevant and controlling regarding this appeal. Also telling is that involuntary termination falls under a chapter in the re-codified Adoption Act entitled “Proceedings Prior to Petition to Adopt.”

purposes of protecting the integrity and stability of the new family unit.” Adoption of J.D.S., 763 A.2d 867, 871 (Pa. Super. 2000). Indeed, where a prospective stepparent, due to separation or pending divorce with the other natural parent, will no longer complete the family unit, the termination of a natural parent’s rights due to abandonment must be vacated. Id. at 872. Thus, where “no new parent-child relationship is contemplated,” the “involuntary termination of . . . parent rights . . . is not permitted under the Adoption Act.” B.E., 377 A.2d at 156; see also T.R., 465 A.2d at 644 n.10 (determining that courts of common pleas “should consider, and not merely accept on its face, [the potential stepparent’s and his or her spouse’s] Declaration of Intent to Adopt, so that the issue of whether they genuinely seek termination solely as an aid to adoption to thereby establish a new parent-child relationship, the singular concern of the Adoption Act, may properly be determined.”).<sup>11</sup>

As noted above, the supplements to the certified record by Judge Miller reflect an intention by Stepmother to no longer seek adoption of L.J.B., and that Stepmother and Father seem to be irreconcilably separated. While neither the docket nor the certified record reflects a formal praecipe or petition on Stepmother’s behalf withdrawing her petition for adoption, the factual circumstances of this case certainly reflect the drastic change in circumstances. To that extent, Attorney Lindsay explained in his November 2009 letter to Judge Miller that Stepmother “appears to have some concerns” in regard to the adoption, and that the bond between Stepmother and L.J.B. “appears, regrettably, to lessen in both frequency and duration as time passes,” due to the separation and growing animosity between Father and Stepmother. Letter from David I.

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<sup>11</sup> The public policy behind this is simple: Pennsylvania will not countenance state-created orphans.

Lindsay, Esq. to Judge Craig P. Miller (Nov. 16, 2009) (found at Mother's Brief, Appendix E). Stepmother has related similar proclamations:

This is the most difficult decision I have ever had to make and finalizing it is very hard for me. However, at this time I feel it would be best to drop the adoption. I did tell [her attorney, Attorney Lindsay, and Father] this in October 2009. However, I am still receiving all letters, and court documents.

Letter from Stepmother to Judge Miller, *et al.* (Jan. 22, 2010) (found at Mother's Brief, Appendix F.). Stepmother further detailed in the letter the alleged aggressive behavior by Father toward her in the months after their separation. Id.

Notwithstanding the absence of a formal praecipe or discontinuance, the facts as exhibited in the letters of November 16, 2009 and January 22, 2010, reflect that Stepmother no longer wishes to adopt L.J.B., and that the "family unit" of Stepmother and Father appears to be permanently fractured. Under Section 2512 and general Pennsylvania jurisprudence as referenced above, the petition for termination of Mother's rights is potentially moot, as it cannot be effected without Stepmother's attendant adoption of L.J.B. See 23 Pa.C.S. § 2512; B.E., 377 A.2d at 155-56; T.R., 465 A.2d at 644 n.10; J.D.S., 763 A.2d at 871.

This Court should not decide moot cases. See Pap's A.M. v. City of Erie, 812 A.2d 591, 599 (Pa. 2002) ("This Court generally will not decide moot questions."); see also In re Cain, 590 A.2d 291, 292 (Pa. 1991) ("The cases presenting mootness problems involve litigants who clearly had standing to sue at the outset of the litigation. The problems arise from events occurring after the lawsuit has gotten under way-changes in the facts or in the law-which allegedly deprive the litigant of the necessary stake in the outcome. The mootness doctrine requires that an actual case or controversy must be extant at all stages of review, not merely at the time the complaint

is filed.”) (quoting In re Gross, 382 A.2d 116, 119 (Pa. 1978)). Without a formal docket entry or findings of fact, however, the final decision regarding mootness cannot be made by this Court upon this record. Nevertheless, as the jurisprudence in this area of the law is clear, it would not be prudent for this Court to render a decision on the merits of Mother’s appeal, with the outstanding question of mootness remaining in this case.

In dissent, Madame Justice Orié Melvin faults us for ordering a remand to the court of common pleas, rather than examining the “propriety of the decree terminating Mother’s parental rights, which is the only matter before us.” Dissenting Slip Op. at 19 (Orié Melvin, J., dissenting). Respectfully, we note multiple instances where, in our view, the Dissent’s observations miss the mark.

First, contrary to the suggestion of the Dissent, the issue of mootness is squarely before us, and is a distinct portion of Mother’s challenge to the termination decree. Mother raised a suggestion of mootness at her first possible opportunity: in her reply brief to the Superior Court after Judge Miller supplemented the record. Mother also explicitly raises the potential mootness of the termination proceedings before this Court. See Mother’s Brief at 65-67. In support of her contention that this case should be deemed moot, Mother quotes the underlying policy, as elucidated by the Superior Court in J.D.S., 763 A.2d at 872: “[N]o gain to the child or society is achieved by permitting the termination of the natural [mother’s] rights in order to permit adoption by a [stepmother] who no longer resides with the child’s [father]. The policy consideration for permitting stepparent adoption is defeated by separation and contemplation of divorce.” Mother’s Brief at 66 (emphasis added). Thus, contrary to the Dissent’s assertions, we do not raise mootness as a matter of “supererogatory.”<sup>12</sup>

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<sup>12</sup> The Dissent also takes this opinion to task for considering the letters from Attorney Lindsay and Stepmother. However, they are part of this record, and we are (continued...)

Moreover, the Dissent objects to a determination of whether this case is moot when its merits can be decided adverse to the party seeking termination, which would conclude this litigation on its merits. There is admittedly something satisfying about “just deciding it.” However, courts have long restrained themselves from deciding moot cases, including those, as recognized on pages 20-21 of the Dissent, which become moot during their pendency. See Gross, 382 A.2d at 119 (Pa. 1978), quoted in Dissenting Slip Op. at 20-21 (Orie Melvin, J., dissenting); see also Pap’s A.M., 812 A.2d at 599. We do no more here than follow this long enshrined and wise prudential rule.

The Dissent also opines that even if this case is moot because of the lack of a stepparent to take the natural parent’s place, it can and should be decided. Respectfully, we believe the Dissent has conflated the statutory provision involving agency adoptions, see 23 Pa.C.S. § 2512(b), with private stepparent adoptions. The applicable statutory language provides that a petitioning agency shall not be required to aver that adoption is presently contemplated nor that a person with present intention to adopt exists. See Burns, 379 A.2d at 541 (holding that, when “a child is in the custody of an approved adoption agency,” no need exists for either the child to be imminently adopted or for the agency to put an adoption plan into motion, as “one of the purposes of the Adoption Act of 1970 was to permit an agency to seek termination of parental rights independently of adoption.”).

Not only is this specifically inapplicable to a private adoption, but by corollary it suggests that when a mother or father seeks to terminate the other parent’s rights, the averment that adoption is presently contemplated and that a person has a present

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(...continued)

thus duty bound to examine them, and to comment upon them to the extent they are germane to a properly framed issue.

intention to adopt is specifically required. Indeed, B.E., 377 A.2d at 155, is strong and unaltered precedent in support of this interpretation. As said above, the idea that the state should create orphans is inimical to our family-centered society. Moreover, the creation of parental termination absent stepparent adoption would provide parents with a new, and in our view dangerous, tactic in heated custody disputes; indeed, one can imagine routine cross-petitions for termination as part of custody battles under the Dissent's suggestion that termination may occur without a ready stepparent.<sup>13</sup>

For all of these reasons, we vacate the decree of Judge Miller terminating Mother's parental rights, and remand for an evidentiary hearing regarding the intention of Stepmother to adopt L.J.B. If, as every inference suggests, Stepmother has no intention of adopting L.J.B., in accord with all of the law set forth herein, the petition to terminate Mother's parental rights should be dismissed by the court of common pleas.

### **III. Recusal of Judges Williamson and Miller**

Upon remand, we further *sua sponte* order the recusal of Judges Williamson and Miller from any further proceedings involving L.J.B. regardless of who the particular parties are (e.g., Mother, Father, Stepmother, Grandmother, uncles, aunts, half-siblings, etc.). As reflected in Part I, infra, these legal proceedings began several years ago as an extremely contentious custody battle in front of Judge Williamson. In our view, Judge Williamson's apparent antagonism towards Mother is evident from the record.

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<sup>13</sup> While indicating no disagreement with the law's clear mandate that terminations may not occur without ready stepparents, the three Dissenting Justices assert that disposing of this case on the bases forwarded herein is not proper in light of this appeal being fashioned as a "children's fast track" matter. We applaud the Dissenting Opinions' concern that this matter be concluded expeditiously for the sake of this Child, and agree. Nevertheless, we see no reason why this remand on jurisprudentially sound grounds will cause a meaningful delay. At the outset of this opinion, we called for an immediate hearing, and it is our expectation that, notwithstanding this remand, this matter will be concluded very shortly.

Indeed, our exhaustive review of the proceedings reveals, at a minimum, the following incidents attributable to Judge Williamson:

- (1) Permitted and entertained *ex parte* communications from Father regarding L.J.B. and Mother; see N.T., Docket No. 802-02 (C.L.F. v. S.M.B., Father's Petition for Modification of Custody), Nov. 24, 2004 at 3;
- (2) Ignored repeated warnings from CYS regarding the falsity of Father and Stepmother's allegations of sexual abuse by Mother; see generally C.L.F. v. S.M.B., Proceedings of Nov. 24, 2004 and February/March 2006;
- (3) Without provocation criticized Mother's conduct over the "past ten years," when at that point L.J.B. was only five years old; N.T., Docket No. 818-07 (B.J.B. v. S.M.B., Petition for Visitation by Grandmother, B.J.B.), Jul. 11, 2007 at 9;
- (4) Stated that Mother "dumped" L.J.B. on Father; id. at 10; while [running] off and abandon[ing L.J.B.];" id. at 11;
- (5) Stated that information placed on an advocacy website by Mother (and/or Grandmother) was "garbage . . . and if you continue to publish this kind of stuff, you'll never see this child again.;" id. at 10-11;
- (6) Advised Father to have Mother jailed "the next time you find her in Clinton County," due to Mother's alleged failure to pay child support; id. at 8;<sup>14</sup>
- (7) Advocated to Father that he seek termination of Mother's parental rights; id. at 11;<sup>15</sup> and
- (8) Failed to enforce orders barring further pelvic examinations of L.J.B. against Father/Stepmother. see e.g. N.T., Docket No. 21-

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<sup>14</sup> It should be noted that, several months after the July 11, 2007 hearing, Father acted on Judge Williamson's advice and had Mother arrested and incarcerated overnight on the very next occasion he observed her in Clinton County. While it is not an appropriate subject for this opinion, it is not at all clear from the record that the arrest was justified.

<sup>15</sup> As evinced by this appeal, Father acted upon this advice, as well.

2008 (In re Adoption of L.J.B., Termination Trial), Apr. 30, 2009 at 143, 149.<sup>16</sup>

Generally, a party must seek to have a judge recused from a case, by first bringing the petition for recusal before that jurist, thus enabling the judge to evaluate the reasons for recusal firsthand. See Commonwealth v. Whitmore, 912 A.2d 827, 833 (Pa. 2006). “This is, in part, to allow the requested judge to state his or her reasons for granting or denying the motion and, as the allegedly biased party, to develop a record on the matter.” Id. The final determination by that judge may then be reviewed by an appellate court, but may only be reversed upon an abuse of discretion. Id. Nevertheless, in our explicit constitutional authority to supervise the courts of the Commonwealth, it is not outside this Court’s power to *sua sponte* order the removal of a jurist from a case. Id. at 832 (holding that the Superior Court may not order the *sua sponte* removal of a judge from a case; “such a question falls within the supervisory and

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<sup>16</sup> On this point, we must note that the plague is certainly not solely on Judge Williamson’s house. As revealed above, Father subjected L.J.B. to no less than eight pelvic examinations before the child’s eighth birthday. Notwithstanding the lack of any evidence to the contrary, Father continuously accused Mother of sexual abuse of L.J.B., and in a vain attempt to gather evidence in support of this contention, forced L.J.B. to undergo and endure the trauma of these examinations. This reprehensible conduct, however, is at least partially derivative of Judge Williamson’s refusal to enforce his own orders banning the examinations.

In this same vein, we must further lay fault upon Clinton County CYS. As reflected in the record, CYS had constant contact with all parties involved in this case. Despite this extensive involvement, the agency failed to take necessary action to stop the repeated and unnecessary pelvic examinations of this child. As poignantly queried recently by one scholar, “which is worse: the harm that results from maltreatment at the hands of a parent or the harm that results from the maltreatment of a state agency?” Kurt Mundorff, Children as Chattel: Invoking the Thirteenth Amendment to Reform Child Welfare, 1 CARDOZO PUB. L. POL’Y & ETHICS J. 131, 148 (May 2003).

administrative powers over all of the courts” granted to this Court by the Pennsylvania Constitution, Article V, Section 10(c).).

In that capacity, we will order the resolution of a legal dispute before a new judge on the mere “appearance of impropriety,” which may be shown where “there are factors or circumstances that may reasonably question the jurist’s impartiality in the matter.” Joseph v. Scranton Times, 987 A.2d 633, 634 (Pa. 2009) (*per curiam*). In our opinion, the facts as related herein reflect, at best, an “appearance of impropriety,” by Judge Williamson against Mother.<sup>17</sup> Upon remand, this case is going to continue either as a termination or custody proceeding. The custody proceedings involving L.J.B. have been handled by Judge Williamson in the past, and there is no indication that, absent intervention from this Court, his involvement would cease. Accordingly, in our respectful view, protection of this otherwise helpless child caught in the maelstrom precipitated by these many adults requires reassignment of all proceedings involving L.J.B. to a judge other than Judge Williamson.

Normally, such appointment of a new judge to preside upon remand could fall to another judge within the same judicial district. However, as noted, Judge Williamson and Judge Miller are the only two commissioned judges of Clinton County. Further, the record and transcript of the custody proceedings before Judge Williamson were

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<sup>17</sup> At worst, the facts suggest the development of an outright bias by Judge Williamson against Mother. We, however, have deep respect for all of Pennsylvania’s jurists, and specifically decline to reach that conclusion on this record. We also must note that we are well aware of the deep, emotional strain caused to all participants, including the trial judge, by a contentious custody battle, which too often reaches the level of an all-out war between the parties. When a trial judge finds himself or herself becoming emotionally involved or frustrated by such a case, it may well be the better practice to step aside in favor of a new judicial figure. In the end, that is all we order here.

admitted into evidence during the termination trial before Judge Miller, who, in examining the totality of the circumstances of Mother's "abandonment," apparently did not consider the potential appearance of impropriety by Judge Williamson against Mother. Indeed, without addressing her allegations of bias, Judge Miller faulted Mother for wanting to wait until Judge Williamson's retirement before again availing herself of the Pennsylvania court system. See In re Adoption of L.J.B., No. 21-2008, Termination Tr. Slip Op at 12 (May 27, 2009); see also Super. Ct. Mem. Op. at 12.

Given what has to be a collaborative relationship and considering both of their involvements in this case, we believe justice, and, as importantly, the interests of L.J.B., who has suffered enough for a lifetime, would best be served by a fresh pair of eyes and a fresh perspective. Thus, we order that all additional proceedings<sup>18</sup> involving these parties be entertained by a new jurist from a different judicial district, as coordinated by the Administrative Office of Pennsylvania Courts.<sup>19</sup>

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<sup>18</sup> With all due respect to the Dissent, even if this Court were to decide the merits of the termination decree, to think that custody proceedings would not inevitably develop following our decision, or that neither Judge Williamson nor Judge Miller would handle those proceedings moving forward, is to deny the reality of the situation. Moreover, the suggestion that either Judge Williamson or Judge Miller would voluntarily recuse himself from further proceedings is also belied by this record.

<sup>19</sup> Mr. Justice Saylor has filed a Concurring Opinion (joined by Chief Justice Castille), which fully joins in the disposition of Parts II and III supporting a remand to determine the status of the case and for the proceedings on remand to occur before a new jurist.

We note that in the Concurrence's final sentence, it reflects uncertainty regarding any "actual bias" by the Clinton County bench towards Mother, but acknowledges the appearance issue that the custody judge's comments created. We are in complete accord with that observation. Like the Concurring Opinion, we are uncertain that there was any actual bias, and called for the "fresh pair of eyes" because of the "ill-informed and intemperate" nature of the "extraneous remarks." See Concurring Slip Op. at 3 (Saylor, J., concurring).

#### **IV. Conclusion**

In summary, we vacate the order of the Superior Court, and remand this case for an immediate hearing and final determination regarding Stepmother's intention to adopt L.J.B., and if it is determined that she will not be so proceeding, the court of common pleas shall dismiss this matter as moot pursuant to 23 Pa.C.S. § 2512. Further, we direct that all further proceedings involving L.J.B., upon remand and beyond, be held before a new jurist, not from Clinton County, as appointed by the Administrative Office of Pennsylvania Courts. Pending receipt of the decision by the court of common pleas upon remand, this Court otherwise retains jurisdiction.

Mr. Justice McCaffery joins the Opinion Announcing the Judgment of the Court.

Mr. Justice Saylor files a concurring opinion in which Mr. Chief Justice Castille joins.

Madame Justice Todd files a concurring and dissenting opinion.

Mr. Justice Eakin files a dissenting opinion.

Madame Justice Orié Melvin files a dissenting opinion.