

[J-34A-2020][M.O. - Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE: ADOPTION OF K.M.G.	: No. 55 WAP 2019
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APPEAL OF: T.L.G., MOTHER	: Appeal from the Order of the Superior
	: Court entered 9/13/19 at No. 580 WDA
	: 2018, affirming the Decree entered
	: 3/5/18 in the Court of Common Pleas of
	: McKean County at No. 42-17-0239
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	: SUBMITTED: April 16, 2020
IN RE: ADOPTION OF A.M.G.	: No. 56 WAP 2019
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APPEAL OF: T.L.G., MOTHER	: Appeal from the Order of the Superior
	: Court entered 9/13/19 at No. 581 WDA
	: 2018, affirming the Decree entered
	: 3/5/18 in the Court of Common Pleas of
	: McKean County at No. 42-17-0240
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	: SUBMITTED: April 16, 2020
IN RE: ADOPTION OF S.A.G.	: No. 57 WAP 2019
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APPEAL OF: T.L.G., MOTHER	: Appeal from the Order of the Superior
	: Court entered 9/13/19 at No. 582 WDA
	: 2018, affirming the Decree entered
	: 3/5/18 in the Court of Common Pleas of
	: McKean County at No. 42-17-0241
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	: SUBMITTED: April 16, 2020
IN RE: ADOPTION OF J.C.C.	: No. 58 WAP 2019
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APPEAL OF: T.L.G., MOTHER	: Appeal from the Order of the Superior
	: Court entered 9/13/19 at No. 583 WDA
	: 2018, affirming the Decree entered
	: 3/5/18 in the Court of Common Pleas of
	: McKean County at No. 42-17-0242
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	: SUBMITTED: April 16, 2020

CONCURRING OPINION

CHIEF JUSTICE SAYLOR

DECIDED: NOVEMBER 10, 2020

I join the majority opinion.

Although our Juvenile Court Procedural Rules and numerous opinions appear to equate the legal interests of a child with the child's express wishes, I take this opportunity to clarify my view that the child's legal interests are broader in scope. See, e.g., National Ass'n of Counsel for Children, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* 11 (2001) (observing that the legal interests of the child may be unclear or contradictory, for example, "a child has a legal interest in being protected from abusive or neglectful parents").¹ What Section 2313(a) of the Adoption Act requires is "counsel to *represent the child* in an involuntary termination proceeding," 23 Pa.C.S. §2313 (emphasis added), which I take to signify a client-directed relationship akin, to the extent possible, to one enjoyed by an adult. Accord ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings §7(c) (2011), Commentary ("The child's lawyer helps to make the child's wishes and voice heard but is not merely the child's mouthpiece. As with any lawyer, a child's lawyer is both an advocate and a counselor for the client.").

The ABA Model Act's discussion of a substituted judgment determination, as contrasted with a best-interests analysis, see *id.* §7(d) also has salience, in my view. See ABA Model Act §7(d), Commentary ("A substituted judgment determination is not the same as determining the child's best interests; . . . "[r]ather, it involves determining

¹ These recommendations are presently under review for revisions. See National Ass'n of Counsel for Children, *Standards of Practice* <https://www.naccchildlaw.org/page/StandardsOfPractice> (last visited Aug. 14, 2020).

what the child would decide if he or she were able to make an adequately considered decision.”). Thus, I would also clarify that a child’s legal counsel in involuntary termination proceedings should carefully screen against conflicts -- not only between the expressed and best interests of the child -- but also between his substituted judgment determination (applicable where children lack the capacity to express their wishes) and a best-interests analysis. When either sort of conflict exists, counsel should seek the appointment of an independent, best-interests advocate.