

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

ADOPTION OF: R.W., A MINOR : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
:

APPEAL OF: S.L.M., MOTHER : No. 524 WDA 2023

Appeal from the Order Entered April 10, 2023
In the Court of Common Pleas of Washington County
Orphans' Court at No(s): C-63-OC-2022-1207

ADOPTION OF: R.W., A MINOR : IN THE SUPERIOR COURT OF
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APPEAL OF: S.L.M., MOTHER : No. 525 WDA 2023

Appeal from the Order Entered April 10, 2023
In the Court of Common Pleas of Washington County
Orphans' Court at No(s): C-63-OC-2022-1208

BEFORE: BOWES, J., OLSON, J., and KING, J.

MEMORANDUM BY KING, J.:

FILED: JANUARY 23, 2024

Appellant, S.L.M. ("Mother"), appeals from the order entered in the Washington County Court of Common Pleas, Orphans' Court, which involuntarily terminated her parental rights to R.E.W. (born in April 2017) and R.J.W. (born in December 2018) ("Children").¹ For the following reasons, we vacate and remand for further proceedings.

The relevant facts and procedural history of this case are as follows.

¹ The Orphans' Court also involuntarily terminated the parental rights of Father/Putative Father and Unknown Father. No father is a party to this appeal.

Mother's family came to the attention of the Washington County Children and Youth Services Agency ("CYS") prior to the birth of Children, due to concerns over Mother's parenting of other children who are not the subject of this appeal. Notably, Mother has some hearing issues, ADHD, and other intellectual difficulties. On April 27, 2021, the court adjudicated Children dependent based on concerns for parenting, housing, and the ability of Mother to meet Children's needs. The court transferred legal custody of Children to CYS, but Mother retained physical custody of Children. On July 14, 2021, Children were removed from Mother's physical custody and placed in foster care together.

On August 11, 2022, CYS filed a petition for involuntary termination of Mother's parental rights to Children under Section 2511(a)(1), (2), (5), (8), and (b). By order entered that same day, the court originally appointed Megan Patrick, Esq. to represent Children in connection with the termination proceeding. On February 27, 2023, however, the court appointed Attorney James Jeffries to represent Children as "Legal Counsel/[guardian *ad litem* ("GAL")]" in connection with the termination proceedings.² (**See** Order, filed

² The record does not indicate that Attorney Patrick was permitted to withdraw at any point, and Attorney Patrick continued to receive service of some filings in this case. Nevertheless, Attorney Patrick did not attend the termination hearing to advocate for Children's legal interests and did not file a brief on appeal.

2/28/23, at 1).³

The court held a termination hearing on March 23, 2023. The court first heard testimony from Pamela Geruschat. Ms. Geruschat testified that she is employed by CYS and had been Children's caseworker for approximately the past 12 months. Ms. Geruschat testified that Mother was ordered to participate in parenting classes through Justice Works and Blueprints. Ms. Geruschat conceded that Mother completed those classes, but "there were some concerns about the implementation." (N.T. Hearing, 3/23/23, at 17). Ms. Geruschat elaborated on this point, indicating that Mother used "very severe language" in front of children, and Ms. Geruschat said there was a "lot of physical contact between the children that was inappropriate." (*Id.* at 18). For example, Mother "would have to strap [R.E.W.] in a stroller to keep him from running all over the place and hurting himself or hurting others." (*Id.*) Ms. Geruschat testified that CYS' main concern was that Children lacked parental control.

Ms. Geruschat testified that Mother also participated in mental health therapy, but Mother had recently stopped taking her prescription medication because Mother did not like the effects. Ms. Geruschat admitted that Mother completed the in-home services. Regarding visitation, Ms. Geruschat testified that Mother originally saw Children twice a week for two hours. In May 2022,

³ The court entered separate orders for each child appointing Attorney Jeffries as legal counsel/GAL.

however, the visits were separated so that Mother spent one hour with each child individually. The rationale for separating the visits was that Mother “might be more successful if she only had to focus on one child.” (*Id.* at 20). All visits were supervised and coached through Blueprints. Ms. Geruschat indicated that Mother was sometimes argumentative with the visitation coaches and would not accept their advice.

Mother’s visits with R.E.W. were ultimately suspended pending therapeutic sessions, based on the recommendation of Dr. Terry O’Hara, who had conducted an evaluation of Mother and Children. Mother initially consented to suspending visits pending the therapeutic sessions, but later did not consent to suspending the visits. Ms. Geruschat admitted that Mother “always came prepared to visit. She would have snacks, she brought gifts, she brought books. She made sure [Children] were able to watch their favorite show, things like that.” (*Id.* at 29-30).

Ms. Geruschat testified that R.J.W. has been with her original foster parents, A.S. and T.S., since her removal from Mother in July 2021. R.J.W. does not have any special needs or diagnoses, except for an issue with chewing, for which she is receiving services. Ms. Geruschat testified that A.S. and T.S. are meeting all of R.J.W.’s needs. Ms. Geruschat observed that R.J.W. is a very happy child, she refers to her foster parents as “mom” and “dad,” and she is comfortable in their home. (*Id.* at 33). R.J.W. attends preschool, participates in gymnastics and cheerleading, and is “well taken care

of.” (***Id.***) R.J.W. looks to her foster parents to meet her daily needs.

On the other hand, R.E.W. is diagnosed with ADHD, “possibly autism,” and/or “possibly bipolar disorder.” (***Id.*** at 34). R.E.W. is receiving services for his diagnoses. Ms. Geruschat explained that R.E.W. was originally placed with R.J.W. in the care of A.S. and T.S. R.E.W. remained with A.S. and T.S. for 17 months. Ms. Geruschat indicated that R.E.W. was removed from their home because A.S. and T.S. could not manage his behaviors. A.S. and T.S. had reported that they were exhausted, that R.E.W. was not sleeping, they could not take R.E.W. places, and they were embarrassed by his behavior. (***Id.*** at 44).

Around January 2023, R.E.W. was placed with different foster parents, C.L. and J.L. Ms. Geruschat stated that A.S. and T.S. provided for R.E.W.’s daily needs when he lived with them, and now C.L. and J.L. are meeting his needs. Ms. Geruschat testified that C.L. and J.L. are working hard to make sure R.E.W. gets adequate sleep, which he struggled with in the past. (***Id.*** at 41).

Ms. Geruschat testified that in the 12 months preceding the filing of the termination petition, Mother did not remedy the circumstances that led to Children’s placement. Ms. Geruschat admitted that Children love their mother, but they now call her by her first name. (***Id.*** at 42). Ms. Geruschat stated that Mother has “done all that she can do. She is who she is. ... She’s very honest.” (***Id.*** at 43). Nevertheless, Ms. Geruschat testified that it would

be difficult, if not impossible, for Mother to parent Children, despite CYS' many services to Mother. Ms. Geruschat stated there has been no progress toward alleviating the issues that necessitated Children's removal.

Regarding Children's bond with their respective foster parents, Ms. Geruschat admitted it was a "tricky" question. (*Id.*) Ms. Geruschat opined that Children are bonded to their foster families and count on them for everything. Ms. Geruschat further admitted that there has been additional trauma to R.E.W. from being displaced from his initial foster home, and concerns about R.J.W. now being an only child. (*Id.* at 43-44). Ultimately, Ms. Geruschat concluded that termination of Mother's parental rights served Children's best interests.

On cross-examination from Mother's counsel, Ms. Geruschat admitted that she had not personally observed any visits between Mother and either child. Rather, the visits were supervised and coached by other professionals. Ms. Geruschat further conceded that the issues which necessitated Children's removal were parenting and housing. Ms. Geruschat admitted that Mother now has had stable housing for at least a year. Ms. Geruschat also acknowledged that Mother completed the parenting classes. Ms. Geruschat was unsure if the supervisors and coaches were aware of Mother's hearing issues or had any specialized training in how to coach a parent with some intellectual difficulties. (*Id.* at 50-51). Ms. Geruschat testified that Dr. O'Hara recommended therapeutic visits for R.E.W. and Mother, but those visits did

not happen for several months due to a lack of available services. (***Id.*** at 52). For the two therapeutic visits that eventually occurred, Ms. Geruschat noted that the therapeutic service provider, Dr. Gilman, did not report any concerns to CYS regarding Mother. (***Id.*** at 54).

When asked why CYS did not remove R.J.W. when R.E.W. was removed from the care of A.S. and T.S., Ms. Geruschat admitted it was “almost unfathomable” that R.E.W.’s removal happened after almost eighteen months. (***Id.*** at 56). Nevertheless, Ms. Geruschat said R.J.W. was thriving in her placement and loves her foster family. Ms. Geruschat testified “I’m sure [R.J.W.] also loves her brother. Either way you look at this situation, it is traumatic for the children.” (***Id.***) Ms. Geruschat agreed the preference is generally for siblings to remain together. Ms. Geruschat also admitted that Children did not have contact with one another from the time of R.E.W.’s removal until the night before the termination hearing. When Children had their visit together, they hugged and had a successful visit, although R.J.W. had a “rough time on the ride home[.]” (***Id.*** at 57).

Upon cross-examination from Attorney Jeffries, who the court had appointed as legal counsel/GAL,⁴ Ms. Geruschat elaborated that on the car ride home from the visit with her brother, R.J.W. “cried for 30 minutes on the

⁴ Notwithstanding the court’s order appointing Attorney Jeffries as legal counsel/GAL, Attorney Jeffries identified himself at the termination hearing only as GAL for Children. (***See id.*** at 4). We discuss Attorney Jeffries’ role in the proceeding in greater detail later in this disposition.

way home, asking for her mother.” (***Id.*** at 69).⁵ Ms. Geruschat further testified that C.L. and J.L. are a pre-adoptive resource for R.E.W. Although R.E.W. had only been in their care for six or seven weeks, Ms. Geruschat indicated that C.L. believes she has the patience, understanding, and resources to help R.E.W. overcome his behavioral issues. Ms. Geruschat testified that she did not believe it would be harmful to R.E.W. to have Mother’s parental rights terminated, as R.E.W. does not look to Mother for his needs or nurturing. (***Id.*** at 74). Similarly, Ms. Geruschat opined that it would not be harmful to R.J.W. to terminate Mother’s parental rights because she is very bonded to her foster parents. (***Id.*** at 75).

On re-direct examination, Ms. Geruschat stated that both foster families are willing to continue sibling visits, but R.E.W.’s foster family has expressed a strong preference for Children to live together. On re-cross examination, Ms. Geruschat also indicated that Mother had visited with R.J.W. for two hours the day before the termination hearing.

Dr. O’Hara testified next as an expert witness. Dr. O’Hara testified that he conducted an evaluation of Mother and Children. Dr. O’Hara authored a first report on August 11, 2020, and second report on May 16, 2022. When Dr. O’Hara observed Mother interact with Children, “she had positive parenting

⁵ Another caseworker had transported R.J.W. to the visit with her brother, and the parties disputed whether R.J.W. crying for her “mom” was in reference to Mother or to foster mother, A.S. Although the caseworker who had transported R.J.W. to the visit was available, CYS did not call her as a witness.

skills. She showed affection to the children. She praised them. She was calm, talkative, engaging, she encouraged sharing..." (***Id.*** at 84). Dr. O'Hara discussed Mother's acknowledgment of poor parenting choices she had made throughout the years. (***Id.*** at 85). Regarding Dr. O'Hara's observations of Children, "they weren't leaning to [M]other for validation. They directed themselves to their mother, they were happy, they were vocal. They referred to her as mom and mommy." (***Id.***) R.J.W. later became upset during the evaluation, however, and asked for "mommy and daddy," referring to her foster parents. (***Id.*** at 85-86). With respect to Mother's bond with Children, Dr. O'Hara testified that "[C]hildren seemed to value their relationship with their mother, at least to a degree." (***Id.*** at 86).

Dr. O'Hara expressed that there "would be safety concerns for the children if they had unsupervised time with their mother...[and] the potential that they would be exposed to harsh parenting." (***Id.*** at 89). Dr. O'Hara recommended supervised visits for Mother and Children. Dr. O'Hara "did say that there would be detriment for the children if their relationships with their mother were to be severed. But [Dr. O'Hara] also said that the detriment could be mitigated by the children from relationships with their foster parents." (***Id.*** at 91). When asked if the benefits of severing Mother's parental rights would outweigh the detriment, Dr. O'Hara opined:

[A]t the time of the May 2022 evaluation, and I'm somewhat limited that I have not seen her since that time, so I really don't have data with regard to what had happened since that time.

But at the time of the evaluation, I did have a lot of concerns. I didn't have a lot of evidence that [Mother] was in any sort of position to care for the children. I thought that was concerning, as the children had been in care for some time. I believe they had been residing with their foster parents since July 2021.

Given [Mother's] lack of progress with services, I really didn't have much evidence that she'd be able to make substantive changes. So I had a lot of concerns about [Mother] at the time of those most recent evaluations.

(**Id.** at 92-93).

On cross-examination, Dr. O'Hara explained that research shows that if siblings are displaced from the parental home, they typically do much better when they're placed with one another. (**Id.** at 118). "But when separation occurs, it can lead to anxiety for the children. When they're placed with each other, it can really reduce anxiety within that particular child. It can increase the parts, those are protective factors involved in children, siblings, when they're placed with one another in foster care." (**Id.**)

Upon re-direct examination, Dr. O'Hara clarified that as of May 16, 2022, he did think there would be some potential detriment to Children if Mother's bond with Children were severed. But, Dr. O'Hara stated that detriment should be weighed against Mother's level of stability, lack of progress with respect to treatment recommendations, continuing to be overwhelmed, mental health issues, and the time Children have already been in placement. (**Id.** at 129). Dr. O'Hara said it should also be weighed against Children's experiences with their foster parents. (**Id.**)

Following Dr. O'Hara's testimony, CYS rested its case. Mother testified next. Mother testified that she was previously not very capable of parenting Children, but therapy has enabled her to be able to do so. Mother affirmed that she meets with her therapist twice a month. (*Id.* at 134-35). Mother confirmed she has been in the same housing since November 2021, and she can make her rental payments each month. (*Id.* at 135). Mother indicated that she played with Children during visits and always brought snacks and activities for them. (*Id.* at 137). Mother and Children were affectionate with each other. (*Id.* at 138). Mother said she is willing to undergo any services required and believes she can meet Children's needs. (*Id.*)

Mother stated she has a positive bond with R.J.W. Mother said: "[R.J.W.] loves me. She always tells me how much she loves me. She just has a very good personality. She makes me laugh. We did bond, we play games together." (*Id.* at 156). Mother sees R.J.W. twice a month. Mother described a positive bond with R.E.W. as well—they draw together on a drawing board, play guessing games, color, talk about school. (*Id.* at 157). Mother acknowledged that until that morning in court, she had not seen R.E.W. since January 2023. Mother explained there was a six-month delay in beginning therapeutic visits with R.E.W. due to a fee issue between CYS and the therapeutic service provider Dr. Gilman, and then visits were suspended at the request of foster parents. (*Id.* at 154-55). Following Mother's testimony, the court took the matter under advisement.

On April 10, 2023, the court granted CYS' petition and involuntarily terminated Mother's parental rights to Children. On May 10, 2023, Mother timely filed a notice of appeal along with a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i).⁶

Mother raises one issue for our review:

Whether the [Orphans'] Court abused its discretion or committed an error of law by finding that sufficient evidence existed to terminate the [M]other's parental rights pursuant to 23 Pa.C.S. § 2511(b).

(Mother's Brief at 4).⁷

Appellate review in termination of parental rights cases implicates the following principles:

A parent's right to make decisions concerning the care, custody, and control of his or her children is among the oldest of fundamental rights. The time-tested law of the Commonwealth requires that we balance this intrinsic parental interest within the context of a child's essential needs for a parent's care, protection, and support. We readily comprehend the significant gravity of a termination of parental rights, which has far-reaching and intentionally irreversible consequences for the parents and the child. For these reasons, the burden of proof is upon the party seeking termination to establish by clear and convincing evidence the existence of the statutory grounds for doing so. [C]lear 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 hesitation, of the truth of the precise facts in issue. Because of this

⁶ Mother filed separate notices of appeal for each child. This Court consolidated the appeals *sua sponte*.

⁷ Mother does not challenge the Orphans' Court's findings under Section 2511(a) on appeal. (***See id.*** at 15).

serious impact attending the termination of parental rights, it is important that a judicial decree extinguishing such rights be based solely on competent evidence.

In cases concerning the involuntary termination of parental rights, appellate review is limited to a determination of whether the decree of the termination court is supported by competent evidence. This standard of review corresponds to the standard employed in dependency cases, and requires appellate courts to accept the findings of fact and credibility determinations of the trial court if they are supported by the record, but it does not require the appellate court to accept the [trial] court's inferences or conclusions of law. That is, if the factual findings are supported, we must determine whether the trial court made an error of law or abused its discretion. An abuse of discretion does not result merely because the reviewing court might have reached a different conclusion; we reverse for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill will. Thus, absent an abuse of discretion, an error of law, or insufficient evidentiary support for the trial court's decision, the decree must stand. We have previously emphasized our deference to trial courts that often have first-hand observations of the parties spanning multiple hearings. However, [w]e must employ a broad, comprehensive review of the record in order to determine whether the trial court's decision is supported by competent evidence.

In re Adoption of C.M., ___ Pa. ___, ___, 255 A.3d 343, 358-59 (2021)

(internal citations and quotation marks omitted).

Mother argues that Children lived with her from birth until July 2021. Mother asserts that after Children's removal, she regularly visited with both Children until visits with R.E.W. were suspended. Even then, Mother claims she regularly visited with R.J.W. Mother emphasizes testimony from Ms. Geruschat, Dr. O'Hara, and herself, concerning Mother's bond with Children.

Mother discounts testimony from Ms. Geruschat stating that Children would not be harmed by terminating Mother's parental rights, because Mother contends that Ms. Geruschat did not observe Mother interact with Children. Mother maintains Ms. Geruschat merely relied on reports of visitation coaches and supervisors, which were not entered into evidence.

Mother stresses the expert opinion of Dr. O'Hara that Children **would** suffer a detriment if Mother's bond with Children were severed. Although Dr. O'Hara opined that such detriment could be mitigated due to Children's strong bond with their foster parents, that opinion was based on siblings both residing in the same foster home. Dr. O'Hara did not update his findings, in light of R.E.W.'s removal from the initial foster family at the foster family's request. Thus, Mother posits that R.E.W. no longer had a strong bond with his foster family to mitigate the damage of severing Mother's bond with him. Relatedly, Mother insists there was no testimony regarding what effect the removal of R.E.W. had on R.J.W. Mother highlights the importance of keeping siblings together. Mother concludes that CYS failed to prove by clear and convincing evidence that termination of Mother's parental rights would best serve Children's interests, and this Court must reverse the order involuntarily terminating her parental rights.⁸ For the following reasons, we decline to

⁸ Attorney Jeffries, who filed a brief on appeal as Children's GAL, agrees with Mother that the court improperly terminated her parental rights to Children. Initially, Attorney Jeffries argues that CYS was responsible for helping Mother
(Footnote Continued Next Page)

reach the merits of Mother's claims.

As a preliminary matter, we observe that "[i]n cases involving children, the law acknowledges two separate and distinct categories of interest: a child's legal interests, which are synonymous with the child's preferred

engage in court-ordered therapeutic visitation with Children. Attorney Jeffries asserts that for reasons unclear from the record, there was a delay of approximately six months between when Mother was ordered to undergo therapeutic visitation with R.E.W. and when those therapeutic visits began. Thereafter, CYS only offered Mother an opportunity to participate in two therapeutic visits. Attorney Jeffries claims:

This seems to be fundamentally unfair to the children, since Mother was ordered to undergo an evaluation by [Dr.] O'Hara and then being recommended therapeutic visitation with [R.E.W.] Mother was also ordered to complete any recommendations by [Dr.] O'Hara. It appears that a barrier has been placed before Mother that would seem to stunt her progress in moving forward in remedying the defects in her parenting.

(GAL's Brief at 9). Thus, Attorney Jeffries suggests termination was improper under Section 2511(a)(2). (**See id.**) We reiterate, however, that Mother has not challenged the court's findings under Section 2511(a) on appeal.

Additionally, Attorney Jeffries challenges the testimony at the termination hearing stating that Children are bonded to their foster parents. Attorney Jeffries emphasizes that the first foster family "was essentially embarrassed by the actions of [R.E.W.] at a Disney vacation which were a result of [R.E.W.'s] medical condition. [Attorney Jeffries] believes that this poses an issue with regards to the assessment of what is in the best interest of the children moving forward." (**Id.** at 9-10). [Attorney Jeffries] also contends that visits between Mother and R.J.W. reportedly go "generally well." (**Id.** at 10). Attorney Jeffries suggests that if this Court couples "the lack and delay of therapeutic visits and generally good visits with [R.E.W.] and [R.J.W.] respectively, ... [C]hildren are...being deprived of reunification...." (**Id.**) Thus, Attorney Jeffries concludes that termination of Mother's parental rights was improper under Section 2511(b).

outcome, and a child's best interests, which the trial court must determine."

In re Adoption of L.B.M., 639 Pa. 428, 432, 161 A.3d 172, 174 (2017)

(internal footnotes omitted). More specifically:

'Legal interests' denotes that an attorney is to express the child's wishes to the court regardless of whether the attorney agrees with the child's recommendation. 'Best interests' denotes that a guardian *ad litem* is to express what the guardian *ad litem* believes is best for the child's care, protection, safety, and wholesome physical and mental development regardless of whether the child agrees.

In re T.S., 648 Pa. 236, 240 n.2, 192 A.3d 1080, 1082 n.2 (2018).

"Section 2313(a) [of the Domestic Relations Code] requires counsel to advocate on behalf of the children's legal interests" in termination of parental rights and adoption cases. ***In re Adoption of L.B.M., supra*** at 444, 161 A.3d at 182. Specifically, the statute provides:

The court shall appoint counsel to represent the child in an involuntary termination proceeding when the proceeding is being contested by one or both of the parents. The court may appoint counsel or a guardian *ad litem* to represent any child who has not reached the age of 18 years and is subject to any other proceeding under this part whenever it is in the best interests of the child. No attorney or law firm shall represent both the child and the adopting parent or parents.

23 Pa.C.S.A. § 2313(a). Further, "a single attorney cannot represent a child's best interests and legal interests if those interests conflict," and "the [O]rphans' [C]ourt must determine whether counsel can represent the dual interests before appointing an individual to serve as [GAL]/counsel for child."

In re Adoption of K.M.G., 663 Pa. 53, 82, 240 A.3d 1218, 1236 (2020).

"[T]he failure to appoint a separate attorney to represent the child's legal

interests constitutes structural error, meaning it is not subject to a harmless-error analysis,” and the issue is “non-waivable, because the right belonged to the child who, given that he or she was unrepresented, could not have challenged the lack of counsel.” **Id.** at 81-82, 240 A.3d at 1235.

As such, this Court can raise *sua sponte* “(1) whether the [O]rphans’ [C]ourt appointed counsel to represent the legal interests of the children; and (2) if the appointed counsel also serves as [GAL], whether the [O]rphans’ [C]ourt determined that the child’s best interests and legal interests did not conflict.” **Id.** at 82, 240 A.3d at 1235. Appellate review of these questions, however, “does not involve second-guessing whether GAL/[legal c]ounsel had a conflict, ... but solely whether the [O]rphans’ [C]ourt made the determination in the first instance.” **Id.** at 82, 240 A.3d at 1235-36. “[T]his limited review strikes an appropriate balance between protecting children who cannot assert their own right to counsel, while insuring the least disruption to ‘the process of orderly judicial decision making’ in termination proceedings.” **Id.** at 83, 240 A.3d at 1236. Thus, “the potential conflict of interest in a GAL/[legal c]ounsel’s representation of a child is not something that appellate courts should review *sua sponte*, without the benefit of appellate advocacy.” **Id.** at 84, 240 A.3d at 1237.

“Generally, an attorney acting as a child’s legal counsel must, at a minimum, attempt to ascertain the child’s preference and advocate on the child’s behalf.” **In re P.G.F.**, ___ Pa. ___, ___, 247 A.3d 955, 966 (2021).

If a child is “too young to be able to express a preference as to the outcome of the proceedings,” there is no conflict between a child’s legal and best interests, and the child’s Section 2313(a) right to counsel is satisfied by an attorney/GAL who represents the view of the child’s best interests. ***In re T.S., supra*** at 251 n.17, 192 A.3d at 1089-90 n.17 (noting that children aged two and three years old who are pre-verbal do not have subjective, articulable preference concerning their legal interests; comparing children aged five or six years old, who are old enough to have opinions that are entitled to weight in legal proceedings concerning their custody).

Instantly, by order entered August 11, 2022, the court originally appointed Attorney Patrick to represent Children in connection with the termination proceeding. On February 27, 2023, however, the court appointed Attorney Jeffries to represent Children as “Legal Counsel/GAL” in connection with the termination proceedings. Notwithstanding this designation, we repeat that at the termination hearing, Attorney Jeffries identified himself only as GAL for Children.

Nothing in the record indicates if the court determined whether Children’s best interests and legal interests conflicted before the court appointed Attorney Jeffries to serve as both legal counsel and Children’s GAL.⁹

⁹ Although this Court is not permitted to review *sua sponte* whether a conflict existed (***see In re Adoption of K.M.G., supra***), we note that R.E.W. was almost six years old at the termination hearing and R.J.W. was four years old. (*Footnote Continued Next Page*)

See *In re Adoption of K.M.G., supra*. Therefore, we are unable to fulfill our duty to verify *sua sponte* that the court determined that Attorney Jeffries could represent Children's dual interests without a conflict. **See *id.*** Accordingly, we vacate the order involuntarily terminating Mother's parental rights and remand for the court to fulfill its Section 2313(a) duty and determine whether Attorney Jeffries may represent both Children's legal and best interests. **See *Matter of Adoption of S.T.K.*, No. 279 WDA 2023 (Pa.Super. filed Aug. 25, 2023) (unpublished memorandum)¹⁰ (providing similar remand instructions).** Upon remand, the court shall conduct additional proceedings as it sees fit.¹¹

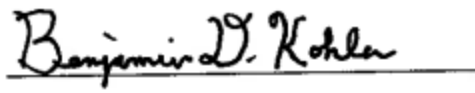
Order vacated. Case remanded with instructions. Jurisdiction is relinquished.

Thus, we cannot say that Children's ages alone eliminated the potential for any conflict. **Compare *In re T.S., supra*.**

¹⁰ **See** Pa.R.A.P. 126(b) (stating we may rely on unpublished decisions from this Court filed after May 1, 2019 for their persuasive value).

¹¹ Because Attorney Jeffries is advocating against termination of Mother's parental rights in his role as GAL, should Children's legal interests (*i.e.*, their preferred outcomes) be aligned with their best interests, the court might reconsider its termination order. To the extent Children's preferred outcomes differ from their best interests, the court shall appoint separate legal counsel for Children to represent their legal interests, after which the court may decide to reinstate its termination order, from which Mother can again appeal. We also acknowledge that R.E.W. and R.J.W. may have different preferred outcomes in this case. To the extent Children are unable to articulate a preferred outcome in this case, the court may also decide to reinstate its termination order, from which Mother can again appeal. Thus, given the circumstances of this case, we leave to the court's discretion the further proceedings which may be appropriate upon remand.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

FILED: 1/23/2024