

2023 PA Super 10

IN RE: ADOPTION OF: A.M.W., A	:	IN THE SUPERIOR COURT OF
MINOR	:	PENNSYLVANIA
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APPEAL OF: M.J.G.	:	
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	:	No. 519 MDA 2021

Appeal from the Decree Entered March 31, 2021
In the Court of Common Pleas of Bradford County Orphans' Court at
No(s): 18 ADOPT 2020

BEFORE: PANELLA, P.J., OLSON, J., DUBOW, J., KUNSELMAN, J., NICHOLS,
J., MURRAY, J., McLAUGHLIN, J., McCAFFERY, J., and SULLIVAN,
J.

CONCURRING OPINION BY DUBOW, J.: **FILED JANUARY 19, 2023**

I agree with the Majority Opinion's disposition vacating the decree that, *inter alia*, dismissed Former Stepfather's petitions to intervene and adopt. I further agree with the Majority Opinion's holding that this case should be remanded for a determination of Former Stepfather's standing. I write separately, however, to express my disagreement with the Majority Opinion's mandate that, upon remand, the trial court must appoint legal counsel for Child in the contested adoption proceeding. Section 2313 provides that "[t]he court **may** appoint counsel or a guardian ad litem to represent any child who . . . is subject to any other proceeding under this part **whenever it is in the best interests of the child.**" 23 Pa.C.S. §2313(a) (emphasis added). The Majority Opinion finds that it is in Child's best interest to appoint counsel for Child in the instant contested adoption proceeding and directs the trial court

to do so. In contrast, I believe that whether it is in Child's "best interest" to appoint counsel is a factual determination that the trial court must make in the first instance. I would, therefore, remand for the trial court to decide whether appointing counsel in the adoption proceeding would, in fact, be in Child's best interest rather than making that factual determination at the appellate level. I agree with the well written and analyzed Majority Opinion in all other respects.

President Judge Panella, Judges Nichols and Sullivan join the concurring opinion.