NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: G.L.W., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: M.J.W., JR., FATHER	:	
	:	No. 1459 EDA 2026

Appeal from the Decree Entered April 23, 2026
In the Court of Common Pleas of Bucks County Orphans' Court at No(s): 2025-A9044

IN RE: L.J.W., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: M.J.W., JR., FATHER	:	
	:	No. 1460 EDA 2026

Appeal from the Decree Entered April 23, 2026
In the Court of Common Pleas of Bucks County Orphans' Court at No(s): 2025-A9045

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., and STEVENS, P.J.E.*

MEMORANDUM BY STEVENS, P.J.E.: **FILED NOVEMBER 6, 2026**

Appellant, M.J.W., Jr. ("Father"), appeals from the April 23, 2026 decrees which granted the petitions filed by C.L.B. ("Mother") and B.L.N. ("Stepfather") (collectively, "Appellees"), and involuntarily terminated Father's parental rights to his daughters, G.L.W., born in April 2017, and

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* Former Justice specially assigned to the Superior Court.

L.J.W., born in April 2019 (collectively, "the Children"), pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b) of the Adoption Act ("the Act"). Upon review, we are constrained to vacate and remand.

Given our disposition, we need not detail the full factual and procedural history of this case. The certified record reflects that Father has struggled with an addiction to heroin and cocaine for his entire adult life. ***See*** Notes of Testimony ("N.T."), 3/18/26, at 15-16, 219. From 2011 to 2024, Father demonstrated a pattern of attending drug treatment, experiencing brief periods of sobriety, and then relapsing. ***See id.*** at 16-17, 32, 41-42, 77. Father was intermittently incarcerated during this time for charges related to his drug addiction and theft. ***See*** N.T., 3/18/26, at 28, 31, 35, 46, 51-52.

In the midst of Father's substance abuse struggles, he and Mother were married in September 2016. ***See id.*** at 21. They resided together with the Children until September 2019, when Father left the marital home following another relapse. ***See id.*** at 28-29, 84, 129-30. Since this departure, Father has not had any relevant contact with the Children. ***See id.*** at 33-34, 84.

In May 2021, Mother filed for divorce and requested custody of the Children. ***See id.*** at 49-51, 138. Mother and Father's divorce was finalized in December 2022. On February 9, 2023, following a custody hearing wherein Father failed to appear, Mother was awarded sole legal and sole physical custody of the Children. Thereafter, Appellees commenced their relationship during the summer of 2023. ***See*** N.T., 3/18/26, at 147-48.

In April 2025, after Father had maintained his sobriety for a year, he filed a petition for modification of custody. ***See*** Father's Exhibit 6. On May 13, 2025, Appellees filed petitions seeking the involuntary termination of Father's parental rights to the Children pursuant to 23 Pa.C.S.A. § 2511(a)(1) and (b). Approximately two weeks later, Appellees married, and Mother and the Children, moved into Stepfather's home.[1] ***See id.*** at 146-47, 152.

On December 8, 2025, the orphans' court appointed Jennifer Dickerson, Esquire ("Attorney Dickerson"), "as Counsel to represent the [Children]" who were then eight and six years old, respectively. Orders, 12/8/25. The appointment orders instructed Attorney Dickerson to "file a motion addressing whether or not a conflict exists in his or her representation of the best interest versus legal interests of the [Children]." ***Id.***

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[1] Appellees were not married at the time they filed the subject petitions to involuntarily terminate Father's parental rights. Our Supreme Court has explained that "a termination petition filed by one parent against the other must occur in the context of an anticipated adoption[.]" ***In re Adoption of M.R.D.***, 145 A.3d 1117, 1120 (Pa. 2016). To that end, the Act requires a parent seeking termination in this context "to consent to the adoption and to relinquish his or her parental rights." ***Id.*** (citing 23 Pa.C.S.A. § 2711(a)(3), (d)(1)). "An exception to this relinquishment requirement exists, however, in second-parent adoption cases where the adopting party is the spouse of the parent seeking termination—that is, in the context of a stepparent adoption." ***Id.*** at 1120-21. Critically, however, Appellees were married prior to the termination hearing in this case. Thus, "[w]hen the court granted termination, the adoption of [the Children] by Stepfather was foreseeable." ***Interest of A.N.A.***, 334 A.3d 413, at *3 (Pa. Super. 2025) (unpublished memorandum). Accordingly, we decline to hold that Appellees' unmarried status at the time of filing impacts the validity of the underlying decrees. ***See id.***

On March 2, 2026, Attorney Dickerson met with the Children. During this meeting, she learned, *inter alia*, that the Children had not yet been made aware of the termination proceedings filed by Appellees concerning Father. ***See*** N.T., 3/18/26, at 242-43. On March 5, 2026, Attorney Dickerson filed motions in compliance with the court's orders, in which she alleged that:

> 6. Due to the age of the [Children], the Attorney avers that the [Children are] not capable of directing representation by expressing [their preferences].
>
> 7. The Attorney for the [Children] avers that after reasonable inquiry and investigation, there is no conflict of interest in representing the best interests as well as the legal interests of the [Children].

Motion, 3/5/26 at ¶ 6-7. In response to Attorney Dickerson's motion, the orphans' court entered orders stating that "upon consideration of the within motion, it is hereby **ORDERED** and **DIRECTED** that Jennifer Dickerson, Esquire, is appointed to represent the [Children's] best interests and legal interests in all orphans' court's proceedings." Orders, 3/9/26 (cleaned up).

On March 18, 2026, the orphans' court conducted an evidentiary hearing. At the outset of the hearing, the court made the following inquiry:

> THE COURT: And, [Attorney] Dickerson, I understand that you will be representing both the best and legal interests of the [C]hildren; is that correct?
>
> ATTORNEY DICKERSON: Yes, Your Honor.
>
> THE COURT: And does anyone have any objection to [Attorney] Dickerson serving in both roles?
>
> COUNSEL FOR MOTHER: No, Your Honor.

COUNSEL FOR FATHER: No, Your Honor.

THE COURT: Very well. Then we may begin.

See N.T., 3/18/26, at 4-5.[2]

On April 23, 2026, the orphans' court involuntarily terminated Father's parental rights to the Children pursuant to Section 2511(a)(1) and (b). On May 20, 2026, Father timely filed notices of appeal and concise statements of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b). On June 12, 2026, the orphans' court filed a Rule 1925(a) opinion.

On appeal, Father raises the following issue:

> Did the orphans' court abuse its discretion and/or err as a matter of law when it accepted legal counsel's representation that there was no conflict with her appointment as legal and best interest counsel based on the age of the children, who were six and eight years old, and that they were unable to direct legal representation, when she had not spoken to the Children about the hearing, which left them completely unaware of the nature and consequence of the proceeding, unaware that Father was contesting termination, and unaware that they had an absolute right to express their preferred outcome?

Father's Brief at 3 (cleaned up).

Before reaching the merits of Father's appeal, we address *sua sponte* whether the orphans' court properly appointed Attorney Dickerson pursuant to 23 Pa.C.S.A. § 2313(a). ***See In re Adoption of K.M.G.***, 663 Pa. 53, 81-

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[2] Mother testified on her own behalf, presented the testimony of Stepfather, and called Father on cross-examination. Father also separately testified on his own behalf and offered the testimony of several family members. Mother and Father each additionally introduced various documentary exhibits.

83, 240 A.3d 1218, 1235-36 (2020) (holding that "appellate courts should engage in *sua sponte* review to determine if orphans' courts have appointed counsel to represent the legal interests of children in contested termination proceedings, in compliance with [23 Pa.C.S.A. §] 2313(a)," and, further, if the orphans' court appoints one attorney to represent both the children's best interests and legal interests, "appellate courts should review *sua sponte* whether the orphans' court made a determination that those interests did not conflict" prior to appointment).

The Adoption Act provides the following:

> **(a) Child**. — 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) (italics added). "[A] child's legal interests . . . are synonymous with the child's preferred outcome," whereas a child's best interests encompass what is "best for child's care, protection safety, and wholesome physical and mental development, regardless of whether the child agrees." ***Matter of Adoption of A.C.M.***, 333 A.3d 704, 708 (Pa.Super. 2025) (citations omitted). In order to "ensure that the child's legal interests are presented to the orphans' court," this Court has explained that "a single attorney cannot represent a child's best interests and legal interests if those interests conflict." ***K.M.G.***, 663 Pa. at 79, 82, 240 A.3d at 1234, 1236.

Therefore,

> [t]o fulfill its statutory duty under Section [] 2313[(a)], the [o]rphans' [c]ourt:
>
> > must determine whether counsel can represent the dual interests ***before*** appointing an individual to serve as GAL/Counsel for a child. Given the essential nature of the GAL/Counsel's ability to represent a child without conflict and ***this Court's mandate that the orphans' court make that determination prior to appointment***, we conclude that appellate courts should verify that the orphans' court indicated that the attorney could represent the child's best interests and legal interest without conflict.
>
> ***K.M.G.***, [663 Pa. at 82-83,] 240 A.3d at 1236 (emphases added). An [o]rphans' [c]ourt's 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." ***Id.***

A.C.M., 333 A.3d at 708 (emphasis in original).

In ***A.C.M.***, this Court held an appointment order "which delegated to counsel the ***[o]rphans' [c]ourt's responsibility*** to determine whether a conflict in dual representation existed" violates ***K.M.G.*** ***Id.*** at 708 (citation and footnote omitted) (emphasis added).[3] Thus, we vacated the termination decrees and remanded for the court to follow the mandate of Section 2313(a). ***See id.*** at 709; ***see also Interest of N.M.D.***, 354 A.3d 494 (Pa.Super. 2026) (unpublished memorandum) (vacating a termination order where the orphans' court "accepted [the GAL's] statement that there was no conflict" instead of

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[3] The appointment order in ***A.C.M***. "assigned the GAL the responsibility of identifying any conflict of interest in the joint representation," and instructed the GAL to move for the appointment of a separate counsel if it became aware of a conflict. ***A.C.M.***, 333 A.3d at 708.

making an independent conflict determination); ***In re Adoption of Z.N.L.***, 362 A.3d 734 (Pa.Super. 2026) (unpublished memorandum) (same).[4]

Instantly, the orphans' court failed to make the requisite conflict determination prior to the appointment of Attorney Dickerson as legal counsel. ***See A.C.M.***, 333 A.3d at 708 (citing ***K.M.G.***, 663 Pa. at 82-83, 240 A.3d at 1236). Moreover, the appointment orders improperly delegated the orphans' court's responsibility by mandating that Attorney Dickerson file a motion addressing whether a conflict existed in her dual representation. ***See*** Orders, 12/8/25. In its subsequent orders, the orphans' court merely relied upon Attorney Dickerson's representations from her motion but failed to make any independent conflict determination. ***See*** Orders, 3/9/26. Finally, at the commencement of the evidentiary hearing, the court inquired whether the parties harbored any objections but did not undertake an independent review. ***See*** N.T., 3/18/26, at 4-5. Accordingly, the orphans' court wholly failed to provide an independent conflict determination regarding Attorney Dickerson's representation of the Children's legal and best interests. Thus, we are constrained to vacate the orphans' court's decrees and remand for the orphans' court to fulfill its duty pursuant to Section 2313(a).

We direct the Prothonotary of this Court to immediately remit the record to the orphans' court. On remand, consistent with Section 2313(a), ***K.M.G.***,

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[4] Pursuant to Pa.R.A.P. 126(b)(2), non-precedential decisions filed after May 1, 2019, may be cited for their persuasive value.

and ***A.C.M.***, the orphans' court shall, within thirty days, hold a hearing and make an independent determination as to whether there is a conflict between the Children's best interests and legal interests that would prevent Attorney Dickerson from representing both interests. ***See K.M.G.***, 663 Pa. at 81-82, 240 A.3d at 1234-36; ***A.C.M.***, 333 A.3d at 709. If the orphans' court determines that no conflict exists between the Children's dual interests, then it shall re-enter its decrees involuntarily terminating Father's parental rights, which will constitute a final, appealable order. ***See A.C.M.***, 333 A.3d at 709 (citing ***In re A.J.R.O.***, 270 A.3d 563, 570 (Pa.Super. 2022)). If the orphans' court determines that there is a conflict between the Children's best interests and legal interests, then the court shall appoint separate legal counsel for the Children and conduct a new termination hearing. ***See id.***; ***see also K.M.G.***, 663 Pa. at 82, 240 A.3d at 1235.

Termination decrees vacated. Cases remanded for further proceedings consistent with this decision. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/6/2026