



# SWAN Legal Services Initiative

## April Legal Report

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### PENNSYLVANIA SUPREME COURT

#### **In the Interest of: L.B.J., A Minor**

Date of Order: April 3, 2018  
Cite: 183 A.3d 971 (Pa. 2018)

The Pennsylvania Supreme Court granted the Petition for Allowance of Appeal to determine whether the Child Protective Services Law (CPSL) allows a mother to be found a perpetrator of child abuse in the event she has a drug addiction and uses illicit substances while her child is in utero. The second issue to be determined by the Supreme Court is whether the intent of the CPSL section that requires reporting of children under one year or age born addicted is limited to providing “protective services” to addicted newborns and their families, and are “not so expansive to permit alcoholic or addicted mothers be found to have committed child abuse while carrying a child in her womb[?]”

### PENNSYLVANIA SUPERIOR COURT

#### **In Re: Adoption of: T.M.L.M , a Minor, Appeal of S.L.M.**

Date of Decision: April 13, 2018  
Cite: 1480 WDA 2017

#### **Holding:**

The Superior Court vacated and remanded the trial court’s involuntary termination of parental rights order, where the court appointed Guardian Ad Litem (GAL) only represented the child’s best interest and not his legal interest.

#### **Facts and Procedural Posture:**

Cambria County Children and Youth Services (CYS) became involved with the family around January of 2014, which was shortly after the child’s mother had attempted suicide and was hospitalized for three days. In June of 2014, the child was adjudicated dependent due to concerns for Mother’s mental health, drug and alcohol abuse, lack of supervision, and domestic violence. CYS placed the child with his maternal great aunt, and while the child flourished in kinship care, the child’s mother demonstrated a lack of progress. From the December of 2015 permanency review hearing onward, Mother was determined to be non-compliant, as she failed to complete drug and alcohol treatment, mental health treatment, to maintain stable housing, to maintain contact with the child or CYS, and was unsuccessfully discharged from family services. In October of 2016, the child’s goal was changed from reunification to adoption and CYS filed a petition to involuntarily terminate Mother’s parental rights. The Orphans’ Court conducted the termination hearings on January 24, 2017; May 5, 2017; and May 18, 2017. At the start of the May 5, 2017 termination hearing, the Orphan’s Court noted on the record that the GAL who had been appointed as legal counsel had also been appointed to represent the child’s legal interest. While the Orphans’ Court

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proceedings were commencing, Mother had plead guilty to charges arising out of a large drug bust, and was sentenced to 36 to 72 months of imprisonment (Mother pleaded guilty in April of 2017). On September 5, 2017, the Orphans' Court entered an order terminating Mother's parental rights pursuant to 23 Pa.C.S. §§ 2511(a)(1),(2),(5),(8) and 2511(b) of the Adoption Act. Mother appealed.

**Issue:**

Did the GAL's representation of the child satisfy the requirements of 23 Pa.C.S. § 2313(a)?

**Rationale:**

At the onset of their opinion, the Superior Court assessed that 23 Pa.C.S. §2313 (a) creates a statutory right to counsel, and quoted In re: K.J.H., in assessing that the failure to appoint statutorily required counsel is an issue that the Superior Court can raise *Sua Sponte*. In re: K.J.H., 180 A.3d 411, (Pa. Super. 2018). The Superior Court noted in In re Adoption of L.B.M. that "a child's legal interests are distinct from his or her best interests, in that a child's legal interests are synonymous with the child's preferred outcome, while a child's best interests must be determined by the court." In re Adoption of L.B.M., 161 A.3d 172, 174 (Pa. 2017). The Court then turned its analysis to the record of the case and saw that during one of the termination hearings the GAL had disclosed that she did not meet with or speak to the child, and that her only concern was for the child's best interest. The Superior Court disapproved of both the fact that they were unable to find anywhere in the record where the GAL stated the child's preferred outcome, and the fact that the GAL admitted that she did not attempt to interview the child. Beyond this, the GAL failed to file a brief on appeal or join the brief of another party, nor did she attend oral argument. The Superior Court frowned upon the GAL's level of representation, as they found that children typically have no say in the selection of their counsel and must be represented with zeal and professionalism. The Superior Court also found that effective representation requires, at a minimum, attempting to ascertain the client's position and advocating in a manner designed to effectuate that position, and that the GAL in this case had clearly failed to do so. From these facts, the Court determined that the child's right to counsel was deprived and as such, the Court vacated the Trial Court's order and remanded the case back to the orphans court with instructions to appoint separate counsel, who will determine if the child's legal interest is consistent with the results of the prior proceedings.

**AMENDMENTS TO PA RULES OF JUVENILE COURT PROCEDURE:**

On April 23, 2018, the Supreme Court of Pennsylvania issued an order changing Pennsylvania Rules of Juvenile Court Procedure (Pa R.J.C.P) §§409 & 1140. Pa. R.J.C.P. §409 relates to delinquency adjudications, and was changed to note that if a court were to find that a youth is not in need of treatment, supervision, or rehabilitation in delinquency adjudication proceedings, the "petition shall be dismissed" and the juvenile shall be released. Pa. R.J.C.P. §1140 relates to the issuance of bench warrants for failure to appear and was amended to add §1140 (3) which states that, "The judge shall not issue a bench warrant for a child who absconds." The comments to Pa. R.J.C.P. §1140 were also amended to add that a court is not precluded from issuing a bench warrant for a child who is adjudicated delinquent and dependent, or an order for protective custody. The comments to Pa. R.J.C.P. §1140 also note that courts may inquire as to efforts made to locate a dependent child. The aforementioned amendments are set to take effect on July 1, 2018. For more information view the links provided below.

<http://www.pacourts.us/assets/opinions/Supreme/out/Order%20Enteredattach%20%2010351668435786107.pdf?cb=1>

<http://www.pacourts.us/assets/opinions/Supreme/out/Order%20Enteredattach%20%2010351697635792675.pdf?cb=1>

**AMENDMENTS TO PA CODE OF JUDICIAL CONDUCT AND THE RULES GOVERNING STANDARDS FOR MAGISTERIAL DISTRICT JUDGES:**

On April 25, 2018, the Supreme Court of Pennsylvania issued an order making amendments to the Pennsylvania Code of Judicial Conduct (rules 3.1 and 3.6), and to the Rules Governing Magisterial District Judges (rules 2.3, 3.1 and 3.6), to add language that precludes judges from discriminatory actions or expressions regarding “gender identity or expression” (Rule 3.1 for Judges and Magistrates) and from holding membership in an organization that engages in discrimination on the basis of “gender identity or expression” (Rule 3.6 for Judges and Magistrates). Rule 2.3 of the Rules Governing Magisterial District Judges was also amended to require that Magisterial Judges and attorneys (practicing in Magisterial Courts) refrain from manifesting bias based upon “gender identity or expression.” These amendments are set to take effect July 1, 2018, and can be viewed at the links provided below.

<http://www.pacourts.us/assets/opinions/Supreme/out/Order%20Entered1%20%2010351980435848000.pdf?cb=1>

<http://www.pacourts.us/assets/opinions/Supreme/out/Order%20Enteredattach%20%2010351991735849551.pdf?cb=1>

**AMENDMENTS TO PA RULES OF PROFESSIONAL CONDUCT:**

On April 23, 2018, the Supreme Court of Pennsylvania issued an order amending Pennsylvania Rules of Professional Conduct (rules 1.1 & 1.6) to reflect that competence now requires attorneys to be familiar and act in accordance with the policies of the court in which the attorney practices, including rules related to the disclosure of confidential or sensitive information. Competent practice under rules 1.1 & 1.6 also requires attorneys to comport with the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. These amendments are set to take effect July 1, 2018, and can be viewed at the link provided below.

<http://www.pacourts.us/assets/opinions/Supreme/out/Attachment%20%2010351671135786137.pdf?cb=1>

**IMPLEMENTATION OF THE 2018 FEDERAL POVERTY INCOME GUIDELINES:**

On April 14, 2018, The Department of Human Services (DHS) announced the implementation of the 2018 Federal Poverty Income Guidelines which were issued by the United States Department of Health and Human Services on January 18, 2018. The Federal Poverty Income Guidelines are the basis for establishing income eligibility limits for programs such as Medicaid, and can be viewed at the link below.

<https://www.pabulletin.com/secure/data/vol48/48-15/578.html>

**ALLOWABLE PRICES UNDER WIC:**

On April 7, 2018, the Department of Health published their list of maximum allowable prices and competitive price lists for WIC eligible items. These price lists became effective on April 1, 2018 and shall remain in effect through June 30, 2018. For more information view the link provided below.

<https://www.pabulletin.com/secure/data/vol48/48-14/541.html>