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In re Adoption/Guardianship, No. T97036005
Children Have a Statutory Right to a Hearing on the Merits for a Petition to Terminate Parental Rights

By Meredith Stein

The Court of Appeals of Maryland held that a child who is the subject of a termination of parental rights petition, and makes a timely objection thereto, is entitled to a hearing on the petition's merits. *In re Adoption/Guardianship, No. T97036005*, 358 Md. 1, 746 A.2d 379 (2000). In a consolidated case, four Children In Need of Assistance (CINA) who through counsel filed timely appeals against the decision to terminate their natural parents' rights, were deemed by the court to be parties to the termination petitions. As such, the children were entitled to representation at the petition hearings, as well as an opportunity to be heard on the petition's merits.

Jamal L., Dimitri D., Iesha E., and Christopher C. were all foster children who had been committed to the care of the Baltimore City Department of Social Services (BCDSS). Each had been previously adjudicated a CINA, pursuant to section 3-812 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (1973, 1998 Repl. Vol. 1999 Supp.). A petition for "guardianship with the right to consent to adoption or long-term care short of adoption" was filed by BCDSS on the children's behalf. BCDSS's requests were granted by the trial court, thereby terminating parental rights to the children either

by operation of law or consent. The trial court had denied each child's request for hearings on the merits of the petition.

The first child, Jamal L., requested a hearing on the merits because he believed his permanency plan through BCDSS was to be returned to his natural mother. Jamal requested, in the alternative, the case be held *sub curia* pending a decision of the Court of Special Appeals of Maryland on *In re Adoption/Guardianship No. T97036005*, No. 783, Sept. Term, 1998 (Md. Ct. Spec. App. Feb. 10, 1999). The second child, Dimitri D. requested a postponement and a trial on the merits based on evidence that there was a connection between him and his father and his desire to be reunited with his mother. The postponement was denied. After which, Iesha E. requested a trial on the merits to show a family bond that had formed between herself and her parents and siblings through frequent contact. The circuit court denied Iesha's request for a hearing on the merits for two reasons: 1) her parents consented to termination by operation of law and; 2) Iesha lacked standing for a trial on the merits. Finally, Christopher C. requested a postponement to attempt to give notice and obtain consent from his absentee father and for the opportunity to have Christopher's

views on the petition heard. The circuit court denied the request and granted BCDSS's petition to waive notice to Christopher's father and guardianship. Upon timely appeal to the court of special appeals, an unpublished opinion was issued affirming the circuit court's decision holding that the denial of postponement was not an abuse of discretion. In each child's case, a timely objection to the circuit court's decision was filed, and a writ of certiorari was granted by the Court of Appeals of Maryland to decide the rights of the children in Termination of Parental Rights Proceedings.

The court began its analysis by determining whether a child is considered a party to the petition for termination. *In re Adoption/Guardianship, No. T97036005*, 358 Md. 1, 12, 746 A.2d 379, 385. A "party" to the petition, as defined by section 3-801(r) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, "includes a child who is the subject of a petition, [and] the child's parent, guardian or custodian." *Id.* at 13-14, 746 A.2d at 385-86. To substantiate this definition, the court read section 3-804(a)'s plain language defining "party" to include a child, previously adjudicated a CINA, who is the subject of a termination of parental rights

proceeding and deemed to be under the jurisdiction of the Juvenile Court. *Id.*, 746 A.2d at 385-86. The court opined that it would be illogical to allow the child to be a party in CINA proceedings, which commits them to BCDSS's custody, but not allow him to be a party in guardianship proceedings. *Id.* at 15, 746 A.2d at 386-87.

The court also noted that under Maryland common law, a party to an action, whose rights are to be affected, has the right to be heard. *Id.* at 16-17, 746 A.2d at 387. The court determined that Maryland law affords this privilege statutorily in termination of parental rights hearings. *Id.* The court interpreted these laws to extend to children by looking to the child's right to counsel, notice of the hearing, and the opportunity to object. *Id.* Section 3-821(a) of the Courts and Judicial Proceedings Article provides that "a party is entitled to the assistance of counsel at every stage of any proceeding under Subtitle 8, Juvenile Causes." Moreover, if read in conjunction with section 3-804(a)(2), this privilege also applies to termination of parental rights hearings. *Id.* The court, therefore, concluded that the right to representation by counsel implies the right to be heard. *Id.* at 17-18, 746 A.2d at 388.

Section 5-323(a)(1)(iv) of the Family Law Article of the Annotated Code of Maryland requires separate counsel to be supplied for the child in an involuntary termination of parental rights proceeding. *Id.* The court equated this right of the child to the parental right to representation by

counsel and the right to be heard. Therefore, the child should also have the right to an evidentiary hearing and the right to be heard. *Id.* Without this interpretation, the court held, the role of counsel to the child would serve little or no purpose. *Id.* at 18, 746 A.2d at 388.

The court recognized the fact that notice to the attorney representing a child in CINA hearings must be given pursuant to section 5-322(a)(1)(ii)(2) of the Family Law Article. *Id.* Further, this requirement includes that a copy of the petition and cause for an action for guardianship to be given to the same attorney, pursuant to Rule 9-105(f). *Id.* These provisions provide an opportunity for objection on behalf of the child. Without objecting, the attorney for the child is considered to have consented to the guardianship. *Id.* at 19, 746 A.2d at 388. Moreover, Rule 9-107(a), as noted by the court, provides that "any person having a right to participate in a proceeding for adoption or guardianship may file a notice of objection to the adoption or guardianship." *Id.* The purpose of the party's right to notice and right to object, as seen in Rule 9-109(a), is to enable that party an opportunity to be heard on the merits. *Id.* at 19, 746 A.2d at 388-89. Based on this statutory interpretation, the court of appeals concluded that because the child is considered a party to a guardianship action, he or she has a right to counsel, a right to notice of the petition, and finally, a right to be heard, as indicated by the Family Law Article and the Maryland Rules. *Id.* at 19-20, 746 A.2d at 389.

Finally, the court noted that the standards to comply with when ruling on a guardianship petition are "the best interests of a child," as codified in Rule 9-109(b) and section 5-313 of the Family Law Article. *Id.* at 22, 746 A.2d at 390. Rule 9-109(b) points to Section 5-313, which sets out a detailed list of factors which must be established by clear and convincing evidence. *Id.* As such, the court concluded that in a guardianship hearing, Rule 9-109 mandates that the factors in Section 5-313 must always be considered by the court. *Id.* at 22-23, 746 A.2d at 390-91. Furthermore, the hearing record must reflect the consideration of all the statutorily required factors. *Id.* at 23, 746 A.2d at 391.

The Court of Appeals of Maryland concluded that the burden imposed by requiring the additional safeguard of an evidentiary hearing is minimal to ensure that the best interests of the child are protected. *Id.* at 25, 746 A.2d at 392. A child has a statutory right as a party to a guardianship hearing to be heard, and therefore, with timely objection on the child's behalf, the child is entitled to an evidentiary hearing on the merits of his or her case.

The decision from the Court of Appeals of Maryland on this compilation of cases opens many doors and opportunities for children in need of assistance in Maryland juvenile law, as it reshapes the way children are viewed in guardianship and adoption proceedings. Specifically, children who are threatened with being permanently separated from their natural parents

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now have an opportunity to voice concerns about how their guardianships are to be handled. The practitioner should be aware that this important decision affects his or her duty to represent children in these proceedings. A more active role for both child and practitioner in guardianship and adoption proceedings has resulted. The goal is to help ensure what is in the best interests of the child by investigating thoroughly, including considering the concerns of the child. Finally, since this may affect the speed at which children are filtered through the social service system, due to the possibility of an extra step in the process, the social service system must scrutinize their petition process more closely.