

# THE SUPREME COURT OF PENNSYLVANIA

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**14 WAP 2024**

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**In the Interest of S.W., Minor**

**Petition of: S.W., Minor, and Allegheny County Office of  
Children, Youth and Families**

**Children's Fast Track Appeal**

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**BRIEF ON BEHALF OF APPELLANT, ALLEGHENY COUNTY  
OFFICE OF CHILDREN, YOUTH AND FAMILIES**

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Joint petition for allowance of appeal from the March 13, 2024,  
Opinion and Order of the Superior Court at 22 WDA 2023,  
vacating the November 8, 2022, Order of the Court of Common  
Pleas of Allegheny County, Family Division – Juvenile Section at  
No. CP-02-DP-0000729-2020

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## **STATEMENT OF JURISDICTION**

This is an appeal from a final order of the Superior Court of Pennsylvania, Western District. The Supreme Court accepted Appellant and the guardian *ad litem's* Joint Petition for Allowance of Appeal in this matter on May 22, 2024. Pursuant to 42 Pa.C.S. § 724, the Supreme Court has jurisdiction to review the order.

## **ORDER IN QUESTION**

Appellant seeks review of the decision entered by the Superior Court on March 13, 2024. The opinion and order of the Superior Court is attached as Appendix A. The Superior Court decision vacated an order that was entered by the Allegheny County Court of Common Pleas, Juvenile Division, on November 8, 2022. The opinion of the trial court is attached as Appendix B.

## **STATEMENT OF THE SCOPE AND STANDARD OF REVIEW**

The present case concerns a question of law. Accordingly, the Supreme Court's scope of review in this matter is plenary, and the

standard of review is de novo. *Dechert LLP v. Com.*, 998 A.2d 575, 579 (Pa. 2010); *In re J.S.*, 980 A.2d 117, 120 (Pa. Super. 2009).

### **STATEMENT OF THE QUESTION PRESENTED**

1. Whether the judicially created “prospective adoptive parent” exception to the general prohibition against foster parents participating in dependency cases was abrogated by the Legislature’s subsequent enactment of Section 6336.1(a) of the Juvenile Act, which provides that preadoptive foster parents shall not have standing in the matter absent an award of legal custody of the child?

**Suggested Answer:** Yes.

### **STATEMENT OF THE CASE**

A.E. and Ann.E. are former non-kin foster parents of the child S.W. The child was born on September 15, 2020, and removed from her mother’s care on October 16, 2020. See Shelter Care Order, 10/22/2020. The child was placed with A.E. and Ann.E. upon removal from her mother. See *id.* The Court of Common Pleas



(hereinafter "trial court") awarded legal custody of the child to Allegheny County Office of Children, Youth and Families (hereinafter "OCYF") at a shelter hearing on October 21, 2020, and adjudicated the child dependent on November 25, 2020. See *id.* and Order of Adjudication and Disposition, 12/17/2020. OCYF retained legal custody of the child for the duration of the dependency case, and the trial court never awarded legal custody to A.E. and Ann.E. See Permanency Review Order, 11/30/2022.

The child remained in the care of A.E. and Ann.E. after the shelter hearing, and the trial court maintained reunification with the child's mother as the child's permanency goal. See A.E. and Ann.E.'s Motion to Intervene, 10/07/2022, and Permanency Review Order, 11/30/2022. On March 31, 2022, OCYF petitioned to terminate the parental rights of the child's mother. See Permanency Review Order, 11/30/2022.

OCYF filed a Motion for Permission to Place on August 12, 2022, due to ongoing concerns with A.E. and Ann.E.'s conduct. Throughout the dependency case, there were concerns that A.E. and Ann.E. were not supportive of the child's permanency goal of

reunification and actively tried to hinder the child's visitation with her mother. Tr. August 26, 2022 at 17; see OCYF's Motion for Permission to Place, 8/12/2022. Additionally, OCYF received an anonymous report alleging that Ann.E. made racist and ableist comments regarding the child's mother. Tr. August 26, 2022 at 21, 48; see OCYF's Motion for Permission to Place, 8/12/2022. Finally, Ann.E. made ableist remarks regarding the child's mother to the foster care caseworker. Tr. August 26, 2022 at 64; see OCYF's Motion for Permission to Place, 8/12/2022.

The trial court held a hearing regarding OCYF's Motion for Permission to Place on August 26, 2022. See Order Granting Motion, 8/26/2022. At this hearing, the trial court stated that pursuant to 42 Pa.C.S. § 6336.1(a), a foster parent or preadoptive parent does not have standing absent an award of legal custody. See Tr. August 26, 2022 at 7:7-14. A.E. and Ann.E. were represented by counsel at the hearing and participated as witnesses, directed by their counsel. Tr. August 26, 2022 at 4:9-10, 70, 106. A.E. and Ann.E., through their counsel, denied that they were seeking to intervene or that viewed themselves as

parties. *Id.* at 9:9-14. A.E. and Ann.E. also did not claim that they were prospective adoptive parents of the child. All parties to the dependency proceeding at that time – OCYF, the child’s guardian *ad litem*, and the child’s mother – believed that removing the child from A.E. and Ann.E.’s care was in the child’s best interests. Tr. August 26, 2022 at 135-137. After the hearing, the trial court granted OCYF’s motion and ordered that the child be moved from A.E. and Ann.E.’s home to a new foster home. See Order Granting Motion, 8/26/2022.

The child was removed from A.E. and Ann.E.’s care around September 6, 2022. See A.E. and Ann.E.’s Motion to Intervene, 09/13/2022 A.E. and Ann.E. filed a Motion to Intervene and a Motion for Return of Child to Foster Parents on September 13, 2022. The trial court denied the Motion to Intervene, and A.E. and Ann.E. withdrew the Motion for Return of Child to Foster Parents. See Order Denying Motion, 9/27/2022, *and* Order of Court, 9/27/2022.

A.E. and Ann.E. filed a new Motion to Intervene and accompanying memorandum of law on October 7, 2022. The trial

court heard oral argument regarding the new Motion to Intervene on October 26, 2022. See Order Denying Motion, 11/08/2022. At oral argument, counsel for OCYF argued that the prospective adoptive parent standing exception was abrogated by 42 Pa.C.S. § 6336.1(a). See Tr. August 26, 2022 at 33:25, 34:1-21, 36:3-5. Additionally, counsel for the child's mother argued that pursuant to 42 Pa.C.S. § 6336.1(a), a foster parent or preadoptive parent does not have standing absent an award of legal custody. See Tr. August 26, 2022 at 40:20-25, 41:1-15. The trial court took the matter under advisement. See Tr. August 26, 2022 at 43:15-19.

The trial court issued an order denying the Motion to Intervene on November 8, 2022, which A.E. and Ann.E. then appealed to the Superior Court. See Petition for Permission to Appeal, 12/14/2022, and Order, 1/10/2023. The guardian *ad litem* argued in his appellate brief that foster parents who have not been awarded legal custody do not have standing in dependency matters. See Brief for Appellee, S.W. at 13, 28-29. The guardian *ad litem* also argued that the prospective adoptive parent standing

exception was abrogated by 42 Pa.C.S. § 6336.1(a). See Brief for Appellee, S.W. at 27-28.

After a hearing on January 27, 2023, the trial court entered an order on February 15, 2023, terminating the parental rights of the child's mother. The child's mother appealed this decision, and the Superior Court affirmed the termination of parental rights on November 8, 2023.<sup>1</sup>

On March 13, 2024, the Superior Court vacated the trial court's order denying A.E. and Ann.E.'s Motion to Intervene and remanded the case for further proceedings. See *Interest of S.W.*, 312 A.3d 345, 361 (Pa. Super. 2024). The Superior Court held that the prospective adoptive parent standing exception remains good law pursuant to *In the Interest of M.R.F., III*, 182 A.3d 1050 (Pa. Super. 2018), and that A.E. and Ann.E. had achieved the status of prospective adoptive parents. *Id.* at 355, 358. However, the Superior Court voiced that it had "significant misgivings about the prospective adoptive parent exception in dependency proceedings"

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<sup>1</sup> The Superior Court noted the facts in this paragraph in its published opinion regarding the trial court's denial of A.E. and Ann.E.'s Motion to Intervene. See *Interest of S.W.*, 312 A.3d 345, 360-61 (Pa. Super. 2024).

and noted its “doubt [that] the holding in *M.R.F., III* could withstand a closer examination by higher authorities.” *Id.* at 355.

## **SUMMARY OF ARGUMENT**

Section 6336.1(a) of the Juvenile Act abrogated the judicially created “prospective adoptive parent” exception to the general prohibition against foster parents participating in dependency cases. The plain, unambiguous language of 42 Pa.C.S. § 6336.1(a) prohibits standing for foster parents and preadoptive parents who do not have legal custody of the child in their care. The statute is clear that a “preadoptive parent” has the right to notice of dependency hearings and the right to be heard at such hearings but does not have standing unless they have been awarded legal custody.

Additionally, landmark case law demonstrates that the prospective adoptive parent standing exception is incompatible with 42 Pa.C.S. § 6336.1(a). The exception has always been implicitly predicated on the assumption that legal custody is not a

necessary condition for prospective adoptive parent standing, which is incompatible with Section 6336.1(a).

Finally, the prospective adoptive parent standing exception interferes with the county child welfare agency's obligations toward reunification under the Juvenile Act. The Juvenile Act requires the county child welfare agency to make reasonable efforts toward reunification, even when adoption is the concurrent permanency goal. The Juvenile Act's hierarchy of permanency goals places reunification above adoption. However, pursuant to existing case law, intact parental rights and a permanency goal of reunification are not barriers to prospective adoptive parent status.

## **ARGUMENT**

### **1. The plain, unambiguous language of 42 Pa.C.S. § 6336.1(a) prohibits standing for foster parents and preadoptive parents who do not have legal custody of the child in their care**

Pursuant to the Statutory Construction Act, "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." See 1 Pa.C.S. § 1921(a). Further, "[w]hen the words of a statute are clear and free

from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” See 1 Pa.C.S. § 1921(b). The plain language of a statute “generally provides the best indication of legislative intent,” and accordingly, courts must “give effect to the plain language of a [statutory] provision whenever that language is clear and free from ambiguity.” See *Miller v. County of Centre*, 173 A.3d 1162, 1168 (Pa. 2017), *and* *Gavin v. Loeffelbein*, 205 A.3d 1209, 1221 (Pa. 2019).

A party is “a person or the county [child welfare] agency” who has standing to participate in dependency proceedings. See Pa.R.J.C.P. 1120. The Juvenile Act does not define “party,” but Pennsylvania courts have defined a party to include (1) the parents of the child; (2) the legal custodian of the child; or (3) the person whose care and control of the child is in question. See *Interest of M.M.*, 302 A.3d 189, 199-200 (Pa. Super. 2023). Non-parties may motion to intervene in a dependency case under the procedures set forth in Pa.R.J.C.P. 1133, which requires that the non-party aver “the grounds on which intervention is sought.” To move for intervention in a dependency case, a non-party must show that



their interest is substantial, direct, and immediate. See *South Whitehall Township Police Serv. v. South Whitehall Township*, 555 A.2d 793 (Pa. 1989), and Pa.R.J.C.P. 1133, comment. Notably, the Superior Court has specifically expressed that foster parents generally “lack standing to intervene in dependency proceedings.” See *In re S.H.J.*, 78 A.3d 1158, 1161 (Pa. Super. 2013).

Under the Juvenile Act, legal custody involves:

[T]he right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child.

42 Pa.C.S. § 6357. A trial court is empowered to transfer temporary legal custody to various entities, including individuals “qualified to receive and provide care for the child” (i.e. a foster parent) and the county child welfare agency. See 42 Pa.C.S. § 6351(a)(2). However, unless a trial court specifically awards legal custody to a foster parent – whether kin or non-kin – that foster parent does not have the right to make the above decisions for the child in their care.

The Juvenile Act does not define “preadoptive parent” (as distinguishable from “foster parent”) in Section 6336.1(a). The Juvenile Act also does not indicate when this status may attach and does not provide a framework for preadoptive parents to achieve standing. See 42 Pa.C.S. § 6336.1(a).

Section 6336.1(a) does specify that foster parents are entitled to notice of dependency hearings and the right to be heard at such hearings:

The court shall direct the county agency or juvenile probation department to provide the child's foster parent, preadoptive parent, relative providing care for the child or a potential kinship care resource under 67 Pa.C.S. § 7507(c) (relating to Kinship Care Program) with timely notice of the hearing. The court shall provide the child's foster parent, preadoptive parent or relative providing care for the child the right to be heard at any hearing under this chapter.

42 Pa.C.S. § 6336.1(a). However, Section 6336.1(a) provides that:

**Unless a foster parent, preadoptive parent, relative providing care or a kinship care resource for a child has been awarded legal custody pursuant to section 6357 (relating to rights and duties of legal custodian), nothing in this section shall give the foster parent, preadoptive parent, relative providing care or a**

potential kinship care resource for the child **legal standing in the matter being heard by the court.**

*Id.* (emphasis added). The Superior Court has interpreted the plain language of Section 6336.1(a) as follows:

Therefore, the Juvenile Act is clear that if a foster parent, pre-adoptive parent, or relative providing care for a child has not been granted legal custody of the child, he or she does not have standing to participate as a party in the dependency proceeding, and instead is entitled to notice of the hearing and the opportunity to be heard.

*In re J.F.*, 27 A.3d 1017, 1021 (Pa. Super. 2011). The plain language of the Juvenile Act is unambiguous: a “preadoptive parent” has the right to notice and the right to be heard but does not have standing unless they have been awarded legal custody.

In light of the plain language of Section 6336.1(a), the Superior Court has repeatedly emphasized the importance of legal custody in evaluating standing for foster parents. See *In re L.C.*, II, 900 A.2d 378, 382 (Pa. Super. 2006) (“To achieve statutory standing under [Section 6336.1(a)], a foster parent, preadoptive parent or relative providing care must have legal custody of the child . . .”); *In re D.S.*, 979 A.2d 901, 905 (Pa. Super. 2009) (“In

order to achieve statutory standing under Section 6336.1, a foster parent, pre-adoptive parent or relative providing care must have legal custody of the child.”); *In re J.S.*, 980 A.2d 117, 122-23 (Pa. Super. 2009) (“As [f]oster [p]arents do not have legal custody, they do not have standing to participate in the proceedings . . .”); *In Interest of J.P.*, 178 A.3d 861, 866 (Pa. Super. 2018) (“[F]oster parents do not have party standing in dependency proceedings unless they have been granted legal custody.”). These rulings comport with the plain, unambiguous language of Section 6336.1(a).

In the present case, the Superior Court concurred with this reasoning, concluding:

As a matter of statutory construction, Section 6336.1(a) appears fairly unambiguous insofar as it simply does not grant foster parents – or pre-adoptive parents – any standing in any juvenile matter unless they have been awarded legal custody. Under this provision, foster parents in dependency proceedings are entitled to notice of the hearing, and they are entitled to be heard, but that would appear to be the extent of their rights.

See *Interest of S.W.*, 312 A.3d 345, 356 (Pa. Super. 2024).

Section 6336.1(a) is clear that the Juvenile Act does not grant

standing to a foster parent or preadoptive parent if they have not been awarded legal custody. Any other reading is contrary to the plain, unambiguous language of Section 6336.1(a) and therefore untenable.

**2. Landmark case law demonstrates that the prospective adoptive parent standing exception is incompatible with 42 Pa.C.S. § 6336.1(a)**

As noted *supra*, foster parents generally lack standing to intervene in a dependency matter. See *In re S.H.J.*, 78 A.3d 1158, 1161 (Pa. Super. 2013). The Superior Court has noted that case law uses the terms “preadoptive parent” and “prospective foster parent” interchangeably; however, prior to the enactment of 42 Pa.C.S. § 6336.1(a), the Superior Court created a “prospective adoptive parent” standing exception. See *In the Interest of M.R.F., III*, 182 A.3d 1050, 1054 n.2 (Pa. Super. 2018), *and Mitch v. Bucks County Children and Youth Social Service Agency*, 556 A.2d 419, 423 (Pa. Super. 1989). Critically, the exception has always been implicitly predicated on the assumption that legal custody is not a

necessary condition for prospective adoptive parent standing, which is incompatible with Section 6336.1(a).

The Superior Court created the prospective adoptive parent standing exception in *Mitch v. Bucks County Children and Youth Social Service Agency*. See *Mitch v. Bucks County Children and Youth Social Service Agency*, 556 A.2d 419, 423 (Pa. Super. 1989). In *Mitch*, the Superior Court reasoned that a prospective adoptive parent differed from a foster parent due to “an expectation of permanent custody which, though it may be contingent upon the [county child welfare] agency’s ultimate approval, is nevertheless genuine and reasonable.” See *id.* This expectation of permanent custody, according to the Superior Court, created the substantial, direct, and immediate interest required for a non-party to obtain standing. See *id.*; see also *South Whitehall Township Police Serv. v. South Whitehall Township*, 555 A.2d 793 (Pa. 1989), and Pa.R.J.C.P. 1133, comment. The Superior Court limited this standing exception to circumstances in which the county child welfare agency removes the child from the care of prospective adoptive parents. See *id.*

Critically, the trial court in *Mitch* awarded legal custody of the child to the county child welfare agency when the trial court adjudicated the child dependent, and there is no indication that the trial court ever awarded legal custody to the former foster parents prior to the appeal. See *Mitch v. Bucks County Children and Youth Social Service Agency*, 556 A.2d at 419. Since *Mitch* granted prospective adoptive parent status to a foster parent who did not have legal custody of the child at issue, it follows that a foster parent's lack of legal custody to the child in their care is not a barrier to prospective adoptive parent status.

After *Mitch* but prior to the enactment of 42 Pa.C.S. § 6336.1(a), the Superior Court reaffirmed the prospective adoptive parent standing exception as good law in *In re Griffin*. See *In re Griffin*, 690 A.2d 1192, 1201 (Pa. Super. 1997). In *Griffin*, the Superior Court ruled that a set of former non-kin foster parents had achieved prospective adoptive parent status. See *id.* at 1201. The Superior Court also indicated that prospective adoptive parent status could potentially attach while parental rights remained intact (i.e. prior to a termination of parental rights). See *id.* at 1199, 1201

(while the order terminating parental rights was filed in April 1995 and prospective adoptive parent status attached in at least July 1995, prospective adoptive parent status may have attached as early as December 1992).

Similar to *Mitch*, the trial court in *Griffin* had awarded legal custody of the children to the county child welfare agency and had never awarded legal custody to the former foster parents. *See id.* at 1214. Therefore, *Griffin* reaffirmed the idea that a foster parent does not need legal custody of the child in their care to achieve prospective adoptive parent status.

In 1998, after the decisions in *Mitch* and *Griffin*, the Pennsylvania Legislature enacted Section 6336.1(a).<sup>2</sup> Subsequently, in *In the Interest of M.R.F., III*, the Superior Court relied on *Mitch* and *Griffin* in ruling that a set of foster parents had achieved the status of prospective adoptive parents. *See In the Interest of M.R.F., III*, 182 A.3d 1050 (Pa. Super. 2018). However, *M.R.F., III* was wrongly decided in its implicit conclusion that the

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<sup>2</sup> The only changes to Section 6336.1(a) since enactment involved the addition of language regarding “potential kinship care resources.”



prospective adoptive parent standing exception survived the enactment of Section 6336.1(a).

In *M.R.F., III*, the Superior Court defined a “prospective adoptive parent” as a “would-be parent [that] has a legitimate, genuine, and reasonable expectation of adoption, even though the authority to finalize the adoption is contingent upon the child care agency's ultimate approval.” See *In the Interest of M.R.F., III*, 182 A.3d at 1054 n.2. Though the Superior Court’s decision was ultimately based on the foster parents’ grounds for intervention rather than their status as prospective adoptive parents, the Superior Court indicated that it believed the prospective adoptive parent standing exception survived the enactment of Section 6336.1(a). See *id.* at 1058-59 (“ . . . we conclude that the trial court erred in concluding that [the foster parents] did not demonstrate that they were preadoptive foster parents as envisioned in *In re Griffin*.”). The Superior Court also indicated that foster parents could achieve prospective adoptive parent status while parental rights remained intact (i.e. prior to a termination of parental rights). See *id.* at 1058. As in *Mitch* and *Griffin*, the Superior Court

in *M.R.F., III* ruled that the foster parents at issue had achieved prospective adoptive parent status despite never having legal custody of the child in their care. See *id.* at 1052 n.1. (noting that the foster parents had never been awarded legal custody). Unlike in *Mitch* and *Griffin*, however, Section 6336.1(a) was in effect when the Superior Court decided *M.R.F., III*.

In the present case, the Superior Court ruled that pursuant to *M.R.F., III*, the prospective adoptive parent standing exception survived the enactment of Section 6336.1(a). See *Interest of S.W.*, 312 A.3d 345, 354 (Pa. Super. 2024). As discussed *supra*, Section 6336.1(a), prohibits standing if a foster parent lacks legal custody of the child in their care; in contrast, the prospective adoptive parent standing exception does not require a foster parent to have legal custody of the child. As the Superior Court in the present case explained:

[W]e question whether the plain language of Section 6336.1(a) could permit the [prospective foster parent standing] exception. The panel in *M.R.F., III* was not directly confronted with the question of whether the exception was abrogated by statute. When faced with that question squarely, it would seem that Section 6336.1(a) plainly disallows standing to any foster

parent, pre-adoptive parent, or relative providing care to the child, at least when it comes to the dependency proceedings – that is, there should be no exception to non-party standing while a parent's rights remain intact.

*Interest of S.W.*, 312 A.3d 345, 355-56 (Pa. Super. 2024). In the present case, the Superior Court voiced that it had “significant misgivings about the prospective adoptive parent exception in dependency proceedings” and noted its “doubt [that] the holding in *M.R.F., III* could withstand a closer examination by higher authorities.” *Id.* at 355.

Notably, the Superior Court has already recognized that Section 6336.1(a) abrogated the prospective adoptive parent standing exception, as seen in a non-precedential case decided after *M.R.F., III*. See *In the Interest of K.R.*, 239 A.3d 70, 5 n.7 (Table), 2020 WL 3989162 (Pa. Super. 2020). In *In the Interest of K.R.*, the Superior Court stated:

Prior to the enactment of Section 6336.1(a), our case law provided that a “prospective adoptive parent” possessed standing for the limited purpose of challenging the removal of a child from his or her care. See *Mitch v. Bucks County Children and Youth Social Service Agency*, 556 A.2d 419 (Pa. Super. 1989), *appeal denied*, 571 A.2d 383 (Pa. 1989); *In re Griffin*, 690 A.2d

1192 (Pa. Super. 1997), *appeal denied*, 700 A.2d 441 (Pa. 1997), *certiorari denied*, 523 U.S. 1004 (1998). Because Section 6336.1(a) plainly changes this prior case law, we conclude that a foster parent is not entitled to any form of standing in a dependency proceeding absent an award of legal custody, regardless of his or her “prospective adoptive” status.

*Id.* *K.R.*’s holding recognizes that the prospective adoptive parent standing exception is incompatible with the plain, unambiguous language of Section 6336.1(a).

In the present case, the Superior Court noted that “[w]hether there is a conflict between *M.R.F., III* and Section 6336.1(a), or whether *M.R.F., III* was wrongly decided are questions that can only be answered by . . . our Supreme Court.” See *Interest of S.W.*, 312 A.3d at 358. Appellant urges this Court to adopt the reasoning of *K.R.*

### **3. The prospective adoptive parent standing exception interferes with the county child welfare agency’s obligations toward reunification under the Juvenile Act**

In 1998, Pennsylvania amended the Juvenile Act to conform to the Adoption and Safe Families Act (hereinafter “ASFA”), a federal statute enacted in 1997. See *In re Adoption of S.E.G.*, 901

A.2d 1017, 1019 (Pa. 2006), *and* *In Interest of A.W.*, 162 A.3d 1117, 1120 (Pa. Super. 2017). ASFA focuses on providing timely permanency for dependent children. See *In re Adoption of S.E.G.*, 901 A.2d at 1019. Pursuant to ASFA and federal funding requirements, state dependency systems require that reasonable efforts are made to “preserve and reunify families” absent certain exceptions. See *In re D.C.D.*, 105 A.3d 662, 675 (Pa. 2014). Accordingly, the Juvenile Act requires the county child welfare agency to make reasonable efforts toward reunification unless the trial court specifically relieves the agency of this duty. See 42 Pa.C.S. § 6341(c.1) *and* 42 Pa.C.S. § 6351(e); *see also* *In Interest of A.W.*, 162 A.3d at 1120.

The Juvenile Act enumerates five hierarchical permanency planning goals: reunification, adoption, placement with a legal custodian, placement with a relative, and placement in another planned permanent living arrangement. See 42 Pa.C.S. § 6351(f.1) *and* *In re B.S.*, 861 A.2d 974, 976-77 (Pa. Super. 2004). The first listed purpose of the Juvenile Act is “preserv[ing] the unity of the family whenever possible,” and accordingly, reunification ranks

above adoption in the hierarchy of permanency goals. See 42 Pa.C.S. § 6301(b)(1) *and* In re B.S., 861 A.2d at 976-77. In a dependency case, the county child welfare agency must make ongoing reasonable efforts toward reunification as the permanency goal until the trial court specifically orders otherwise. See 42 Pa.C.S. § 6341(c.1) *and* 42 Pa.C.S. § 6351(e).

In accordance with ASFA, the Juvenile Act encourages concurrent planning of permanency goals in dependency proceedings. See In re R.J.T., 9 A.3d 1179, 1191 (Pa. 2010). Concurrent planning permits “simultaneous pursuit of reunification and alternative permanent placement” and “allow[s] agencies to consider adoptive resources . . . while keeping alive the potential of reunification.” See In re R.J.T., 9 A.3d at 1186, 1191. The Juvenile Act requires the county child welfare agency to continue its reasonable efforts toward reunification, even after Section 6351(f)(9) requires the county child welfare agency to file a petition to terminate parental rights (a step toward adoption). See 42 Pa.C.S. § 6341 *and* In re Adoption of S.E.G., 901 A.2d at 1027-28 (ruling that an agency can file a petition to terminate parental

rights when the permanency goal remains reunification); *see also* 42 Pa.C.S. § 6341(c.1) *and* 42 Pa.C.S. § 6351(e), (f)(9).

The Superior Court has stated that a foster parent's relationship with the dependent child in their care is "by its very nature subordinate to both the relationship between the agency and the child and to the relationship between the child and the child's parents." *See In re Adoption of Crystal D.R.*, 480 A.2d 1146, 1151 (Pa. Super. 1984). Parents have a fundamental liberty interest in the care, custody, and control of their children; this interest is protected by the due process clause of the Fourteenth Amendment of the United States Constitution. *See Troxel v. Granville*, 530 U.S. 57, 66 (2000). In contrast, foster parents and prospective adoptive parents – whether kin or non-kin – have no corresponding fundamental liberty interest in the care, custody, and control of their foster children. This Court has described the relationship between a foster parent and the child in their care as "established through the Legislative scheme" as well as "uniquely limited and subordinate, state-created, [and] agency-maintained." *See In re G.C.*, 735 A.2d 1226, 1230 (Pa. 1999).

The county child welfare agency is responsible for approving the foster home, supervising the foster home's care of the child, ensuring the foster home's compliance with government regulations, and, when appropriate, removing the child from the foster home. See *In re Adoption of Crystal D.R.*, 480 A.2d at 1150. Foster parents do not have corresponding supervisory rights and obligations over the county child welfare agency. Accordingly, "a foster parent's rights are subordinate to those of the agency that has **legal custody**." See *In re N.S.*, 845 A.2d 884, 887 (Pa. Super. 2004) (emphasis added). While concurrent case planning permits dual goals of reunification and adoption, the legislative scheme regarding the hierarchy of permanency goals and regarding reasonable efforts (regardless of a concurrent permanency goal of adoption) underscores the importance of the county child welfare agency's obligations toward reunification.

In contrast, case law regarding the prospective adoptive parent standing exception indicates that prospective adoptive parent status may attach even when parental rights remain intact and reunification remains a permanency goal. In *Griffin*, the



Superior Court posited that the foster parents at issue may have achieved prospective adoptive parent status over two years prior to the termination of parental rights. See *In re Griffin*, 690 A.2d at 1199, 1201 (while the order terminating parental rights was filed in April 1995 and prospective adoptive parent status attached in at least July 1995, prospective adoptive parent status may have attached as early as December 1992). In *M.R.F., III*, the Superior Court reaffirmed its position that foster parents could achieve prospective adoptive parent status while parental rights remained intact. See *In the Interest of M.R.F., III*, 182 A.3d at 1058. Further, the Superior Court in *M.R.F., III* granted prospective adoptive parent status when the permanency goal remained reunification. See *id.* at 1058 (“Although the trial court denied the petition to terminate Mother's parental rights, and gave her an opportunity to prove her commitment to reunification, that does not negate [the foster parents'] preadoptive status.”).

In the present case, the Superior Court stated that “[j]uvenile courts and local protective services agencies must be free to navigate parental reunification without interference from non-

parties, even as they identify and implement a concurrent adoption goal.” See *Interest of S.W.*, 312 A.3d at 357-58. The Superior Court also noted its “doubt that a foster parent’s interest in a potential adoption could be superlative to the rights of parents or to the duty of local child protective services agencies to reunify families.” See *id.* at 356.

The Superior Court in the present case reasoned that *Griffin* did not conflict with Section 6336.1(a) if “read to mean that prospective adoptive parents only have standing to participate in the subsequent adoption proceedings” once parental rights were terminated. See *Interest of S.W.*, 312 A.3d at 352. However, *Griffin* stands for the opposite proposition that prospective adoptive parent status may attach years prior to termination of parental rights. See *In re Griffin*, 690 A.2d at 1199, 1201. In the present case, the Superior Court even noted that the *M.R.F., III* court “discounted that the child was not immediately eligible for adoption.” See *Interest of S.W.*, 312 A.3d at 353. Under existing case law, intact parental rights and a permanency goal of reunification are not barriers to prospective adoptive parent status.

This runs counter to the Juvenile Act's emphasis on reunification, the corresponding obligations of the county child welfare agency toward reunification, and the nature of a foster parent's relationship with the county child welfare agency.

### **CONCLUSION**

For the reasons set forth above, Appellant respectfully requests that this Court find that the judicially created "prospective adoptive parent" exception to the general prohibition against foster parents participating in dependency cases was abrogated by the Legislature's subsequent enactment of Section 6336.1(a) of the Juvenile Act. Accordingly, Appellant also respectfully requests that this Court vacate the Superior Court's decision granting prospective adoptive parent standing to former foster parents A.E. and Ann.E., who were never awarded legal custody of the child in their care, S.W.

Respectfully submitted,

A handwritten signature in black ink that reads "A Stryker". The signature is written in a cursive style with a large, prominent initial "A".

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**Alexandria Stryker, Esquire**  
Counsel for Appellant – Allegheny  
County Office of Children, Youth  
and Families

**THE SUPREME COURT OF PENNSYLVANIA**

**In the Interest of: S.W., Minor**

**Petition of S.W., Minor, and  
Allegheny County Office of  
Children, Youth and Families**

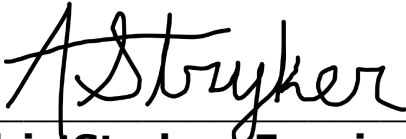
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**14 WAP 2024**

**CERTIFICATE OF COMPLIANCE – Pa.R.A.P. 127**

Pursuant to Pa.R.A.P. 127, I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

June 21, 2024  
Date



**Alexandria Stryker, Esquire**  
Counsel for Appellant – Allegheny  
County Office of Children, Youth  
and Families

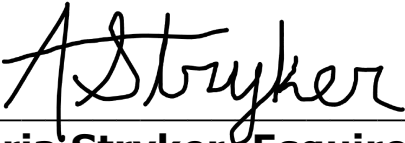
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**Children, Youth and Families** )

**CERTIFICATE OF COMPLIANCE – Pa.R.A.P. 2135**

Pursuant to Pa.R.A.P. 2135(d), I certify that the foregoing brief complies with the word count limit stated in Pa.R.A.P. 2135(a)(1). According to the word count of the word processing system used to prepare the brief, the brief contains 6,305 words.

June 21, 2024  
Date

  
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