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In L.B.M. Case, Pennsylvania Supreme Court Rules Youth in Foster Care Facing Termination of Parental Rights Have a Right to an Attorney

Philadelphia, PA (March 29, 2017) – The Pennsylvania Supreme Court yesterday reversed and remanded the order terminating parental rights in the case of L.B.M., holding that failure to appoint client-directed counsel to represent the children’s legal interests was a structural error. Juvenile Law Center filed an amicus brief in this case and applauds this outcome. “This case represents a key victory in the state of Pennsylvania for children’s rights,” said Lisa Swaminathan, Staff Attorney at Juvenile Law Center, who led the amicus brief effort. ACLU of Pennsylvania, Community Legal Services, National Association of Counsel for Children, National Coalition for a Civil Right to Counsel, and Pennsylvania Legal Aid Network all joined in the brief.

The Opinion of the Court, written by Justice Wecht who was joined by Justices Dougherty and Donohue, held that the statutory language is unambiguous and the court must appoint separate client-directed counsel for the child in a contested termination of parental rights proceeding. The opinion included a recognition that “appointment of client-directed counsel optimizes the protection of the child’s needs and welfare, which form the ultimate issue that the trial court must resolve before granting the [Termination of Parental Rights].”

The opinion also acknowledged that “when a child’s relationship with his or her birth family could be severed permanently and against the wishes of the parents, the legislature made the policy judgment, as is evident from the plain, unambiguous language of the statute, that a lawyer who represents the child’s legal interests, and who is directed by the child, is a necessity.”

“We believe that the voices of children and parents are paramount when courts are making life-changing decisions about families,” said Kathleen Creamer, Family Advocacy Unit Managing Attorney at Community Legal Services, who joined Juvenile Law Center on the amicus brief in this case. “We are pleased that the Supreme Court affirmed that all children deserve a lawyer to represent their wishes when their right to an ongoing relationship with their family is at stake.”

Justices Baer and Mundy each wrote separate dissenting opinions. Justice Baer would apply the hybrid best interest/legal interest GAL role provided for in the Juvenile Act, and Justice Mundy found that the court-appointed GAL fulfills the Juvenile Act’s mandate that counsel be appointed.

This case represents a key victory in the state of Pennsylvania for children’s rights.

Juvenile Law Center is the oldest non-profit, public interest law firm for children in the nation. Widely published and internationally recognized as thought leaders in the field, Juvenile Law Center’s impact on the development of law and

policy on behalf of children is substantial. Juvenile Law Center uses an array of legal strategies and policy advocacy to promote fairness, prevent harm, ensure access to appropriate services, and create opportunities for success for youth in the foster care and justice systems. For more information about Juvenile Law Center's work, visit www.JLC.org.

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