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Annotate this Case

(NOTE: The status of this decision is Published.)

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3238-13T3
APPROVED FOR PUBLICATION

IN THE MATTER OF THE ADOPTION OF
A CHILD BY J.E.V. and D.G.V.

October 23, 2015

APPELLATE DIVISION

Argued September 17, 2015 - Decided October 23, 2015

Before Judges Fuentes, Koblitz and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex
County, Docket No. FA-07-0115-14.

Alex Miriam Miller argued the cause for

appellant L.A. (Donahue Hagan Klein & Weisberg, LLC, attorneys; Francis W. Donahue and Ms. Miller, on the brief).

Bonnie Frost argued the cause for respondents J.E.V. and D.G.V. (Einhorn, Harris, Ascher, Barbarito & Frost, attorneys; Matheu D. Nunn and Mark Wechsler, on the brief).

Respondent The Children's Home Society has not filed a brief.

The opinion of the court was delivered by

KOBLITZ, J.A.D.

After a two-day trial at which she represented herself,

L.A. appeals from the March 4, 2014 order terminating her

parental rights to her young daughter as part of a private adoption.¹ We reverse and remand, holding that L.A. had a

constitutional and statutory right to court-appointed counsel

beginning before trial, when the private adoption agency first

determined to proceed with an adoption over her objection.²

The Children's Home Society of New Jersey (CHS) knew from its first interaction with L.A. that she was indigent, yet at no time was L.A. provided legal counsel. Nor did the court inform

L.A. that she was entitled to appointed counsel. Although this case began with L.A. trying to ensure the well-being of her daughter, and the Division of Child Protection and Permanency (the Division) was never involved, L.A. would have been accorded more due process had her situation been brought to the attention of the Division based on child welfare concerns.

No evidence was introduced at trial that L.A. abused or neglected her daughter; nor that she was addicted to drugs or alcohol, or suffered from mental illness. To the contrary, poverty alone seems to have given rise to L.A.'s concerns

1

The adoption was stayed pending appeal of the termination of her parental rights.

2

L.A. sought counsel on appeal. We referred her request to the Public Defender's Office, which indicated it was not statutorily permitted to represent parents appealing private adoption matters. After initial briefing, we ultimately appointed counsel to represent L.A., and asked the parties to submit supplemental briefs on the issue of her entitlement to trial counsel.

Initially contemplating adoption, L.A. placed the child with CHS. After the mandated pre-adoption counseling, which statutorily requires the advisement that adoption in New Jersey entails "the permanent end of the relationship and all contact between the parent and child,"³ L.A. decided not to surrender her parental rights. She left her daughter with CHS for short-term foster care, and continued to visit the child. L.A. signed a plan agreeing to find a job and permanent housing with the aim of continuing to parent her daughter.

L.A. lived with her sister in Pennsylvania for several months, causing her to miss visits with her daughter. She also gave birth to a baby boy while her daughter was in foster care.

L.A.'s two sons continued to live with her throughout the litigation. L.A. was still receiving welfare assistance and living at a shelter at the time of trial. L.A.'s transient housing and inability to pay for her daughter's care⁴ were known to the agency and the court, and plaintiffs submitted evidence

3 N.J.S.A. 9:3-41(a). Pursuant to N.J.A.C. 10:121A-5.4(c)(1)(i), an adoption agency is required to document that the birth parent was provided such counseling.

4

CHS did not seek payment from L.A. The agency paid the foster family \$13 per day plus reimbursed expenses, until the case changed from foster care to an adoption case.

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of such to demonstrate that L.A. had failed to fulfill her

parental duties.

After an unsuccessful short-term foster placement, the

child was placed with plaintiffs. The evidence adduced at trial

indicates that plaintiffs provided the child with a loving

family, which included another girl of the same age.

Plaintiffs

also provided access to helpful professional resources to

address the child's special needs.

Approximately one year after assuming custody, CHS wrote to

L.A. in a March 1, 2013 letter⁵:

The Children's Home Society is a licensed adoption agency in the State of New Jersey. You placed your daughter . . . in the care of [CHS] on March 8, 2012. Since that time, you have been inconsistent with visitation, you have not maintained consistent contact with your counselor . . . and you have made no viable plan to parent your daughter. As such, we are going to make an adoption plan for your child.

. . . .

You have the	right to be represented by an
attorney, and	you may or may not have the
right to have	counsel appointed to represent
you. You may	contact the Essex/Newark Legal
Service [sic]

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The agency also attached to the letter forms for the surrender of parental rights. This letter was not introduced as evidence at trial. Because both parties included it in their appendix, and it is useful to our understanding of the history of this matter, we have considered it.

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CHS then executed an "agency consent to early filing of adoption complaint" on July 8, 2013, pursuant to N.J.S.A. 9:3-

47(a), stating that the agency "believe[d]" that L.A. had "abandoned the child" and "was not fit to parent the child." If L.A. had been involved with the Division, and if it appeared that the child was in need of services, the Division would have initiated judicial proceedings under Title 30 before the initial placement of the child outside the home,⁶ and within a year would have had to satisfy a judge that adoption was the appropriate plan.⁷

At the suggestion of CHS, plaintiffs filed the adoption complaint on July 18, 2013, attaching the agency consent. L.A.

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See N.J. Dep't of Children & Families, Removal of a Child, in Child Protection & Permanency Manual (2011), [http://www.state.nj.us/dcf/policy_manuals/ CPP-II-C-2-700.pdf](http://www.state.nj.us/dcf/policy_manuals/_CPP-II-C-2-700.pdf) (stating that the Division "may seek and/or accept a parent's consent" for placement without judicial approval only in situations where the placement sought is in congregate care or an independent living arrangement, and only if the child has not been subject to abuse or neglect); see also N.J. Div. of Youth & Family Servs. v. T.S., 426 N.J. Super. 54, 64-66 (App. Div. 2012) (intervention by the Division is proper "to protect a child who, although not abused or neglected, is in need of services to ensure its health and safety"). Pursuant to

N.J.S.A. 30:4C-12, after appropriate investigation by the Division, it could apply for an order granting care and custody of the child to the Division.

7 See N.J.S.A. 30:4C-61.2(a)(2) ("A permanency hearing shall be held that provides review and approval by the court of the placement plan . . . no later than 12 months after the child has been in placement.").

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objected to the adoption at every opportunity.
initial

At the

pre-trial conference in October 2013, more than seven months

after the letter from CHS announcing the plan for adoption, the

court asked L.A.: "Do you intend to get an attorney at all in

this matter?" She responded: "Working on it."

The court

informed L.A. that she should obtain a lawyer
"quickly" to

comply with the discovery schedule.⁸

At no time was she advised

that a lawyer would be assigned to represent her if she could

not afford to retain counsel.

L.A.'s situation is different from private
adoption

situations in other reported decisions.
do

L.A.'s circumstances

not present a stepparent adoption, see
N.J.S.A. 9:3-48(a)(4); In

re Adoption of Children by G.P.B.,
311 N.J. Super. 38, 40 (App.

Div. 1998), rev'd
161 N.J. 396 (1999); see also *In re Adoption*

of a Child by J.R.D.,
246 N.J. Super. 619, 625 (Ch. Div. 1990)

("The substantial number of stepparent adoptions is no longer
considered a surprising or an unusual phenomenon."); nor is this

an objection to adoption of a newborn registered
by a

noncustodial parent after the custodial parent's surrender of

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This interchange can hardly be viewed, as urged by plaintiffs,
as a waiver of her right to appointed counsel. See *N.J. Div. of
Youth & Family Servs. v. J.Y.*,
352 N.J. Super. 245, 266 (App.
Div. 2002) (describing waiver as the intentional relinquishment
of a known right).

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parental rights.⁹ See
N.J.S.A. 9:3-47(c); *In re Adoption of a*

Child by P.F.R.,
308 N.J. Super. 250, 252 (App. Div. 1998).

Nor

is this a situation where a custodial parent or parents have

left their child with a family member or friend for an extended

period of time. See *In re Adoption of a Child by J.D.S.*,
353 N.J. Super. 378, 385 (App. Div. 2002), certifs. denied,
175 N.J.

432 (2003).10 L.A. left her special-needs child in foster care
with a State-licensed agency. That agency placed the child with
a foster family¹¹ who was unknown to L.A. The
agency then
decided on its own that L.A. was an unfit mother
and had
abandoned her child, and encouraged the foster family to file an
adoption complaint over the objection of L.A.

The termination of parental rights by State action is of
constitutional magnitude, and parents unquestionably have the
right to counsel when the State moves to terminate parental
rights. See
N.J.S.A. 30:4C-15.4(a); N.J. Div. of Youth & Family
Servs. v. B.R.,
192 N.J. 301, 305-06 (2007). CHS acted here in
a fashion similar to the Division, but without providing the

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The identity of the child's father is unknown.

10
We note that the objecting parent in the published cases were
represented by counsel.

11
The foster mother testified that her family received the same

training as Division-certified resource families. See
N.J.S.A.
30:4C-27.5.

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services to promote reunification or the legal
safeguards

afforded parents involved in litigation with the Division.

The financially advantaged foster family
retained a

psychologist who conducted separate bonding evaluations¹² of the

child with L.A. and with the foster parents,
and conducted

psychological testing of only the biological
mother.¹³ The

expert determined that the foster parents had become the child's

psychological parents. He opined that separating the child from

her foster family would cause great harm, a greater harm than

severing the child's relationship with her biological mother.¹⁴

The expert made no evaluation of the child
with her older

brother, although L.A. testified the two children had a close

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See *In re Guardianship of J.C.*,

129 N.J. 1, 19-21 (1992)

(discussing the function of comparative bonding evaluations in "assessing the existence, nature, and extent of the harm facing the child" if he or she were separated from the foster parents, but noting the "grave pitfalls" of overreliance on bonding theory in that it is often used "to keep children in foster care rather than return them to their parents").

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He did not diagnose the mother with a mental illness, but indicated certain conditions should be ruled out by further investigation.

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Notably, our Supreme Court has expressed concern with instances "where the Division removed a child from his or her biological parents and placed the child with a foster family, thereby causing a child-foster parent bond to form, and then later attempted to rely on that bond as a basis for terminating the rights of the natural parents." N.J. Div. of Youth & Family Servs. v. I.S.,

202 N.J. 145, 209 n.14 (2010); see *In re Guardianship of K.L.F.*, 129 N.J. 32, 45-46 (1992).

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relationship. Unlike the way a case involving the Division

would proceed, the first time the court was involved with this family was after plaintiffs filed the adoption complaint.

The adoption statute states in pertinent part:

This act shall be liberally construed to the end that the best interests of children be promoted and that the safety of children be of paramount concern. Due regard shall be

given to the rights of all persons affected
by an adoption.

[N.J.S.A. 9:3-37.]

When such an irreversible, critical decision is to be made
by the court in a situation such as this, an indigent person
needs a lawyer. Because the preservation of
families is a
"paramount concern" of the State,
N.J.S.A. 30:4C-1, and the
termination of parental rights is of constitutional dimensions,
B.R., supra, 192 N.J. at 305, indigent parents
facing the
termination of their parental rights by private agency action in
this type of situation are entitled to appointed counsel.
Our
Supreme Court has held that indigent parents in private adoption
matters are entitled to free transcripts,
provided by the
plaintiffs, or if plaintiffs are financially unable to provide
the transcript, then by the Office of the Public Defender (OPD).
In re Adoption of a Child by J.D.S.,
176 N.J. 154, 158-59
(2003). Our Supreme Court opined:

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In a termination action based on Title 9 findings of abuse or neglect, the OPD is responsible for representation and, even when a public interest law firm undertakes that representation, for the ancillary expenses necessary to that representation. We see no basis for distinguishing OPD's responsibility in this setting where, by virtue of State legislative authorization, a private party initiated the severing of parental rights for reasons congruent to the type of findings required in a Title 9 termination action.

[Id. at 158 (citation omitted).]

Our Supreme Court has determined that "the right to appointed counsel for indigent litigants has received more expansive protection under our state law than federal law."

Pasqua v. Council,
186 N.J. 127, 147 n.5 (2006).¹⁵

In Pasqua,

the Court determined that indigent persons facing a civil child

support enforcement hearing that could result in coercive

incarceration were entitled to appointed counsel.
at 149.

Id.

Indigent persons in quasi-criminal matters facing a potential "consequence of magnitude," including loss of driving privileges or even fines, are entitled to appointed counsel. Rodriguez v.

Rosenblatt,
58 N.J. 281, 295 (1971), superseded by statute,
Public Defender Act, N.J.S.A. 2A:158A-5.2, as recognized in W.

World, Inc., supra,
440 N.J. Super. at 195; see R. 7:3-2(b);

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See State v. W. World, Inc.,
440 N.J. Super. 175, 187-88 (App.
Div. 2015) (discussing situations where indigent persons have
been held entitled to appointed counsel).

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State v. Hermanns, 278 N.J. Super. 19, 29
(App. Div. 1994)

(holding "aggregate monetary sanctions of \$1,800 in a single proceeding gives rise to the right to counsel under Rodriguez").

Even indigent corporations are entitled to
appointed counsel

when facing a consequence of magnitude. W. World,
Inc., supra,

440 N.J. Super. at 201-02.

After the elimination of the

death

penalty,16 we can think of no legal consequence of greater

magnitude than the termination of parental rights. Such

termination "sever[s] the parent-child bond, . . . is

irretrievably destructive of the most fundamental family

relationship," and "the risk of error . . . is considerable."

M.L.B. v. S.L.J.,

519 U.S. 102, 121,

117 S. Ct. 555, 566,

136 L. Ed. 2d 473, 491 (1996) (internal citations and quotation marks

omitted). "[A] natural parent's desire for and right to the

companionship, care, custody, and management of his or her

children is an interest far more precious than any property

right." Santosky v. Kramer,

455 U.S. 745, 758-59,

102 S. Ct. 1388, 1397,

71 L. Ed. 2d 599, 610 (1982) (internal citation and

quotation marks omitted).

L.A., when facing a consequence of such magnitude, imposed

by the action of a State-licensed agency, was entitled to

appointed counsel. Foster parents are
statutorily precluded

16

See

N.J.S.A. 2C:11-3b.

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from providing legal counsel to a birth mother past the first
forty days after the filing of the adoption complaint.
See

N.J.S.A. 9:3-53.

The OPD has not been statutorily authorized to

represent indigent parents in private
adoptions.¹⁷ Private

counsel must therefore be assigned.

The assigned lawyer should be present
before the trial

begins, when the private agency first decides to move toward
adoption, to assist the parent in preparing for trial and in
negotiating the process leading up to the filing of a complaint.

In an action involving the Division, a lawyer
is appointed

through the OPD to represent the parent either when litigation
begins, or certainly no later than when termination of parental

rights is first sought by the State.

N.J.S.A. 30:4C-15.4(a);

B.R., supra,

192 N.J. at 305-06. L.A. should have been

represented by counsel beginning in March 2013, when CHS first

advised her she was facing the termination of
her parental

rights through adoption. With counsel, she would have been
far

better prepared for trial when it began in late October.

She

could have obtained her own expert, sought an
attorney to

represent the minor child, and sought
immediate enhanced

parenting time.

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The OPD's statutory authority to represent parents in
termination cases derives from

N.J.S.A. 30:4C-15.4(c), which

concerns actions filed by the Division.

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We note that had L.A. asked for her daughter
to be

returned, we are aware of no legal authority that would have

allowed CHS to maintain custody of the child.
agency would

The

have had to return the child to L.A., or call the Division to

conduct an emergent evaluation of whether the child would be at

risk if returned to L.A.

If the Division had determined that

the child would be at risk if returned, the Division could have

sought custody through the court.

See

N.J.S.A. 30:4C-11; see

also 9:6-8.18, -8.22.

A lawyer representing the biological parent would be of

assistance to the court as well as the parent.

Although we

reverse and remand for a new trial, and thus need not discuss

any trial errors, to emphasize the need for counsel in this

complex matter, and ensure that the mistakes made
are not

repeated, we point out several areas where the
trial court

appears to have erred.¹⁸

The court did not explicitly make its findings
by the

standard of clear and convincing evidence.¹⁹

The

Supreme Court

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Except as noted, these issues were not briefed by the parties. Although we initially ordered the foster parents to provide L.A. with a transcript based on her indigency, pursuant to J.D.S., supra, 176 N.J. at 158-59, we did not appoint counsel to represent L.A. on appeal until we sought supplemental briefing on the issue of her right to counsel.

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The definition of clear and convincing evidence is:

(continued)

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of the United States has held that "[b]efore a State may sever

completely and irrevocably the rights of parents in their

natural child, due process requires that the State support its

allegations by at least clear and convincing evidence."

Santosky, supra,

455 U.S. at 747-48,

102 S. Ct. at 1391-92,

71 L. Ed. 2d at 603.

Our Supreme Court has held that "[a]s part

of

the Title 9 scheme, termination of parental rights under

N.J.S.A. 9:3-46 is a component of the State's overall and

coordinated system of child protection and supervision." J.D.S.,

supra,

176 N.J. at 158.

Thus, while termination in a private

adoption is not sought by a State agency,
the clear and

convincing standard should still govern the
burden that

plaintiffs bear in order to terminate a birth parent's parental

rights. See J.D.S., supra,
353 N.J. Super. at 391-92, 96; see

also In re Adoption of a Child by P.S.,
315 N.J. Super. 91, 111

(App. Div. 1998); In re Adoption of Child by O., 307 N.J. Super.

(continued)

[T]hat which produces in the mind of the
trier of fact a firm belief or conviction as
to the truth of the allegations sought to be
established, evidence so clear, direct and
weighty and convincing as to enable the
factfinder to come to a clear conviction,
without hesitancy, of the precise facts in
issue.

[I.S., supra,
202 N.J. at 168 (citation
omitted).]

176, 184 (Ch. Div. 1997) ("In order to terminate a parent's

rights, clear and convincing evidence of the statutory criteria

must be demonstrated.").

At oral argument, plaintiff's counsel

conceded that this high standard is required for the termination

of parental rights, while arguing that the court might have used

such a standard while not articulating it.

An enhanced

standard

of proof cannot be inferred if not expressly stated
by the

court. See *In re Civil Commitment of E.D.*,
183 N.J. 536, 552

(2005).

The trial court was also somewhat unclear in delineating

what standard it was using when determining what was "in the

best interest of the child."

The issue of whether the trial

court used the correct criteria was anticipated and briefed by

the foster parents in their response to the mother's initial pro

se appellate brief.

Contrary to the argument set forth by the
attorney

representing the foster parents before the trial court, L.A. did

not place her daughter for adoption as that term is used in the

statute. Although it was her initial intention to relinquish her child for adoption, she did not sign a surrender of parental rights after attending adoption counseling. Thus, she did not knowingly or intelligently complete a placement for adoption. She ultimately did agree to leave her child with CHS for

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temporary foster care; with a written plan calling for L.A. to

work toward goals with the aim of parenting her child.

Thus,

the standard applicable when a child has been "placed for

adoption" is not appropriate here.

The inapplicable "placed for adoption" standard requires

that the court find:

during the six-month period prior to the placement of the child for adoption

(1) that the parent has substantially failed to perform the regular and expected parental functions of care and support of the child, although able to do so, or

(2) that the parent is unable to perform the regular and expected parental functions of care and support of the child and that the parent's inability to perform those functions is unlikely to change in the immediate future.

[
N.J.S.A. 9:3-46(a)(1), (2).]

The statute defines the regular and expected functions of care and support of a child as:

(a) the maintenance of a relationship with the child such that the child perceives the person as his parent;

(b) communicating with the child or person having legal custody of the child and parenting time rights, or unless prevented from so doing by the custodial parent or other custodian of the child or a social

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service agency over the birth parent's objection; or

(c) providing financial support for the child unless prevented from doing so by the custodial parent or other custodian of the child or a social service agency.

[N.J.S.A. 9:3-46(a).]

The trial court's determination should have been guided by the standard applicable when a parent has not placed the child for adoption, the "best interest of the child" standard, which is statutorily defined as "whether a parent has affirmatively assumed the duties of a parent." Ibid. In making this determination,

[T]he court shall consider, but is not limited to consideration of, the fulfillment of financial obligations for the birth and care of the child, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life.

[Ibid.]

"A parent seeking to show that he or she has 'affirmatively assume[d] the duties of being a parent' need only 'demonstrat[e] . . . the establishment and maintenance of a place of importance in the child's life.'" In re Adoption of Children by G.P.B.,

161 N.J. 396, 410 (1999) (alterations in original)
(quoting

N.J.S.A. 9:3-46(a)).

Our Supreme Court explained that, under

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this "best interest" analysis, "'demonstration of a continued

interest in the child [and] a genuine effort
to maintain

communication with the child' . . . is not as difficult as a

demonstration . . . that the person has actually communicated

with the child or person having custody, as required in the

performance of 'regular and expected parental duties'" under the

inapplicable "placed for adoption" standard.

Id. at 410-11

(alterations in original) (quoting

N.J.S.A. 9:3-46(a)). The

Court also noted that the two standards differ in measuring a

birth parent's performance, insomuch as, in a
best interest

determination, there is no consideration of the birth parent's

ability to perform, which is considered in the
inapplicable

"regular and expected parental functions" test used when the

child has been "placed for adoption."

Id. at 411.

Lastly,

under a best interest analysis, there is no time limit to the assessment, and proper consideration should be given to the birth parent's actions over the course of the child's entire life, as opposed to the six-month period expressly noted in the "regular and expected parental functions" inquiry not applicable here. Id. at 411, 413.

Although the trial court indicated it was considering the best interest of the child in making its determination, and clearly did not focus only on the prior six months of the

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child's life, the court appeared to be comparing the efforts

L.A. made to parent the child with those made by plaintiffs.

The policy in our State is not to remove children from less

capable parents for the purpose of placing them with more

capable parents, those with more economic resources, nor those

who are better educated. See G.P.B., supra, 161 N.J. at 404;

J.D.S., supra,

353 N.J. Super. at 394.

The polestar inquiry "is

not whether the child would be better off with the adoptive parent, but whether the biological parent has failed to fulfill his or her duties." G.P.B., supra, 161 N.J. at 413; see P.S., supra, 315 N.J. Super. at 110 ("[T]ermination based upon the child's 'best interest' . . . does not mean that termination is appropriate just because the child 'might be better off' with the foster or prospective adoptive parents."). Thus, along with not articulating the proper standard of proof, we have serious concerns as to whether the trial court used the proper legal test in determining the outcome of the trial.

No consideration was given to the appointment of a law guardian to represent the child, as is done by statute in every case involving the Division. See N.J.S.A. 30:4C-15.4(b). We recognize that lawyers are rarely appointed to represent children in private adoptions. See *In re Adoption of Child by E.T.*, 302 N.J. Super. 533, 539-41 (App. Div.), certif. denied,

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152 N.J. 12 (1997). We emphasize, however, that while this matter may have taken the route of a private adoption, from L.A.'s perspective, in many ways it followed a parallel course to a Division case. The central differences were that the court was not involved until the very end, few social services other than the opportunity to visit her child and meet with a "birth parent counselor" were offered to the mother,²⁰ and neither she nor her child had any legal representation as the situation evolved.

Applying these principles prospectively, we hold that, once a private adoption agency determines that it is going to seek adoption over the objection of a parent, that parent has the right to counsel. In the future, a State-licensed private

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For example, plaintiffs presented evidence that L.A. did not seek as many visits as she might have and was late to many scheduled visits, in part because she had to take public transportation. The Division frequently provides bus passes to parents. L.A. was also criticized for not having permanent housing, yet no evidence was adduced that CHS assisted her in locating housing. In July 2012, L.A. signed a "service plan" with CHS in which all four goals, including finding housing and a job, were categorized as the full responsibility of L.A. In

that plan, it was noted that L.A. "has stated that parenting is her goal." Had the Division sought to terminate parental rights, it would have had to prove by clear and convincing evidence that it had made reasonable efforts to reunify the family, or the termination would not have been granted.

N.J.S.A. 30:4C-15.1(a)(3); see I.S., supra,
202 N.J. at 180

(reversing the termination of the father's parental rights in part because the Division failed to make reasonable efforts to reunify).

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adoption agency must advise the court at the same time that it

notifies an indigent parent that it plans to proceed with

adoption. The court will then be able to appoint counsel.

The assignment of counsel to an individual who does not yet

have a matter before the court presents an unusual

administrative challenge.

We refer this matter to the Acting

Administrative Director of the Court, who may wish to consult

with the Conference of Presiding Family Judges to develop a

procedure.

The Madden list²¹ may have to be utilized to provide

counsel.

The child may also be entitled to counsel in these

situations.

E.T., supra,

302 N.J. Super. at 539-41.

We do not

address a non-custodial parent's entitlement to
counsel when

objecting to adoption after the custodial parent's surrender of

parental rights, or objecting to a stepparent
adoption, or

objecting after the child is left with a relative or friend.

We

do not address these situations as they are not before us.

Because the trial court made credibility findings when L.A.

was not represented by counsel, in an excess of caution, we

remand to a different judge for trial.

We do not

intend to

imply a particular result after trial for these families and

this child, nor do we intend to preclude the possibility of a

negotiated compromise in this particular situation.

As our

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See *Madden v. Delran*,
126 N.J. 591 (1992).

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Supreme Court has eloquently stated, "[t]he possibility
of

serious psychological harm to [a] child . . . transcends all

other considerations." Sorentino v. Family & Children's Soc'y,

72 N.J. 127, 132 (1976).

Reversed and remanded for a new trial at which L.A. must be
appointed an attorney and consideration given to
appointing
counsel to represent the child. See R. 5:8A. We do not retain
jurisdiction.

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