***[Please note: This is a memorandum by a law student intern. It is intended to jump-start your own research. We have not Shepardized the cases or determined that the student’s analysis of the cases or other sources is correct.]***

To: Appellate Panel Support Unit

From: Law Student Intern (EdC)

Date: June, 2020

**KEY CASES—Parent Out of State or Country**

***SCOTUS Cases:***

Santosky v. Kramer, 455 U.S. 745 (1982) (The Supreme Court held that before 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, so the termination of parental rights does not deny the parent due process)

Quilloin v. Walcott, 434 U.S. 246, 255 (1978) (The Supreme Court held that the father's substantive rights under the due process clause were not violated by application of the “best interests of the child” standard where father had not petitioned for legitimation at any time in 11-year period between birth and filing of adoption petition, child had always been in mother's custody, and adoption petition was filed over eight years after mother married)

Mathews v. Eldridge,424 U.S. 319 (1976)

(held that an evidentiary hearing is not required prior to termination of disability benefits, and that the present administrative procedures for such termination fully comport with due process)

(Identification of specific dictates of due process generally requires consideration of three distinct factors: private interest that will be affected by official action; risk of erroneous deprivation of such interest through procedures used, and probable value, if any, of additional or substitute procedural safeguards; and government's interest, including function involved and fiscal and administrative burdens that additional or substitute procedural requirements would entail)

***SJC Cases:***

Adoption of Mary*,* 610 N.E.2d 898 (1993) (the SJC held that: (1) admission of investigator's reports was not prejudicial; (2) evidence supported finding that mother was unfit parent; and (3) court would not address merits of mother's claim of ineffective assistance of counsel)

Care and Protection of Robert*,* 556 N.E.2d 993 (1990) (The Supreme Judicial Court held that decision made at “72–hour hearing” to maintain removal of children from parental custody must meet intermediate standard of “fair preponderance of the evidence”)

***MA Appeals Court Cases:***

Adoption of Posy, 94 Mass. App. Ct. 748 (2019) (Father living in Guatemala sought to obtain custody of his two daughters placed in foster care after the death of their mother. The Probate and Family Court Department, Bristol Division, terminated father's parental rights. Father appealed. Father wins on appeal. Holdings: (1) trial court failed to set forth adequate findings and conclusions in determining father's parental rights; (2) Department of Children and Families' allocation of less than one month for father to show progress with respect to his service plan was an unreasonably short amount of time; (3) evidence was not clear and convincing that father had abandoned children; (4) evidence was not clear and convincing to support finding that father had a serious issue with criminal activity; and (5) evidence was not clear and convincing that father had longstanding issues of domestic violence.)

Bonaparte v. Devoti, 93 Mass. App. Ct. 603 (2018) (107 N.E.3d 505)

* (The Appeals Court held that trial court abused its discretion by denying wife's request to participate in trial via telephonic or audiovisual testimony because (1) Mass. Dom. Rel. P. 30(A)(k)(1) requires notice and an opportunity to be heard but has no specific filing deadline. *Bonaparte,* 93 Mass. App. Ct. at 607. The rule *must* not supersede the needs of justice and the best interests of the child; (2) the trial judge failed to consider relevant factors like the wife’s interest in being able to testify, the prejudice resulting from her inability to testify, and the impact on the child’s interests; and (3) because the mom was the primary caregiver, it is unlikely her testimony wouldn’t be of great importance)
* (a judge’s action to ameliorate the harsh effects of a procedural rule may be necessary to protect the child’s best interests and to prevent manifest injustice”)

Calderwood v. Dyer, 68 Mass. App. Ct. 1114 (2007) (In this unpublished decision, the mother raised several issues on appeal. “One of her arguments is that the judge abused her discretion in denying her request to testify and to present evidence by telephone. The record contains no written motion on the subject.” It was revealed that the mother’s counsel made an oral request on the morning of the trial. The oral motion was neither timely nor proper. The judge's denial of the mother's motion to participate in the trial by telephone was not error)

In re Adoption of Fran, 54 Mass. App. Ct. 455 (2002) (Father appealed termination of parental rights, partially on the basis that his testimony had been erroneously chilled. However, the original termination order was affirmed and it was held that the father’s excluded testimony was not an abuse of discretion)

Adoption of Edmund*,* 50 Mass. App. Ct. 526 (2000) (finding that where father’s due process right was violated because he could not participate by telephone thanks to technical difficulties, he should be accorded due process, and thus “should be allowed the opportunity to respond to the evidence by the filing of his affidavit, which must address with specificity, based on his personal knowledge, only those issues which the father raised in his brief”)

***See also:***

110 CMR § 1.12, *Special Provisions Relating to Refugees/Unaccompanied Refugee Minors.*

**(1)** The Department provides a range of social services to refugee families, in conjunction with the services of other departments (e.g. Transitional Assistance, Mental Health, etc.) and in cooperation with the Governor's Advisory Council for Refugees and Immigrants (GACRI) and the Massachusetts Office for Refugees and Immigrants (MORI). The Department offers refugees the full range of services described in 110 CMR. For services available to refugees beyond the social services offered by the Department (e.g. food stamps, SSI, ESL training, etc.) more information is available by contacting MORI directly, at 727-7888.

**(2)** The Department shall periodically offer training to its social work staff on the cultural and ethnic issues of those refugee populations which are statistically significant in Massachusetts.

**(3)** The Department operates an Unaccompanied Refugee Minors Program, which provides foster care and case management services to Indochinese (Vietnamese, Cambodian and Laotian) refugee children who arrive in Massachusetts unaccompanied by a parent or immediate relative. In every case the parents of such children are either deceased or of parts unknown. The intent of this program is to reunite such children with a member or members of their family. Services are provided to these minors by providers under contract with the Department. These providers are required to have a demonstrated ability to respond to the cultural and linguistic needs of the refugees they serve. The Unaccompanied Refugee Minors program is fully funded by the federal government through the Office of Refugee Resettlement. At present, a federal regulation requires that such children not be freed for adoption by the states. A proposed amendment to the federal regulation, to allow states to free such children for adoption, awaits enactment. The Department will adhere to the federal regulation in question.

***Other States:***

Cecilia A. v. Arizona Dep't of Econ. Sec., 274 P.3d 1220 (Ariz. Ct. App. 2012) (“We are persuaded … that due process does not require the juvenile court to suspend a severance hearing until a mentally incompetent parent can be restored to competency, if ever”)

In re Termination of Parental Rights to Idella W., 708 N.W.2d 698 (Wis. App. 2005) (vacating termination of parental rights where parent was owed an opportunity to participate and it was unclear whether the parent’s participation difficulties had arisen because the parent was in a witness protection program or because the parent was in prison)

In re Interest of Mainor T*.,* 674 N.W.2d 442 (Neb. 2004) (Supreme Court of Nebraska holdings from the case: (1) mother's failure to appeal from adjudication, disposition order, or review hearings did NOT preclude appellate review of entire proceeding leading to termination for due process deprivations; (2) issuance of ex parte custody order without detention hearing violated due process; (3) mother was not afforded procedural due process in adjudication proceedings; and (4) juvenile court's approval of permanency objective of reunification without setting rehabilitative goals denied mother due process)

In re Brandon A., 769 A.2d 586 (R.I. 2001) (Proceeding was brought to terminate parental right of parent who was incarcerated in another state. The Family Court entered default judgment against parent. Parent appealed. The Supreme Court of Rhode Island held that entry of default judgment based on parent's lack of personal appearance was improper, where parent was represented by counsel at hearing)

In re T.E.B., 24 P.3d 900 (OK CIV APP 2001) (rejecting indefinite delay where a parent is experiencing symptoms of mental illness, because in termination proceedings, “a level of incompetency would be directly relevant to that person's ability to act a parent and it would not be in the best interest of the children to indefinitely delay termination proceedings”)

State ex rel. Children, Youth & Families Dep't v. Ruth Anne E., 974 P.2d 164 (N.M. 1999) (The Court of Appeals of New Mexico held that conducting hearing on termination petition in absence of incarcerated father violated father's procedural due process rights)

Morton v. Morton, 982 F. Supp. 675 (D. Neb. 1997) (The District Court held that court was required to give preclusive and dispositive weight to decisions of Utah state court and German court that required child's return to United States under provisions of Convention on the Civil Aspects of International Child Abduction (Hague Convention)

Interest of Christopher D*.,* 530 N.W.2d 34 (Wis. Ct. App. 1995) (The Court of Appeals of Wisconsin found “that a trial court may order the petitioning parent to pay for the transportation of the respondent [parent] to the termination hearing; but … did not decide whether the respondent has a right to be physically present or whether there are alternatives to physical presence that afford meaningful participation.” *Christopher*, 530 N.W.2d at 42, citing *In re A.A.L.,* 448 N.W.2d at 243)

In re A.A.L., 448 N.W.2d 239 (Wis. Ct. App. 1989) (finding due process rights of out-of-state incarcerated father who received all exhibits by mail and participated in hearing by telephone were adequately upheld)

In Interest of T.S.B., 536 So. 2d 1239 (La. 1989) (The Court of Appeal of Louisiana found a father’s imprisonment and the fact that his “hearing impairment will not improve” weighed in favor of “permitting the state to proceed with its efforts to terminate”)

In re Dean L., 109 A.D.2d 87 (N.Y.S. 1985) (“Analogous cases [to … have upheld the right of the State to proceed with the hearing in the absence of a parent unable to attend because of imprisonment.”)

State in Interest of S.A.D., 481 So. 2d 191 (La. Ct. App. 1985) (finding denial of continuance appropriate where “it is unlikely that the mother would be capable of assisting counsel or parenting these children at any future time”)

Hamlin v. Hamlin, 276 S.E.2d 381 (N.C. 1981) (The Supreme Court of North Carolina held, among other things, that the trial judge was justified in hearing the father's motion without the presence of the father)

***See also:***

“(1) The court may require any witness or party to testify or participate in a hearing by telephone if the court finds (A) that the testimony or participation of the witness or party is necessary to the fair determination of the issues, and (B) that the witness or party is either physically unable to be present or cannot be produced without imposing substantial administrative burdens or costs on the state.(2) Upon motion of a party granted in advance of hearing, or upon the court's own motion, the court may permit any witness or party to testify or participate in a hearing by telephone.” VT R. FAM. P. Rule 17 (2009).