***[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.]***

**MEMORANDUM**

TO: CAFL Appellate Panel Support Unit

FROM: Law Student Intern (JF)

RE: *Sua Sponte* Decisions

DATE: July, 2020

1. **QUESTION PRESENTED**

In Massachusetts, when does a judge’s *sua sponte* decision (that is, a decision made by the judge unrequested by any party) at trial warrant reversal?

1. **BRIEF ANSWER**

A judge’s *sua sponte* decision will generally warrant reversal of the judge’s decision in Massachusetts if the decision violated a party’s due process rights by: (1) vacating a previous decision or withdrawing evidence from the record; (2) transforming a pretrial conference or hearing into a hearing on the merits without providing the parties to the case with advanced notice; or (3) unwarrantedly deciding an issue not raised before the court and thereby denying the parties the right to present evidence on the issue.

1. **DISCUSSION**
2. **Vacating a Previous Decision or Withdrawing Evidence**

It is an abuse of discretion for a judge to *sua sponte* vacate a previous decision and circumvent the standard review process. *See* Adoption of Nate, 69 Mass. App. Ct. 371, 375-76 (2006) (holding the judge erred in vacating a decree based solely on the judge’s own frustrations with DCF). In the initial trial in Nate, Mother signed a stipulation for judgment that was approved by the Court, thus terminating her parental rights. *See id.* at 372. Part of that stipulation required DCF to place the child in a pre-adoptive home, where Mother could have visitation; however, the child was placed in a residential treatment center for behavioral issues, and remained there for nearly a year without any progress toward the stipulated plan. *See id*. at 372-73. Frustrated by the circumstances, the judge vacated the decree terminating Mother’s parental rights, circumventing the standard permanency review process.  *See id.* at 373. However, he was found to have corrected his own error when he reinstated the decree following a motion for reconsideration by DCF; the Appeals Court concurred.  *See* Nate, 69 Mass. App. Ct. at 377.

Similarly, it is reversible error for a judge to *sua sponte* withdraw evidence from the record following the conclusion of the trial. *See* Houston v. Houston, 64 Mass. App. Ct. 529, 534-37 (2005) (holding the judge erred in withdrawing wife’s admissions from testimony). In Houston, following the conclusion of trial, husband filed a post-trial motion to amend the judge’s findings of fact for being contrary to the weight of the evidence. *See id.* at 535. Ultimately, the Appeals Court found that these admissions were essential to the case, and the decision to remove them constituted reversible error. *See id.* at 539.

1. **Transforming a Pretrial Conference or Hearing into a Trial on the Merits**

A judge’s decision must be reversed if the judge denies a party due process by transforming a pretrial conference into a trial on the merits without providing the party with proper notice. *See* Adoption of Zev, 73 Mass. App. Ct. 905, 905-06 (2009) (reversing where judge *sua sponte* converted a pretrial conference into a trial upon mother’s failure to appear). In Zev, because mother was not informed that the hearing she missed would become the trial, she was denied her due process right to offer evidence of her own, as well as notice.  *See id.* at 906; *see also* Adoption of Hugh, 35 Mass. App. Ct. 346, 347 (1993) (holding state termination actions must comport with due process, including notice and opportunity to be heard). Due process concerns, as well as fundamental fairness in the courts, require that a parent have an opportunity to rebut allegations concerning childrearing capabilities, especially in proceedings that can terminate parental rights. *See* Adoption of Mary, 414 Mass. 705, 710 (1993) (noting due process violation where parties are given no chance to rebut allegations). Without adequate notice, parties are deprived of actual notice, as well as a “meaningful opportunity to participate in the litigation.” *See* Care and Protection of Orazio, 68 Mass. App. Ct. 213, 219-221 (2007) (holding transforming a 72-hour hearing into a hearing on the merits deprived mother and children of due process).

1. **Unwarrantedly Deciding an Issue Not Before the Court**

Similarly, a judge may not *sua sponte* decide an issue not raised by the parties or not properly before the court where the parties have no had notice and opportunity to address the issue. *See* Swistak v. Stelmokas, 83 Mass. App. Ct. 1111 (2013) (Mass. App. Ct. Rule 1:28) (reversing judge’s *sua sponte* dismissal of grandparents’ visitation complaint in hearing intended only to address a petition for modification). Doing this denies the parties due process, and can be considered an abuse of discretion. *See id.;* Adoption of Reid, 39 Mass. App. Ct. 338, 341 (1995); *see also* Guardianship of Moe, 81 Mass. App. Ct. 136, 139-40 (2012) (reversing judge’s *sua sponte* decision to order sterilization of an individual with a mental illness without notice or a hearing); Smith v. Williams, 81 Mass. App. Ct. 1109 (2012) (Mass. App. Ct. Rule 1:28) (reversing *sua sponte* decision where judge decided de facto parent needed to pay child support). In Reid, DCF filed a request to terminate parental rights, but then changed the goal from adoption to guardianship before trial. *See* Reid, 39 Mass. App. Ct. at 339, 341. Despite this agreement, the judge terminated mother’s parental rights. *See id.* at 340. The Appeals Court found this to be an abuse of discretion, and vacated the order. *See id.* at 343.

A judge addressing an issue that was not previously before the court implicates due process concerns because different interests attach to different types of cases; for example, care and protection hearings are substantially different proceedings than termination hearings. *See* Adoption of Frederick, 405 Mass. 1, 4-5 (1989) (outlining fundamental differences between types of hearings). In a care and protection hearing, the focus is on the current parental fitness and the removal of a child does not have to be permanent. *See id.* at 6. However, a termination proceeding carries much more risk, and the result is swiftly permanent; the stakes are much higher. *See id.* Bringing forward a termination issue when the parties present were prepared for a discussion about current custody places a huge disadvantage on the parent present, and violates their due process right to be heard. *See* Santosky v. Kramer, 455 U.S. 745, 753-54 (1982) (highlighting greater need for procedural protections in termination cases compared to care and protection cases).

However, a court may nevertheless decide certain issues that aren’t before it in the best interests of the child. *See* Youmans v. Ramos, 429 Mass. 773, 781-83 (1999) (declining to reverse where judge *sua sponte* awarded visitation rights to aunt, the former guardian of the child). Although the court was only hearing a paternity suit in Youmans, the judge was being asked to make custody decision. *See id.* at 780. In doing so, the judge determined that the best interest of the child, who was under the guardian-aunt’s custody for the majority of her life, was to remain in contact with the aunt. *See id.* at 781.

1. **CONCLUSION**

A judge may not make a *sua sponte* decision that violates a party’s constitutional rights, such as the right to receive notice and to be heard in a meaningful manner. Therefore, *sua sponte* decisions that change a prior decision, transform a pretrial conference into a trial, or decide an issue not properly before the court are grounds for reversal. An appellate court might nevertheless affirm a *sua sponte* decision if the decision serves the best interest of a child in a custody proceeding.