

Roger Williams University Law Review

Volume 25
Issue 3 *Vol. 25, No. 3 Summer 2020*

Article 27

Summer 2020

In re Joziah B., 207 A.3d 451 (R.I. 2019)

Devon Q. Toro

Candidate for Juris Doctor, Roger Williams University School of Law

Follow this and additional works at: https://docs.rwu.edu/rwu_LR



Part of the [Civil Procedure Commons](#), and the [Family Law Commons](#)

Recommended Citation

Toro, Devon Q. (2020) "In re Joziah B., 207 A.3d 451 (R.I. 2019)," *Roger Williams University Law Review*.
Vol. 25 : Iss. 3 , Article 27.

Available at: https://docs.rwu.edu/rwu_LR/vol25/iss3/27

This Survey of Rhode Island Law is brought to you for free and open access by the School of Law at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized editor of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Family Law. *In re Joziah B.*, 207 A.3d 451 (R.I. 2019). Pursuant to Rhode Island General Laws section 15-7-9, parents are entitled to procedural due process before the termination of their parental rights, which means that a petitioner must present an affidavit which “set[s] forth the last contacts with the absent parent and any other information considered pertinent in determining the absent parent’s whereabouts”¹ so that the Court can determine whether personal service can be effectuated.

FACTS AND TRAVEL

On April 30, 2015, the Rhode Island Department of Children, Youth, and Families (DCYF) filed a petition to terminate the parental rights of Heather B. (Heather) with respect to her son, Joziah B. (Joziah).² DCYF’s complaint alleged that Joziah had been under its care for the past year,³ that it had offered services to help Heather correct the situation⁴ and, given Joziah’s need for a stable home life, there was a strong probability that Joziah would not be able to return to Heather’s care within a reasonable period of time.⁵ In support of its complaint, DCYF filed a summary of facts stating that the department was initially contacted in 2013 by Joziah’s aunt, who reported that Heather had given Joziah to her with neither clothes nor money.⁶ Furthermore, DCYF alleged that Heather was homeless, had been using illegal drugs, had engaged

1. *In re Joziah B.*, 207 A.3d 451, 456 (R.I. 2019) (citing 15 R.I. GEN. LAWS § 15-7-9(a)).

2. *Id.* at 452–53.

3. *Id.* at 453.

4. *Id.* These services, whether offered or received, led to Joziah’s placement with DCYF. *Id.*

5. *Id.* Two years later in 2017, DCYF amended its complaint to include the allegation that Heather had abandoned Joziah. “A lack of communication or contact with the child for at least a six (6) month period shall constitute prima facie evidence of abandonment or desertion.” *Id.*

6. *Id.*

in acts of prostitution while Joziah was present, and her family was concerned that she “was sending her pimp to pick up [Joziah].”⁷ DCYF further alleged that Heather had not cooperated with the department and failed to complete her treatment.⁸ It was also alleged that, while under Heather’s care, Joziah had been sexually abused, witnessed domestic violence, witnessed his mother performing acts of prostitution and, at one point, been kidnapped and held for ransom.⁹ By the time DCYF had filed its petition, Joziah was in his fourth foster home, had engaged in various incidents of “inappropriate sexualized behavior” with others, and had been diagnosed with PTSD and ADHD.¹⁰ The caseworker responsible for the summary of facts stated that she had not been in contact with Heather since March 2015 and that Heather had not been in contact with her son since February of the same year.¹¹

Following an investigation into the above-described incidents, the department placed Joziah in a foster home because of Heather’s neglect.¹² In May 2015, Heather was assigned a public defender in conjunction with her arraignment in Family Court.¹³ Later that year, with a trial already scheduled on the matter, Heather agreed to the adoption of Joziah.¹⁴ Shortly thereafter, Heather filed an emergency motion to withdraw her consent, which was scheduled to be heard in January 2016.¹⁵ On September 22, 2017, via order of the Family Court, an advertisement was placed in The Providence Journal notifying Heather that a hearing on the petition to terminate her parental rights was taking place on October 3,

7. *Id.*

8. *Id.* DCYF alleged that Heather was “discharged from a family visitation program [because] of her ‘ongoing use of heroin, cocaine, ‘other opiates,’ alcohol and marijuana.’” She was also diagnosed with various drug dependencies and disorders. *Id.*

9. *Id.*

10. *Id.* at 454.

11. *Id.* at 453.

12. *Id.* The court was later updated; the caseworker’s last contact with Heather was in November 2015, around the time she consented to Joziah’s adoption by his foster parent. *Id.*

13. *Id.* at 454.

14. *Id.*

15. *Id.* Heather failed to appear at the hearing in January, but the motion passed. Her public defender was, however, permitted to withdraw from the case. *Id.*

2017.¹⁶ Even though Heather failed to appear, the Family Court proceeded with the hearing.¹⁷ Based on DCYF's summary of facts and the uncontradicted testimony of Denise Zolnierz, the supervisor assigned to Joziah's case, the Family Court justice made several factual findings.¹⁸

The justice found, by clear and convincing evidence, that Heather left Joziah with his aunt for a period of three months, that DCYF had intervened in Joziah's care, that DCYF had attempted to help Heather with the care of Joziah, that Heather failed to comply with the terms of DCYF's plans, and that Heather had not been in contact with Joziah since November 2015.¹⁹ Furthermore, the justice found that Joziah had in fact been hospitalized for serious traumas, was now living in residential care and, although stable, was in need of further treatment.²⁰ Based on these findings, the justice concluded that Heather was an unfit parent, terminated her parental rights and appointed DCYF as Joziah's legal guardian.²¹ A decree was entered reflecting the justice's findings, which Heather appealed shortly thereafter.²²

ANALYSIS AND HOLDING

On appeal, the Rhode Island Supreme Court (the Court) sought to determine whether Heather was afforded proper procedural due process in the termination of her parental rights.²³ Before the Court began its inquiry into the issue of procedural due process, it

16. *Id.* The advertisement stipulated that Heather's failure to appear at the hearing would result in the termination of her parental rights. *Id.*

17. *Id.*

18. *Id.* Denise Zolnierz's testimony included a relaying of the facts mentioned in DCYF's summary, along with additional facts such as Heather's background in the correctional system, Joziah's hospitalization, Joziah's cancelled adoption, and updated information that Joziah was stable and living in a residential care center. *Id.*

19. *Id.* at 454–55.

20. *Id.* at 455.

21. *Id.* The justice weighed other factual findings in her decision, including that Heather abandoned Joziah and that, given his need for a stable home, it was unlikely that Joziah could be returned to Heather within a reasonable period of time. *Id.*

22. *Id.*

23. *Id.* at 456 n.7 (Referring to "proper procedural due process," the Court was tasked with determining the sufficiency of the notice given to Heather with regard to the hearing date scheduled on October 3, 2017).

recognized that in reviewing a decree terminating parental rights, it must apply a deferential standard.²⁴ The Court explained that it “reviews termination of parental rights rulings by examining the record to establish whether the Family Court justice’s findings are supported by legal and competent evidence.”²⁵ Furthermore, “[t]hese findings are entitled to great weight, and th[e] Court will not disturb them unless they are clearly wrong or the trial justice overlooked or misconceived material evidence.”²⁶ In its review, the Court noted that although Joziah’s guardian *ad litem*²⁷ argued Heather did not assert any issue with procedural due process, her statement “that she was not ‘aware of the court date on October 3, 2017 or else [she] would have been there,’” indicated that Heather was in fact challenging the sufficiency of the notice given with regards to the hearing.²⁸

The Court noted that the statute governing the termination parental rights²⁹ states that, when a petition has been filed where the parent-in-question’s location is unknown, “that fact shall be sworn to by the petitioners by affidavit which shall set forth the last contacts with the absent parent and any other information considered pertinent in determining the absent parent’s whereabouts.”³⁰ Furthermore, the statute charges the Family Court with reviewing said affidavit to determine if personal service can be effectuated.³¹ Ultimately, the Court concluded that if effectuation of personal service is not possible, only then can notice be published in a newspaper of general circulation.³² After examining the record, the Court found that no such affidavit had been submitted by DCYF.³³ Because DCYF failed submit an affidavit pursuant to section 15-7-9(a), the notice given in The Providence Journal by the Family Court on September 22, 2017 was

24. *Id.* (citing *In re Lauren B.*, 78 A.3d 752, 759 (R.I. 2013)).

25. *Id.* (citing *In re Izabella G.*, 196 A.3d 736, 740 (R.I. 2018)).

26. *Id.* (citing *Izabella G.*, 196 A.3d at 740–41).

27. *Ad litem*, *Oxford American Large Print Dictionary*, (2008) (Referring to a guardian “appointed to act in a lawsuit on behalf of a child or other person who is not considered capable of representing themselves.”).

28. *Joziah B.*, 207 A.3d at 456 n.7.

29. *Id.* (citing 15 R.I. GEN. LAWS § 15-7-9).

30. *Id.* (citing § 15-7-9(a)).

31. *Id.* (citing § 15-7-9(b)).

32. *Id.* (citing § 15-7-9(b)).

33. *Id.*

insufficient as a matter of law.³⁴ Consequently, the Court held that Heather's right to procedural due process was violated because of the insufficient notice of hearing provided by the Family Court.³⁵

COMMENTARY

Ultimately, the present case affirms the importance of procedural due process in cases involving the termination of parental rights.³⁶ While the Court recognized that there is "no absolute right to be physically present at [a] termination hearing,"³⁷ it consistently stressed throughout its opinion that a parent's right to the opportunity of presence should be protected.³⁸ On its face, the admission of an affidavit setting forth the parent's last known contacts does not seem to invoke the opportunity of presence, however, the affidavit serves a larger purpose. It affords the Family Court the chance to determine if personal service can be effectuated, thus protecting a parent's right to the opportunity of presence at the termination hearing.³⁹ Substantial weight is placed on procedural due process in cases terminating parental rights because of the significance of the right being terminated.⁴⁰ For "[t]he termination of a parent's rights is a 'grave, drastic, and irreversible action'" and therefore, the procedures which give rise to it must be protected.⁴¹ Yet, while there is heavy focus on parental rights, there is little focus on the rights of the child.⁴²

In cases such as this, it is critically important to keep in mind the well-being of the child, who deserves stability and efficiency.⁴³ Children, like others in the court system, have a right to efficiency and speedy determinations.⁴⁴ The longer a child's case continues, the longer he or she is in a state of limbo, not even sure who his or her legal guardian is. While the protection of a parent's right to due

34. *Id.*

35. *Id.* at 456–57.

36. *See id.* at 457.

37. *Id.* at 456–57 (quoting *In re Ariel N.*, 892 A.2d 80, 84 (R.I. 2006)).

38. *Id.* at 457 (citing *In re Brandon A.*, 769 A.2d 586, 590 (R.I. 2001)).

39. *Id.*

40. *Id.* (citing *In re Ginger G.*, 775 A.2d 255, 258 (R.I. 2001)).

41. *Id.* (quoting *In re Gabrielle D.*, 39 A.3d 655, 665 (R.I. 2012)).

42. *See id.*

43. *Id.*

44. *See id.*

process it extremely important,⁴⁵ the end result in this case will likely be the same regardless of whether Heather received sufficient notice. Proper notice does not negate the facts of the case and the unfortunate reality that Heather is an unfit parent.⁴⁶ The Court's focus on due process and its decision in the present case, while legally sound, will only further subject Joziah to years of continuing litigation.⁴⁷ More time, money, and effort will be expended by the parties, only to reach the same conclusion.⁴⁸ But this is the law. It balances competing interests and comes up with the fairest solution. Here, that is protecting Heather's right to the opportunity of presence.⁴⁹

CONCLUSION

The Rhode Island Supreme Court held that, pursuant to Rhode Island General Laws section 15-7-9, the notice provided by the Family Court in the instant case was insufficient as a matter of law given the lack of an affidavit submitted by DCYF. As such, the Court vacated the decree of the Family Court and remanded for further proceedings consistent with its opinion.⁵⁰

Devon Q. Toro

45. *Id.*

46. *See id.*

47. *See id.*

48. *See id.*

49. *See id.*

50. *Id.*