

[J-5A-5C-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE: ADOPTION OF J.E.F., C.J.U., N.G.F.	: Nos. 29-31 WAP 2005 : : Appeal from the Order of the Superior : Court entered November 29, 2004 at Nos. : 783-785 WDA 2004, reversing and : remanding the Order of the Court of : Common Pleas of Washington County : entered April 6, 2004 at Nos. 63-03-0052 : to 63-03-0054. : : 864 A.2d 1207 : : ARGUED: February 28, 2006
APPEAL OF WASHINGTON COUNTY CHILDREN AND YOUTH AGENCY	

CONCURRING OPINION

MADAME JUSTICE BALDWIN

DECIDED: JULY 18, 2006

I concur with Justice Castille’s result, but write separately to clarify my reasons regarding the finding that the consent of Washington County Children and Youth Agency (“Agency”) is not required.

To effect an adoption, the legislative provisions of the Adoption Act must be strictly complied with and therefore my analysis focuses entirely on the relevant statutory provisions. In re Adoption of R.B.F., 569 Pa. 269, 276, 803 A.2d 1195, 1199 (2002). Section 2711(a)(5) of the Adoption Act requires a potential adoptive parent to obtain the consent of:

The guardian of the person of an adoptee under the age of 18 years, if any there be, or of the person or persons having the custody of the adoptee, if any such person can be found, whenever the adoptee has no parent whose consent is required.

23 Pa.C.S. § 2711(a)(5).

The language of section 2711(a)(5) may be susceptible to more than one interpretation. However, under no interpretation does section 2711 require that the consent of the Agency be obtained.

Appellees, the aunt and uncle of the three minor children, argue that section 2711(a)(5) should be interpreted to grammatically link the phrase “the guardian of the person” with both “of the adoptee” and “of the person or persons having custody of the adoptee.” Therefore, Appellees read the provision as requiring consent of (1) the guardian of the person of an adoptee under the age of 18 years; or (2) the guardian of the person or persons having custody of the adoptee under 18 years of age. For example, if the child is in the custody of an incapacitated person or a minor, then the consent of the “guardian of the person” of that incapacitated person or minor is required. The statute specifically refers to persons and not to agencies in its requirements.

Alternatively, section 2711(a)(5) may be read to require the consent of (1) the “guardian of the person” of an adoptee under the age of 18 years; or (2) the person or persons having the custody of the adoptee.

Under either interpretation, Agency consent is not required. At no time was the Agency adjudged “guardian of the person” of the adoptees.¹ Nor were the adoptees in the custody of an incapacitated person or a minor. Finally, the Agency is not a “person having custody of the adoptee.” Section 2711 does not require consent of the “person or agency” having custody, but only of the “person” having custody. The Adoption Act repeatedly makes a distinction between the terms “person” and “agency” and the two words are not

¹ See 20 Pa.C.S. § 5111 *et. seq.* (appointment of guardians of the estate or of the person of a minor) and Pa.O.C.R. 12.5 (petitioning for the appointment of a guardian for the estate or person of a minor).

interchangeable.² Therefore, following the language of 23 Pa.C.S. § 2711(a)(5), the consent of the Agency is not required for the Appellees to petition for adoption.

² See e.g. 23 Pa.C.S. § 2102 (“Intermediary.’ Any **person or persons or agency** acting between the parent or parents and the proposed adoptive parent or parents in arranging an adoption placement”) (emphasis added); 23 Pa.C.S. § 2521(b) (“Award of custody.--The decree [terminating parental rights] shall award custody of the child to the **agency or the person** consenting to accept custody . . .”) (emphasis added); 23 Pa.C.S. § 2521(c) (“Authority of **agency or person** receiving custody.--An **agency or person** receiving custody of a child shall stand in loco parentis to the child . . .”) (emphasis added); 23 Pa.C.S. § 2530(b) (“Preplacement report.--A preplacement report shall be prepared by the **agency or person** conducting the home study . . .”) (emphasis added).