

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: D.N.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.C.M.N., FATHER

No. 288 EDA 2014

Appeal from the Decree entered January 2, 2014,
in the Court of Common Pleas of Philadelphia County, Family
Court, at No(s): CP-51-AP-0000315-2013; CP-51-DP-0000156-2012,
FID 51-FN-001196-2011

BEFORE: GANTMAN, P.J., ALLEN, and FITZGERALD*, JJ.

DISSENTING STATEMENT BY FITZGERALD, J.: **FILED DECEMBER 18, 2014**

I respectfully dissent. I depart from the majority's analysis with respect to the reliance upon Ms. McCloud's testimony that no bond existed between Father and Child and I would remand for further proceedings.

At the termination hearing, Ms. McCloud stated that Child did not have a bond with Father. N.T., 1/2/14, at 13. In support thereof, she testified as follows:

Q: [D]o you believe that [Child] has a parent/child bond with Father?

A: No.

Q: Why is that?

A: Father, while he was out [of prison], he did visit with [Child] but I don't believe there is a bond between the two.

Q: And why is that?

* Former Justice specially assigned to Superior Court.

A: Well, **according to the agency**—

Id. (emphasis added). Father’s counsel objected¹ and the court **sustained** the objection. **Id.** We further note that Ms. McCloud did not supervise the visits with Child. **Id.** at 21.

The trial court opined that “**the testimony established** that [Child] did not have a bond [sic] her father.” Trial Ct. Op., 4/16/14, at 5 (emphasis added) (unpaginated). However, the trial court did not hear any evidence concerning Child’s interactions with Father during the supervised visits, only Ms. McCloud’s bald assertion that Child did not have a parent/child bond with Father. Ms. McCloud was about to testify only as to what the agency informed her, and in any case the court sustained an objection before she could complete her response. In the circumstances of the instant case, I would find there was insufficient evidence to support the trial court’s finding that the testimony established that Child did not have a bond with Father. **See** 23 Pa.C.S. § 2511(b); **In re Adoption of J.M.**, 991 A.2d 321, 324 (Pa. Super. 2010).

¹ Counsel did not state a basis for his objection.