

**[J-3A-2018 and J-3B-2018] [MO: Saylor, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

IN RE: T.S., E.S., MINORS : No. 50 WAP 2017
: :
: Appeal from the Order of the Superior
APPEAL OF: T.H.-H., NATURAL : Court entered August 25, 2017 at No.
MOTHER : 364 WDA 2017, affirming the Order of
: the Court of Common Pleas of
: Allegheny County entered February 3,
: 2017 at Nos. CP-02-AP-0000208-
: 2016 and CP-02-AP-0000209-2016.
: :
: ARGUED: April 10, 2018

IN RE: T.S., E.S., MINORS : No. 51 WAP 2017
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: Appeal from the Order of the Superior
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: 2016 and CP-02-AP-0000209-2016.
: :
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CONCURRING OPINION

JUSTICE DOUGHERTY

DECIDED: AUGUST 22, 2018

I join Sections I and II of the majority opinion, and concur in the result as to the remainder. I write separately to note what is, in my view, a critical difference between this case and *In re Adoption of L.B.M.*, 161 A.3d 172 (Pa. 2017).

In *L.B.M.*, the termination of parental rights (TPR) proceedings were initiated by the guardian *ad litem* (GAL) on behalf of an eight-year-old, articulate child who equivocated over his preferred outcome. *Id.* at 176-177. The unanswerable question

giving rise to structural error under those circumstances was how the child's preferences might have been advanced more definitively had legal counsel been appointed as required under 23 Pa.C.S. §2313(a). *Id.* at 182. There was manifest potential for a conflict of interest between the child's best interests and legal interests in the GAL-attorney's zealous pursuit of the termination of the mother's parental rights.

Here, there is no dispute over the children's preference: the parties agreed they cannot have formed one. See Majority Opinion, slip op. at 15.¹ Moreover, the Allegheny County Office of Children Youth and Families (CYF) initiated the TPR proceedings, and was involved with the children almost since birth, having custody of the two-year-old and three-year-old for over half their young lives. *Id.* at 4-5. The GAL-attorney represented the children's best interests and legal interests without an apparent conflict of interest. Under the circumstances presently before us, I consider the appointment of separate counsel to represent the child's legal interests to be unnecessary.

¹ I would not hold the preferences of very young or pre-verbal children, either in favor of termination of parental rights or opposed to it, may never be ascertained.