

IN THE
Supreme Court of Pennsylvania

No. 7 WAP 2020

CHILDREN'S FAST TRACK APPEAL

IN RE: P.G.F.
APPEAL OF: K.F., NATURAL FATHER

Appeal of K.F. of the Order of Court Terminating the Parental Rights of K.F., natural father of P.G.F. in the Court of Common Pleas of Bedford County, Orphans' Court Division, by the Honorable Thomas S. Ling, at No. 3 for the year 2018, Terminating the Parental Rights of K.F., natural father. By Opinion and Order of Court dated January 27, 2020, the Superior Court affirmed.

BRIEF FOR *AMICI CURIAE* KIDSVOICE, DEFENDER ASSOCIATION OF PHILADELPHIA, MONTGOMERY CHILD ADVOCACY PROJECT, PROFESSOR LUCY JOHNSTON-WALSH, DAVID M. BRODZINSKY, PH.D., RACHEL H. FARR, PH.D., AND SUSAN G. BERMAN KRESS, PH.D., IN SUPPORT OF APPELLEE P.G.F.

Thomas C. Welshonce, ID No 94147
Jennifer McGarrity, ID No. 89249
KidsVoice
437 Grant Street, Suite 700
Pittsburgh, PA 15219
(412) 391-3100
twelshonce@kidsvoice.org
jmcgarrity@kidsvoice.org

Counsel for Amici Curiae KidsVoice, Defender Association of Philadelphia, Montgomery Child Advocacy Project, Professor Lucy Johnston-Walsh, David M. Brodzinsky, Ph.D., Rachel H. Farr, Ph.D., and Susan G. Berman Kress, Ph.D.

TABLE OF CONTENTS

Table of Authorities ii

Interest of Amici 1

Introduction 8

Argument..... 10

 A. P.G.F. did not know the identity of his biological father, and his father had plenty of opportunities throughout P.G.F.’s life to inform P.G.F. about his identity. 11

 B. Young children are not “mini-adults.” 12

 1. Psychological and developmental research establish that young children lack the capacity to comprehend complex concepts such as paternity, termination of parental rights and adoption, and simply providing a young child with complex information will not lead to the child having the ability to make a meaningful decision..... 12

 2. Psychological and developmental research establish that discussions with young children about paternity and related topics are discussions that should be guided by a trained clinician over a period of time, and that it would be psychologically-inappropriate for the child to learn of this information from TPR counsel..... 16

 3. The Superior Court’s decision in this case is consistent with prior case law. 18

 C. If this Court requires that a child’s counsel take additional steps when the child does not know the identity of one of the parents who is contesting the TPR, the Court should establish a psychologically-appropriate process for the trial court to determine whether and how the child should be informed about that parent’s identity. 19

Conclusion 21

TABLE OF AUTHORITIES

Cases

In re Adoption of K.M.G., 219 A.3d 662, *appeal granted in part*, 221 A.3d 649 (Pa. 2019)..... 11
In re: Adoption of L.B.M., 161 A.3d 172 (Pa. 2017)..... 11
In re C.J.A., 204 A.3d 496 (Pa. Super. 2019)..... 18,19
In re P.G.F., No. 1284 WDA 2019, 2020 WL 579038 12,19
In re: T.S., 192 A.3d 1080 (Pa. 2018)..... 10

Statutes

42 Pa. C.S. § 6302..... 14
231 Pa. C.S. § 2036..... 14

Rules

Pa. R.A.P. 531(b)(2)..... 1
Pa. R.P.C. 1.14 14,16

Other Authorities

John Anzelc, et al., *Comment on the Committee’s Model Act Governing Representation of Children in Abuse and Neglect Proceedings*, 12 Mich. Child Welfare L. J. 8 (2009) 15

Brodzinsky, D.M. *Children's understanding of adoption: Developmental and clinical implications*. Professional Psychology: Research and Practice, 42, 200-207 (2011) 17

Brodzinsky, D.M., Singer, L., & Braff, A.M. *Children's understanding of adoption*. Child Development, 55, 869-878 (1984)..... 13,14

Malik F, Marwaha R. *Cognitive Development*. [Updated 2020 Apr 14]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; (2020)..... 13

I. Interest of Amici¹

KidsVoice (www.kidsvoice.org) is a non-profit organization founded in 1908 as the Legal Aid Society of Pittsburgh. KidsVoice represents more than 3,000 children each year in termination of parental rights, adoption and dependency cases in Allegheny County, Pennsylvania. KidsVoice continues to represent clients through age 24 after they leave the child welfare and foster systems and require help with housing, credit, social security disability, health care access, mental health, intellectual disability, and expungement of juvenile court records. These services remove barriers to housing, health care, and employment.

KidsVoice worked with the states of Connecticut, Louisiana, Wyoming and Colorado, and in Travis County, Texas (Austin), to develop child advocacy offices using the KidsVoice practices and multi-disciplinary approach to protect child victims of physical abuse, sexual abuse or neglect. KidsVoice was one of five lead partners — and the only direct service child advocacy organization — on a five-year, \$6 million federal Quality Improvement Center Project for legal representation of abused and neglected children funded by the Children’s Bureau of the United States Department of Health and Human Services.

¹ Pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(2), the undersigned certify that no entity other than the identified *amici*, their members or the undersigned counsel paid in whole or in part for the preparation of this brief or authored this brief in whole or in part.

The **Defender Association of Philadelphia** was founded in 1934 by a group of attorneys who were dedicated to the belief that everyone, regardless of income, deserves the highest quality legal representation. Firmly rooted in Philadelphia for over 80 years, the Defender Association stands as the City's vanguard for all types of indigent defense and has continually expanded its services to provide high-quality, client-centered legal representation not only to adults but also to juveniles and children in Philadelphia. As such in 1974, the Defender Association created the Child Advocacy Unit to act as a voice for children who are involved in the dependency court system. The Child Advocacy Unit provides an integrated, team-based approach of attorneys and social workers who work together throughout the life of a case to protect the client's legal rights; advocate for their best interest; and promote permanency, stability, well-being, and positive outcomes for our clients.

As the primary appointment source for Family Court, the Child Advocacy Unit as an entity represents the largest collective group of children who are the subject of dependency petitions before the court. In 2019, the Child Advocacy Unit represented approximately 3,100 clients in 12,500 dependency and adoption hearings. Our representation model is a team consisting of an attorney and social worker assigned to each child with the team representing the child throughout the life of the court proceedings. As attorneys, we utilize our social work teammate as

a facet of our legal representation to provide us with direction and guidance regarding a variety of areas including child development and childhood trauma. Our social workers inform our practice and provide us insight into how to interact with and interview our clients regarding extremely sensitive areas (e.g., sexual and physical abuse) in preparation for court proceedings.

Given the facts of the instant matter, we would not have viewed it as necessary or appropriate to inform a six-year-old child as to the identity of his biological father for a variety of reasons, all of which are included herein. We would never find it appropriate for a child to receive this type of information in this context.

The **Montgomery Child Advocacy Project** (“MCAP”) (www.mcapkids.org) is a non-profit organization providing free legal representation to the children of Montgomery County, Pennsylvania, who are victims of abuse, neglect, and child trafficking. Our mission is to end and prevent child abuse and neglect in our County through legal services, advocacy, and education.

We are a unique victim’s agency as we provide free legal representation to abused and neglected children to navigate the legal and social services systems, so they can find greater safety, security, and stability in their lives. Along with our staff attorneys, we have 110 trained and dedicated attorneys who volunteer their time and talent to represent these children and make sure their voices are heard in the courts

and social service agencies. Since our inception in 2004, we have helped over 7,000 children. Our MCAP advocates serve as guardians *ad litem* and legal counsel for minors. They are involved in all of the legal arenas, including Protection from Abuse, Criminal Court, Dependency Court, and Orphans' Court (specifically for termination of parental rights and adoption cases).

MCAP has a compelling interest in ensuring that the attorney advocate represents the child professionally without causing harm or trauma. Critical to this professional representation is to use sound judgment in all communications with the child given the child's age, developmental stage, history of maltreatment, and familial disruption. Recognizing that each child is special, the advocate must treat and serve each one uniquely.

MCAP and the courts depend upon our pro bono advocacy, without which our abused and neglected child-clients would lack sound legal representation. Lawyers representing children must perform their duty as legal advocates, not counselors or therapists. If legal advocates for children are expected to assume the roles of counselors or therapists, the role of advocate will be blurred and possibly confusing for the child. Such expectations will create a chilling effect among our volunteers who would be acting outside of their area of expertise. Furthermore, the outcome would inherently harm the court and children.

Professor Lucy Johnston-Walsh teaches Juvenile Law and is the director of the Children's Advocacy Clinic, an experiential educational program of Penn State Dickinson Law.² The Children's Advocacy Clinic has a dual function of providing an education to law students in the practice of law, while simultaneously providing quality legal representation and advocacy for child clients. For 14 years, the Cumberland County Court of Common Pleas has appointed students in the Clinic to represent abused and neglected children in dependency, termination of parental rights, adoption, and custody matters under Professor Johnston-Walsh's supervision. The clinic operates as an inter-disciplinary law office, combining the professions of law, social work and medicine. Students participating in the Children's Advocacy Clinic also work to address systemic child welfare issues through policy and legislative advocacy.

David M. Brodzinsky, Ph.D. is Professor Emeritus of Clinical and Developmental Psychology at Rutgers University. For more than three decades, his research and scholarly writings have focused primarily on developmental and clinical issues in adopted and foster children and their families. Among the many

² Professor Johnston-Walsh appears as an *amicus curiae* individually and not on behalf of the law school or the Pennsylvania State University.

topics studied are: children's understanding of adoption; coping with adoption-related loss; parent-child attachment; psychological and academic adjustment; open adoption; adoption by sexual-minority families; preparation and training needs of adoptive parents; and training mental health professionals to be adoption clinically competent. He has over 100 publications, including numerous peer reviewed journal articles, book chapters, and six books on adoption and another on lifespan human development.

Dr. Brodzinsky is a licensed psychologist, who has maintained a private clinical and consultation practice focusing primarily on mental health issues in adoptive kinship members. He has also been a forensic consultant and expert witness in a number of high profile legal cases involving adoption-related issues.

Dr. Brodzinsky was one of the founding directors of the Donaldson Adoption Institute (DAI), an internationally-known adoption and foster care think tank in New York City. He served on the Board of Directors of the Institute for ten years and was its Research Director for another eight years. After leaving DAI in 2014, he joined the National Center on Adoption and Permanency as its Research Director.

Dr. Brodzinsky has been a consultant to countless public and private adoption agencies and has conducted training workshops for mental health professionals, child welfare professionals, legal professionals, and policymakers on a wide range of topics related to adoption and foster care throughout North America, Europe, and

parts of South America. He is a frequent keynote speaker at conferences and has testified before state and U.S. Congressional committees on policy issues related to adoption.

For his widely known and well respected work in adoption, Dr. Brodzinsky has received three national awards: U.S. Congressional Coalition in Adoption, Angel in Adoption Award in 2002; Marshall Schechter Memorial Lecture Award from the American Academy of Child and Adolescent Psychiatry in 2010; and the Adoption Excellence Award from the U.S. Department of Health and Human Services and the Children's Bureau in 2015.

Rachel H. Farr, Ph.D. is an Associate Professor in the Department of Psychology at the University of Kentucky. Dr. Farr's research in developmental psychology focuses on diverse families, particularly those formed through adoption and headed by LGBTQ+ parents. Her findings have been published in top-tier developmental psychology journals, such as *Child Development* and *Developmental Psychology*. Her work has garnered national media attention and has been cited in numerous *amicus* briefs for U.S. Supreme Court cases.

Susan G. Berman Kress, Ph.D. holds a doctorate in Clinical Psychology. She has been a PA-licensed Clinical Psychologist since 1993. Her private practice

with Allegheny Mental Health Associates, PC was singularly focused on the treatment of children and adolescents and their parents until 2007, when she transitioned to focus on life coaching specific to parenting issues and most often centered on helping families cope with the impacts of divorce and custody arrangements. For more than a decade she also participated in the Children's Issues Roundtable of the Allegheny County Bar Association's Family Law Section. This group included family law practitioners, Family Court judges, psychologists, mediators and conciliators involved in issues relevant to family court matters such as divorce proceedings, custody arrangements, impacts of mental health and addiction, parental termination, the foster care system, etc. She also served as an instructor for the Generations Program, a mandatory educational seminar for divorcing families involved in custody disputes.

II. Introduction

This case raises legal, psychological and public policy concerns about whether an attorney acting as counsel for a young child in a contested termination of parental rights proceeding should force upon the child information that all family members have elected not to disclose to the child. *Amici curiae* include psychologists who work directly with children and scholars and experts in adoption, three of the most established and respected children's legal advocacy offices that provide direct representation of children in Pennsylvania termination of parental rights cases, and an attorney who is the Director of a Child Advocacy Clinic.³

Amici curiae offer their collective perspective on the practical implications of the Court's decision in this case. *Amici* note that, although the question presented is framed in terms of a possible conflict of interest for the child's attorney, the decision in this case will affect any attorney appointed as counsel for this young child. *Amici* ask this Court to recognize that the disclosure of the father's identity will have significant and lasting effects on the child, and disclosure of that information should not come from the child's counsel, who from a psychological perspective would never be an appropriate person to have that discussion with the child.

³ Father's position in this case is supported by an *amicus* brief filed on behalf of a group of organizations and individuals, although none of those organizations or individuals provide direct representation of children in TPR hearings in Pennsylvania.

Amici psychologists and child advocates strongly support the decision of the six-year-old child's counsel in this case to not inform the child about his father's identity given the child's age and developmental capacity and the likelihood that such a revelation would lead to confusion, anxiety or trauma without actually allowing the child to make a meaningful decision based on that information. *Amici* therefore urge this Court to affirm the decision of the Superior Court.

Finally, should the Court determine that disclosure of the father's identity could be required in this case or under a different set of circumstances, *amici* propose a psychologically-informed process for the trial court to follow, involving at the outset a clinical evaluation of the child to determine whether disclosure would be appropriate given the child's developmental and emotional capacity to understand and make a meaningful decision based on complex and abstract information. If it is determined that the child has that capacity, the disclosure would occur over a period of time, would be guided by a clinician, and would not come from counsel but instead a close family member or someone else who the child trusts who would be available to provide the long-term emotional support the child will need.

III. Argument

The core question in this case is whether counsel for six-year-old P.G.F. should have told the child who his father was when none of his family, including Father himself, had shared that information. The answer to this question will affect any attorney who is appointed to act as counsel for P.G.F. or any younger child in similar circumstances.⁴ *Amici* believe that the trial court and Superior Court were correct in deciding that P.G.F.’s counsel fulfilled her duties to her young client in this case.⁵ *Amici* further strongly believe that requiring a child’s counsel to inform a six-year-old boy that the person the child believes is his father is not actually his father, and to disclose the identity of the biological father to the child: (1) would be inconsistent with the prevailing research of young children’s developmental and emotional capacity; (2) would likely cause confusion or even trauma to the child; and (3) would not likely lead to a more meaningful decision from the child.

⁴ A child is entitled to counsel in a contested termination of parental rights proceeding, and when that proceeding occurs as a result of a dependency case, the guardian *ad litem* who represents the child in the dependency case can serve as the child’s counsel absent a conflict. *In re: Adoption of L.B.M.*, 161 A.3d 172 (Pa. 2017); *In re: T.S.*, 192 A.3d 1080 (Pa. 2018). The present appeal does not arise from a dependency case.

⁵ The issue of whether counsel for a child in a contested TPR appropriately represented the child’s legal interests would necessarily be based on the individual facts of the case. *See, e.g., In re Adoption of K.M.G.*, 219 A.3d 662, 670, *appeal granted in part*, 221 A.3d 649 (Pa. 2019) (“Since the determination that a GAL does not have a conflict is a factual one, we hold that we should use the same standard of review when reviewing any factual determination of the orphans’ court and give great deference to those factual findings.”).

A. P.G.F. did not know the identity of his biological father, and his father had plenty of opportunities throughout P.G.F.'s life to inform P.G.F. about his identity.

P.G.F. did not know that K.F. (“Father”) was his biological father when the child’s attorney met with him prior to the first TPR hearing (when he was five years old) or when his attorney met with him after the case was remanded (when he was six years old). *In re P.G.F.*, No. 1284 WDA 2019, 2020 WL 579038, at *4 (Pa. Super. Jan. 27, 2020). Based on her questioning of P.G.F., it was clear to P.G.F.’s attorney that P.G.F. did not even remember Father or recall spending any time with him. *Id.* This is not surprising given the limited contact Father had with P.G.F. during the two years immediately prior to the TPR. *Id.* at *6. During this time, Father stopped exercising his partial custody time with P.G.F. *Id.* P.G.F. saw Father only occasionally at his paternal grandmother’s home, and only knew Father as “Grammy’s friend.” *Id.* at *2, *6. Although Father had previously sought and obtained a custody order, he made no efforts to enforce the order. *Id.* at *6. He also made no efforts to build a father-child relationship with P.G.F. *Id.* In fact, Father never even disclosed his identity as biological father to P.G.F., although he had opportunities over the years to do so. *Id.* at *2-3.

In addition to not knowing that Father was his biological father, it was also clear to P.G.F.’s attorney that P.G.F. viewed Mother’s husband as his father. At the time of the TPR remand hearing, P.G.F. had been living with Mother and Mother’s

husband for nearly two years. *Id.* at *1. P.G.F. identified Mother’s husband as his father and did not seem to remember Father at all. *Id.* at *4. When asked if he knew anyone by Father's name, P.G.F. could only recall a classmate who shares the same name as Father. *Id.* He did not appear to recall spending any time with Father. *Id.* P.G.F. became upset when considering the possibility of not living with Mother and Mother’s husband. *Id.* All of the adults in P.G.F.’s life, including Father and the paternal grandmother, allowed the child to believe that Mother’s husband was his father. *Id.* at *1-*4.

B. Young children are not “mini-adults.”

- 1. Psychological and developmental research establish that young children lack the capacity to comprehend complex concepts such as paternity, termination of parental rights and adoption, and simply providing a young child with complex information will not lead to the child having the ability to make a meaningful decision.**

To suggest that counsel for a six-year-old child should “gently” explain to the child who his father is for the sole purpose of ascertaining the child’s preferred outcome in a TPR also suggests that young children are “mini-adults” capable of comprehending complex concepts and making meaningful decisions based on that information. *Amici* psychologists and clinicians suggest to this Court that a six-year-old child is not developmentally capable of comprehending and processing abstract and complex ideas and concepts, such as biological father versus step-father and termination of parental rights and adoption, nor is a child this age capable of making

meaningful decisions involving these complex concepts.⁶ Malik F, Marwaha R. *Cognitive Development*. [Updated 2020 Apr 14]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2020 (children 6 to 12 years of age lack the ability to comprehend abstract ideas and children do not develop the ability to apply abstract thinking to solve problems until age 12); Brodzinsky, D.M., Singer, L., & Braff, A.M. *Children's understanding of adoption*. *Child Development*, 55, 869-878 (1984). (it is not until adolescence that children begin to understand the permanence of adoption and recognize that adoption involves a legal transfer of parental rights and responsibilities). These developmental limitations and the impact on decision making by children are reflected throughout the law. *See e.g.*, Pa. R.P.C. 1.14 (recognizes that younger children suffer from diminished capacity to make adequately considered decisions); 42 Pa. C.S. § 6302 (child must be at least 10 years old to commit a delinquent act); Mental Health Procedures Act and Minor's Consent Act (children under the age of 14 not authorized to make mental health decisions); 231 Pa. C.S. § 2036 (affidavit by competent person having knowledge or information if minor lacks capacity).

⁶ Any discussion with P.G.F. regarding his origins and Father's identity would have to begin with helping the young child understand the concepts of birth and reproduction, and would also necessarily include a discussion about the normality of diverse family structures. Some cases could require discussions of very sensitive topics where, for example, a parent is incarcerated due to abusing the child or where the child was conceived through rape. As detailed more fully in Section B.2. of this Argument, any discussion regarding the child's origins should not be a one-time event, and should be guided by a trained clinician – not an attorney.

Even the main scholarly article cited by Father's *amici* recognizes the diminished capacity of children under the age of 10 when examining the question of whether children in dependency court should be represented by client-directed counsel. After a review of scientific research, that article concludes:

Balancing the scientific research with child empowerment, ethical, and other practical issues, **our group recommends that the bright-line age be set at ten years old.** We recognize that this age is at the lower end of the range suggested by the science, but we feel that this is appropriate in order to achieve the other important goals of clarity for child attorneys, reduced ethical problems, and improved child development through meaningful involvement in court proceedings. Further, age 10 does make sense developmentally, since it is right at the cusp of some major developmental changes according to Piaget's research. Finally, we feel that it is better to set the age low, as over-inclusiveness on presumed competence is preferable given our other concerns, and since there would be a challenge procedure in place. (Emphasis added)

John Anzelc, et al., *Comment on the Committee's Model Act Governing Representation of Children in Abuse and Neglect Proceedings*, 12 Mich. Child Welfare L. J. 8 (2009).

At age six, P.G.F. would have minimal capacity to understand the paternity issues and the implications of that information for himself and his family, as well as a limited understanding of the termination of parental rights proceeding and possible future adoption.

In addition to having limited capacity to comprehend complex information, *amici* psychologists and clinicians assert that even if P.G.F.'s counsel had informed

him about his Father's identity for purposes of the TPR, P.G.F. would not have the necessary life experience to process that information and form a meaningful decision based on the new information. Young children who know and have lived with both parents can use that lived experience to form a preference about custody, which is a very basic and concrete concept and a concept that many young children could comprehend despite not understanding the legal proceedings.⁷ P.G.F. only knows his experiences of living with Mother and her husband, who he views as his family. It is unrealistic to expect a child this age to make a meaningful decision about something that he has not lived or experienced and that involves complex concepts that he cannot fully understand. Further, children of this age do not base their decisions on who is biologically related to them; they base their decisions on who is in their lives and who holds a place of importance to them. P.G.F. has absolutely no relationship with Father. The child did not even recognize Father's name. In contrast, P.G.F. clearly views Mother's husband as his father and expressed his desire to remain with Mother and her husband. Thus, any suggestion that P.G.F. could have given his TPR counsel a more reliable response if counsel would have given P.G.F. the information about Father's identity runs counter to the research

⁷ This assertion is consistent with Comment 1 to Pa. R.P.C. 1.14, which provides, in part, "For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."

regarding young children's capacity to comprehend and process complex information.

2. Psychological and developmental research establish that discussions with young children about paternity and related topics are discussions that should be guided by a trained clinician over a period of time, and that it would be psychologically-inappropriate for the child to learn of this information from TPR counsel.

As set forth above, young children simply do not have the capacity to understand complex information like paternity. To require that P.G.F.'s counsel disclose this information to him for the sole purpose of ascertaining his preferred outcome in the TPR would at best lead to confusion, and would not allow P.G.F. to make any meaningful decisions based on that information. *Amici* psychologists and clinicians note that research establishes that the most appropriate way to inform a young child about issues like paternity is through an ongoing conversation, guided by a trained clinician, between the child and someone the child trusts (e.g., a close family member) who can be available to support the child through the process. Brodzinsky, D.M. *Children's understanding of adoption: Developmental and clinical implications*. *Professional Psychology: Research and Practice*, 42, 200-207 (2011). (discussing adoption with children is a process that unfolds over time between the parent and child and is geared toward the child's cognitive and emotional readiness for the information). To require counsel to coldly reveal this information could easily lead to confusion and potentially cause anxiety or trauma

for the child. *Id.* at 42, 200-207 (parents need to be emotionally available for their child when discussing adoption information as the child may experience unanticipated and unsettling thoughts and feelings). Even Father acknowledges how emotionally damaging disclosing this information could be for the child. *See* Brief for Appellant, pp. 17, 18.

It is not the role or responsibility of TPR counsel for the child to share paternity information with a young child when no one else, including the father, has shared that information. Attorneys are not trained or otherwise qualified to discuss his type of information with clients. Even *amici* attorneys, who are dedicated children’s attorneys representing hundreds of children each year as counsel in TPR hearings in Pennsylvania, are not trained to discuss and process this type of sensitive information with their child clients. *Amici* strongly encourage this Court to recognize that any suggestion that it would be appropriate for a child’s counsel to “gently” explain to P.G.F. that K.F. is his father would be psychologically harmful to P.G.F.

3. The Superior Court’s decision in this case is consistent with prior case law.

In addition to being supported by the available psychological and developmental research, the decision by P.G.F.’s attorney to not tell the child the paternity information is also consistent with the Superior Court’s decision in *In re C.J.A.*, 204 A.3d 496 (Pa. Super. 2019). *C.J.A.* also involved a six-year-old child

who was the subject of an involuntary termination proceeding and who was unaware of the existence of his father. *Id.* at 502. The *C.J.A.* court acknowledged that it could be “confusing and traumatic” for a young child to learn this information from their TPR counsel and that it was “a reasonable judgment on [the]... part [of the child’s attorney] not to [tell the child]” *Id.* at 502. Ultimately, the *C.J.A.* court concluded that the child’s attorney discharged her duty as counsel to the best of her ability, based on the child’s age, mental condition and emotional condition. *Id.*

In this case, when TPR counsel met with P.G.F., she asked questions of the child to try to ascertain his preferred outcome in the TPR without advising him about the paternity issues. The child did not remember Father and identified Mother’s husband as his father. *In re P.G.F.*, at *4. The child clearly expressed his desire to live with Mother and Mother’s husband and became upset when considering the possibility of not living with them. *Id.* Given P.G.F.’s young age, lack of awareness of Father, view of Mother’s husband as his father and clear desire to live with Mother and her husband, it was reasonable for TPR counsel to not tell the child the paternity information and it was appropriate for TPR counsel to advocate for termination and adoption.

C. If this Court requires that a child’s counsel take additional steps when the child does not know the identity of one of the parents who is contesting the TPR, the Court should establish a psychologically-appropriate process for the trial court to determine whether and how the child should be informed about that parent’s identity.

For all of the above reasons, *amici* request that this Court affirm the decision of the Superior Court. Most children this age simply do not have the developmental capacity to process or comprehend complex information, and to disclose information like the identity of a parent through even the most competent attorney could lead to trauma, anxiety and other negative responses. However, in a case where the child does not know the identity of one of the parents, if the Court determines that something more is required from the child’s counsel, *amici* suggest that the Court consider an approach that would allow the trial court to determine the appropriate course of action based on available developmental research and an individualized psychological assessment of the child. *Amici* urge this Court to recognize that, from a psychological perspective, it is not appropriate for a child’s counsel to share this information with the child, and that discussion should instead be guided by a trained clinician.

Amici suggest that if a child’s counsel determines that the child does not know the identity of a parent in a contested TPR proceeding, counsel could inform the trial court about the child’s lack of knowledge. The trial court could then order a psychological evaluation of the child, and specifically request that the evaluator

assess and offer an opinion about whether the child should be informed about the parent's identity, and by whom, as part of the TPR proceeding for the purpose of ascertaining the child's preferred outcome in the TPR, and if so, how that should happen. The evaluator could be asked, in making this assessment, to consider the child's age and development, what information the child has about the identity of the parent, the child's capacity to process and understand this type of information, the child's history of mental health conditions, and the likelihood that informing the child about the parent's identity could cause any adverse psychological or emotional effects.

Amici further suggest that after review of the psychological evaluation, if the trial court determines that it is necessary to disclose the parent's identity to the child, the trial court should follow the recommendations of the psychological evaluator as to how to make that disclosure, which will likely involve a gradual disclosure by a parent or trusted adult with the assistance of a trained therapist or other mental health clinician. At no point should the trial court direct the child's counsel to inform the child about the parent's identity, because to do so would likely lead to confusion at best, and perhaps would traumatize the child. This process will likely take several months or longer, but as noted throughout, would be the only way to appropriately share this information with the child if the trial court determines that the information should be disclosed prior to the contested TPR hearing.

IV. Conclusion

Amici psychologists and child advocates strongly urge this Court to affirm the decision of the Superior Court and not require that counsel for a young child inform the child about his father's identity when none of the child's family had previously shared that information.

Date: August 26, 2020

Respectfully submitted,

/s/ Thomas C. Welshonce

Thomas C. Welshonce

Pa. ID No.: 94147

/s/ Jennifer McGarrity

Jennifer McGarrity

Pa. ID No.: 89249

KidsVoice

7th Floor, Frick Building

437 Grant Street

Pittsburgh, PA 15219

(412) 391-3100

Counsel for Amici Curiae

KidsVoice, Defender

Association of Philadelphia,

Montgomery Child Advocacy

Project, Professor Lucy

Johnston-Walsh, David M.

Brodzinsky, Ph.D., Rachel H.

Farr, Ph.D., and Susan G.

Berman Kress, Ph.D.

PA. R.A.P. 531(b)(3) CERTIFICATION

I hereby certify that the Brief of *amici curiae* complies with the word count limit of Pa. R.A.P. 531(b)(3). This brief contains 5,083 words, based on the word count feature of Microsoft Word.

PA. R.A.P. 127 CERTIFICATION

I hereby certify that the foregoing Brief complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, pursuant to Pa. R.A.P. 127 that require filing confidential information and documents differently than nonconfidential information and documents.

Date: August 26, 2020

/s/ Thomas C. Welshonce
Thomas C. Welshonce
Pa. ID No.: 94147

/s/ Jennifer McGarrity
Jennifer McGarrity
Pa. ID No.: 89249

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for *amici curiae* was served upon the following parties by Electronic filing and First-Class mail, postage pre-paid on August 26, 2020. This service satisfies the requirements of Pa. R.A.P. 121:

Anthony Zaroni
118 South Juliana Street
Bedford, Pennsylvania 15522

Honorable Thomas S. Ling
Bedford County Courthouse
200 South Juliana Street
Bedford, Pennsylvania 15522

Matthew Dombrosky
104 Keystone Street
Altoona, Pennsylvania 16602

Carol Ann Rose
238 South Richard Street
Bedford, Pennsylvania 15522

Date: August 26, 2020

/s/ Thomas C. Welshonce
Thomas C. Welshonce
Pa. ID No.: 94147

/s/ Jennifer McGarrity
Jennifer McGarrity
Pa. ID No.: 89249