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COURT OF APPEALS

STATE OF NEW YORK

In the matter of

K.Y.Z.

NO. 68

20 Eagle Street
Albany, New York
September 9, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

EMILY S. WALL, ESQ.
CENTER FOR FAMILY REPRESENTATION
Attorney for Appellant
40 Worth Street, Room 605
New York, NY 10013

GEOFFREY P. BERMAN, ESQ.
GEOFFREY P. BERMAN, P.C.
Attorney for Respondent
2005 Palmer Avenue, Suite 176
Larchmont, NY 10538

ANDREW T. FORD, ESQ.
THE LEGAL AID SOCIETY
Attorney for Child
199 Water Street
New York, NY 10038

Chrishanda Sassman-Reynolds
Official Court Transcriber



1 CHIEF JUDGE WILSON: First case on the calendar
2 is matter of K.Y.Z.

3 MS. WALL: The Center for Family Representation
4 by Emily Wall for the appellant father. I'd like to
5 request two minutes in rebuttal.

6 CHIEF JUDGE WILSON: Yes.

7 MS. WALL: The Family Court found that the
8 agency's efforts to reunify my client with his son had been
9 minimal; that it could have done more. It should have done
10 more, and it had even failed to follow the court's orders.
11 These findings are inconsistent with the Family Court's
12 determination that the agency proved, by clear and
13 convincing evidence, that it had made diligent efforts to
14 reunify the family.

15 JUDGE RIVERA: So since you disagree that this is
16 the minimum, which is what the court decided, what - - -
17 what would be the minimum? What's the floor? What else
18 needed to be done?

19 MS. WALL: Well, Your Honor, I would - - - the
20 agency was required to determine the particular problems
21 facing the parents with respect to return of the child and
22 make affirmative, repeated, and meaningful efforts to
23 assist the parents with overcoming those efforts as this
24 court said in Sheila G.

25 And so the primary obstacles that were facing my

1 client with respect to return of the child were his
2 understanding of his wife's mental illness and his frequent
3 work out of state.

4 JUDGE SINGAS: As to the first one, I - - - I'm a
5 little confused about what the agency could have done,
6 because I think the allegation was that he was not
7 accepting his wife's illness, mental illness. So I don't
8 really know what it is that they could have done
9 differently.

10 It's not like he's saying I didn't understand it,
11 or I need more education on it. He's - - - he was
12 basically saying, as far as I could tell from the record, I
13 don't accept this. So what do you think the agency could
14 have done?

15 MS. WALL: Your Honor, I'm not sure that it's - -
16 - it was an issue of - - - of refusing to believe it or - -
17 - or not understanding what it consisted of. I think the
18 agency was obligated to explore what it was that was
19 preventing him from having the kind of understanding the
20 agency wanted him to have about her mental illness and help
21 him overcome that obstacle.

22 JUDGE TROUTMAN: With respect to understanding,
23 how was it conveyed to him? Was language a barrier? Was
24 education a barrier?

25 MS. WALL: Your Honor, I believe the only time

1 the agency spoke to my client about his wife's mental
2 illness was at the planning meetings, which were held every
3 six months, twice a year.

4 JUDGE TROUTMAN: Did they have an interpreter
5 there?

6 MS. WALL: They did have an interpreter at those
7 meetings. Initially, I believe it was a Mandarin
8 interpreter, and at some point it began being a Fuzhou
9 interpreter. But the case planning staff who attended
10 those meetings didn't have any - - - there was no evidence
11 that they had any expertise in mental illness or whether
12 they - - - that they had the cultural competence necessary
13 to help my client overcome any cultural barriers to his
14 understanding of his wife's mental illness.

15 JUDGE CANNATARO: And - - -

16 JUDGE RIVERA: What, if any, services were
17 provided to address that particular issue? Anything?

18 MS. WALL: No services were provided to address
19 my client's understanding of his wife's mental illness.

20 JUDGE RIVERA: So what - - -

21 JUDGE CANNATARO: Obviously - - -

22 JUDGE RIVERA: - - - what happens at the planning
23 meeting? They just say you don't understand?

24 MS. WALL: At the planning meeting they would say
25 that he - - - you know, that the wife was not able to care

1 for the child due to her mental illness. And I believe
2 that was about the extent of it.

3 JUDGE RIVERA: Did they offer therapy for him?

4 MS. WALL: They did not.

5 JUDGE CANNATARO: Didn't they ask him to go to
6 the wife's therapy sessions, presumably to get a better
7 understanding of the nature of her problem?

8 MS. WALL: So the case planner testified that my
9 client had been informed that he could attend the wife's
10 therapy with her, but that wasn't a meaningful opportunity
11 for him to gain an understanding of his wife's mental
12 illness, because she didn't regularly attend her therapy.

13 JUDGE SINGAS: I know. But why not? I mean, I -
14 - - I - - - I think you're suggesting that the father
15 should have been offered some kind of mental health
16 therapy, but he didn't need it. So they're saying, look,
17 we're - - - you're not accepting your wife's issues. Maybe
18 you should attend these issues, because that will help - -
19 - these sessions, because that'll help you understand. Why
20 isn't that sufficient?

21 Again, I - - - I come back to I don't know what
22 the agency could have done to force him to accept this
23 notion that his wife was suffering from mental illness.

24 MS. WALL: I think the suggestion that - - - that
25 he needed to be forced to accept it, I think, presumes that

1 - - - that he understands it and is - - - is refusing to
2 accept it, which I don't think is clear in this case.

3 JUDGE TROUTMAN: And what are you saying impacted
4 his ability to understand and appreciate the effect of her
5 illness on her ability to care for the child?

6 MS. WALL: Right. I think - - - I think that
7 there may have been cultural barriers to his understanding
8 of his wife's mental illness. And I do think that
9 individual counseling is a service that can assist someone,
10 even someone not diagnosed with a mental illness, to better
11 understand mental illness. There's also support groups for
12 - - -

13 JUDGE SINGAS: Which is - - -

14 JUDGE TROUTMAN: Would you suggest that's akin to
15 like, parenting?

16 MS. WALL: Yes.

17 JUDGE TROUTMAN: But - - - but dealing with him
18 as an individual? So what is the agency's responsibility
19 with respect to providing services for an individual?

20 MS. WALL: Well, they need to tailor the - - -
21 the services to the individual situation. And as I
22 mentioned before, they need to determine the particular
23 problems, whatever the obstacles are with respect to that
24 parent's ability to reunify with the child and help the
25 parent overcome those obstacles.

1 JUDGE GARCIA: Counsel, I have a more basic
2 question. There were findings made. There's a decision in
3 - - - at the lower court, then that's affirmed at the
4 Appellate Division. What's our standard of reviewing this?

5 MS. WALL: Your Honor, I believe that the - - -
6 the issue of whether the appropriate standard was applied
7 is a question of law that this court can decide. And - - -

8 JUDGE GARCIA: But if it was the appropriate
9 standard of reviewing these, what's our standard? Because
10 I look at this record, and I see over the course of almost
11 two years, in 2019 to 2020, there are ten hearing dates for
12 fact finding hearing. Then the next year, from September
13 2021 to September '22, there are six hearing dates for
14 dispositional hearing.

15 So after those sixteen hearing dates, presumably,
16 where all of these things that we're talking about were
17 discussed, there were decisions made. What's our role here
18 in reviewing what's now, I think, nine years of litigation
19 over this - - - well, eight years of litigation and
20 hearings? And now is it our role to say what type of
21 therapy might have been provided to your client?

22 MS. WALL: I think this court's role is to
23 determine whether the Family Court applied the appropriate
24 standard, which is the standard this court set in Sheila G.
25 And that the agency make affirmative, repeated, and

1 meaningful efforts to help the parent overcome the problem.

2 JUDGE GARCIA: And it - - - is that, in our view,
3 we just de novo review whether we think we would have done
4 that?

5 MS. WALL: Well, Your Honor, I don't - - - the -
6 - - the Family Court did not find that the agency had made
7 any efforts that were addressed at overcoming the primary
8 obstacles to reunification. So the - - - the Family Court
9 misapplied the standard when it approved the efforts
10 despite - - -

11 JUDGE GARCIA: What are you asking us to do if we
12 agree with that? Send it back so they just apply the right
13 standard, or are they going to have more proceedings? Are
14 they going to give it another year? What happens?

15 MS. WALL: Your Honor, I think that the - - - the
16 - - - the order terminating my client's parental rights
17 should be reversed, and the agency can always file another
18 petition.

19 JUDGE GARCIA: And we start over again?

20 MS. WALL: Your Honor, in addition to the - - -
21 the agency failed to take steps to address the underlying
22 obstacles to reunification and also failed to tailor its
23 assistance to the family's language needs. This - - -

24 JUDGE HALLIGAN: On the language point, what are
25 we to make of the statement that - - - that your client

1 had, I think the word was "average" language skills in
2 Mandarin?

3 MS. WALL: Well, Your Honor, I don't think the
4 court needs to specifically address whether Mandarin or
5 Fuzhou was the appropriate language. Because in this case,
6 the - - - to provide my client with services then, because
7 in this case the agency didn't provide my client with
8 services in either language that were tailored to - - -

9 JUDGE HALLIGAN: So you're not - - - you're not
10 relying then on the provision of whatever interactions
11 there were in Mandarin as opposed to Fuzhou?

12 MS. WALL: Right. I don't think the court needs
13 to decide that because no services were provided in either
14 language to address the - - - the fundamental issues, as -
15 - -

16 JUDGE CANNATARO: So you're saying the record is
17 completely devoid of any services that were provided, even
18 in Mandarin?

19 MS. WALL: No. I'm saying no services that were
20 tailored to addressing the underlying problems preventing
21 reunification. The services - - -

22 JUDGE CANNATARO: So it's really not a language
23 issue at all, it's just the appropriateness of the services
24 that were provided?

25 MS. WALL: I - - - yes. With regard to services,

1 I would be focusing more on the appropriateness of the
2 services.

3 JUDGE RIVERA: Well - - - well, how can that be?
4 If you're not able to communicate with the parent to
5 appreciate what are the services that they need because
6 there's a language barrier - - -

7 MS. WALL: Yes.

8 JUDGE RIVERA: - - - isn't that then getting back
9 to Judge Halligan's question about whether or not, in part,
10 the - - - the argument here is regarding the lack of
11 appropriate linguistic services?

12 MS. WALL: I agree that - - - that especially in
13 a case where insight is so important, as in this case, that
14 - - - that the - - - speaking to the parent in the
15 appropriate language is - - - is going to make a big
16 difference and is important.

17 JUDGE HALLIGAN: But - - - but how can we
18 conclude that Mandarin was not appropriate when there was
19 testimony that - - - that he had average skills in
20 Mandarin? That's what I'm wrestling with.

21 MS. WALL: Right. And I - - - I don't think the
22 court necessarily needs to decide that. The - - - because
23 in addition to no - - -

24 JUDGE HALLIGAN: So - - - so does that mean - - -
25 I just want to make sure I have your argument. With

1 respect to any interactions in which there was only a
2 Mandarin interpreter provided, and nothing in Fuzhou - - -
3 I - - - I understand you're making a distinct point about
4 additional services you think should have been provided,
5 but that we don't need to be concerned about the question
6 of whether Mandarin was an appropriate language in which to
7 - - - to provide an interpreter?

8 MS. WALL: I don't think the court needs to
9 decide that in - - - in this case. There were so many
10 interactions that took place without any interpreter at
11 all. For example, when my client came to the visits and no
12 interpreter was provided, which prevented him from having
13 regular conversations in any language with the case
14 planning staff about - - -

15 JUDGE TROUTMAN: And in addition, at - - - in the
16 record at A-627, was there some discussion of illiteracy on
17 his part?

18 MS. WALL: That's correct, Judge. My client
19 testified that he is illiterate in his own language. So
20 that obviously was an obstacle for him to understand, you
21 know, what - - - to be able to access services on his own.

22 JUDGE RIVERA: So - - - so what could, "just
23 average understanding of Mandarin" mean?

24 MS. WALL: And I don't know, Your Honor. It's -
25 - - it's not really in the record. The - - - the case

1 planner testified that he gave logical responses when he -
2 - - she spoke to him in Mandarin. But then, you know, I
3 don't think that the case planning staff was really
4 qualified to assess his language skills.

5 JUDGE TROUTMAN: And the court below did the - -
6 - there were some comments made by the court when it
7 rendered its decision with respect to some deficiencies.

8 MS. WALL: Yes. Yes. The court indicated, if
9 Your Honor is referring to the language about the agency's
10 efforts being minimal, that it could have done more, should
11 have done more, and had failed to even follow the court's
12 orders, which I think is a clear indication that - - - that
13 - - - you know, the - - - the court had some hesitation
14 about whether to approve these efforts, which is
15 inconsistent with the clear and convincing evidence
16 standard that the court was required to decide this case
17 under.

18 JUDGE RIVERA: Well, I - - - I get that a judge
19 might conclude that even the failure to comply with certain
20 orders doesn't mean they have not otherwise satisfied their
21 burden. But it is troubling for a judge to say they should
22 have done more. I mean, unless the judge is saying as a
23 moral - - - you know, something moral requires that you do
24 more than this. But otherwise, that sounds like a judge is
25 saying, despite the contrary conclusion, I - - - I don't

1 find that you've complied with your statutory obligations.

2 MS. WALL: Yes. And also, I think that the - - -
3 the statement that the agency could have done more suggests
4 that it wasn't an - - - an issue of - - - you know, that it
5 was too difficult for the agency to - - - to provide my
6 client with additional services.

7 The court actually noted in the written decision
8 that the court was not persuaded by the agency's excuse as
9 to why it took two years to make the first referral for my
10 client.

11 JUDGE CANNATARO: Why is the - - - the - - - the
12 notion - - - the statement that the agency could have done
13 more, should have done more, but the efforts were, I think
14 the - - - the phrase was minimally adequate or something
15 along those lines, why is that not legally sufficient in
16 terms of the standard that we have?

17 MS. WALL: Because the court apparently thought
18 it was sufficient for the agency to schedule planning
19 meetings, schedule visits, and refer my client to a
20 parenting class. But that's not what this court has held.
21 This court has held that the efforts have to be tailored to
22 the specific problems facing the family, not just the usual
23 plan, and that they have to be affirmative, repeated, and
24 meaningful.

25 So they can't wait for a parent to, like, ask for



1 a particular service. They have to affirmatively sit down
2 with the parent, figure out what is needed.

3 JUDGE CANNATARO: And that missing service is
4 therapy for the father?

5 MS. WALL: Well, something yes. Individual
6 counseling or a support group or a class to learn about
7 mental illness, and also some kind of assistance to help
8 him overcome the obstacle that his work schedule posed to
9 him visiting frequently enough.

10 JUDGE RIVERA: Let me - - - let me ask this.
11 Let's circle back to this issue of indicating that he could
12 attend his wife's - - - his spouse's therapy. And you
13 said, well, she didn't really attend therapy, so that's not
14 much of an - - - an offer. But let's - - - let's go with
15 attending the therapy. I mean, what - - - so - - - did
16 they arrange for someone to then discuss what went on in
17 that therapy session to help him better understand? What -
18 - - what was going to be the follow up to the mere
19 attendance?

20 MS. WALL: They - - - there was no - - - the
21 agency didn't put in any evidence.

22 JUDGE RIVERA: It's not his therapy - - -

23 MS. WALL: Right.

24 JUDGE RIVERA: - - - right? It's her therapy?

25 MS. WALL: Right. And the agency presented no

1 evidence that they even coordinated - - - you know, a time
2 when he could attend with his wife. The - - - the agency
3 case planner just simply testified that she had spoken to
4 the mother's therapist, and she had learned that our client
5 had been informed that he could attend the mother's
6 therapy. So it wasn't like an active - - - you know,
7 affirmative effort they made to coordinate - - - you know,
8 a time when they could both sit down with her therapist and
9 talk about how her mental illness impacted her ability to
10 be a caregiver for the child.

11 CHIEF JUDGE WILSON: Thank you.

12 MR. FORD: May it please the court. The Legal
13 Aid Society by Andrew Ford on behalf of the child.

14 I would respectfully submit to the court that the
15 Appellate Division, First Department, properly concluded
16 that a sound and substantial basis in the record supported
17 the Family Court's finding that clear and convincing
18 evidence established that the appellant permanently
19 neglected his now eleven-year-old child, who had been in
20 foster care since shortly after his birth notwithstanding
21 the agency's diligent efforts, i.e., reasonable - - -

22 JUDGE TROUTMAN: What efforts can you identify
23 that they engaged in to address the specific needs of the
24 father?

25 MR. FORD: With regards to appellant's need to

1 understand his wife's mental illness and its impact on her
2 ability to safely care for their child unsupervised, the
3 agency counsels him repeatedly as to the need for
4 supervision, and that she could not be alone with him,
5 given her mental health issues, and - - -

6 JUDGE TROUTMAN: And when you say they counseled
7 him, is there also - - - there evidence that it was
8 explained to him the nature and extent of her illness?

9 MR. FORD: The case planner testified that at the
10 conferences they discussed with an interpreter her mental
11 illness and then - - - and the impact on her ability to
12 parent, such that he had to ensure that she would not be
13 alone with the child if reunification occurred.

14 Furthermore, once it became clear that appellant
15 was still unable or unwilling to acknowledge his wife's
16 mental illness and the impact - - -

17 JUDGE TROUTMAN: What about - - - what if he
18 didn't understand?

19 MR. FORD: There's nothing in the record to
20 indicate that appellant did not understand what was said in
21 terms of a language or education.

22 JUDGE TROUTMAN: Well, there's evidence that he
23 was illiterate.

24 MR. FORD: Yes, Your Honor. But illiteracy does
25 not necessarily mean an inability to comprehend spoken



1 conversation - - -

2 JUDGE TROUTMAN: Nor does it - - -

3 MR. FORD: - - - and at no point - - -

4 JUDGE TROUTMAN: - - - mean that one can
5 understand.

6 MR. FORD: That's correct, Your Honor.

7 JUDGE TROUTMAN: And whose burden is it to
8 establish that he did, in fact, understand and appreciate
9 the nature of her illness?

10 MR. FORD: It is agency's burden to establish
11 that and exercise diligent efforts - - -

12 JUDGE TROUTMAN: And in order to understand the
13 nature and extent of that communication, it - - - it needs
14 to be clear that he is - - - there is an interpretation
15 that he's participating. How - - - how was that done?
16 There are two languages done at different times. How - - -
17 how was that done here?

18 MR. FORD: Yes, Your Honor. And with regard to
19 the interpretation. During the first year the agency used
20 Mandarin interpreters to speak with appellant, during that
21 time, appellant confirmed through the interpreter that he
22 understood the agency - - - through the Mandarin speaking
23 interpreter and provided logical, clear responses to the
24 agency's inquiries of him.

25 JUDGE HALLIGAN: With respect to the visits - - -

1 JUDGE RIVERA: I'm sorry. Where - - - where on
2 the record does it say that he says, I understood
3 everything that was said to me - - -

4 MR. FORD: On - - -

5 JUDGE RIVERA: - - - through the Mandarin
6 interpreter? Just so I know where to look if I've missed
7 it.

8 MR. FORD: One moment, please. One moment,
9 please. Your Honor, I need to find the correct page.

10 JUDGE RIVERA: Well, I - - - I don't want to take
11 up all your time with that search.

12 MR. FORD: But it - - - but - - -

13 JUDGE RIVERA: I'll attempt to find it.

14 MR. FORD: - - - specifically - - - I did
15 reference it in my brief the specific page numbers.

16 JUDGE RIVERA: Oh, we'll find it. Thank you.

17 MR. FORD: And I will note that during those
18 conversations there's no evidence that appellant ever
19 expressed confusion or lack of understanding of what was
20 being said, nor is there any evidence that the interpreter
21 ever raised a concern.

22 JUDGE HALLIGAN: But would - - - would - - -

23 MR. FORD: And - - -

24 JUDGE HALLIGAN: Go ahead.

25 MR. FORD: - - - with regards to his own

1 testimony, appellant testified that the agency spoke with
2 him about the need to ensure that his wife is not alone
3 with his child many, many times and that he did not test -
4 - - and he did not testify that he did not understand those
5 conversations. In fact, he testified - - -

6 JUDGE RIVERA: Didn't he say he'd get a - - -
7 didn't he say he'd get a babysitter?

8 MR. FORD: Excuse me?

9 JUDGE RIVERA: Didn't he say he'd get a
10 babysitter?

11 MR. FORD: He testified at one point eventually
12 that he would get a babysitter for half a day, when he
13 worked more than half a day. Thus clearly indicating he
14 did not really understand the need - - -

15 JUDGE RIVERA: Well, it's indicating that the
16 person lives on subsistence wages, and it's very difficult
17 for him - - -

18 MR. FORD: That's - - -

19 JUDGE RIVERA: - - - to make ends meet. Did the
20 agency in any way address what is so obvious, the poverty
21 and economic obstacles to this man being able to have his
22 child with him?

23 MR. FORD: I will respond to that. But first, if
24 I can just finish my last thought?

25 JUDGE RIVERA: Yep.

1 MR. FORD: The agency didn't - - - the appellant
2 testified that he did not think it a big deal that his wife
3 be alone with his child. He did not, despite being aware
4 of her diagnosis, aware of - - - of the agency's position,
5 and despite sitting in court and hearing her mental health
6 professional's testimony, he still did not see the issue
7 with this child being alone with his wife. So I'll submit
8 his lack of understanding was clear.

9 With regards to - - -

10 JUDGE RIVERA: That's - - - the Mandarin
11 interpreter said that that's what he said?

12 MR. FORD: That was the Fuzhou - - - the Fuzhou
13 interpreter was in court for the - - - this testimony in
14 court, Your Honor.

15 JUDGE RIVERA: Thank you.

16 MR. FORD: And with regards to poverty, I would
17 submit to the Court that appellant's schedule or need to
18 work or his self-imposed need to work outside the state
19 does not - - - was not the primary barrier to reunification
20 here.

21 JUDGE TROUTMAN: "Self-imposed?"

22 MR. FORD: Yes.

23 JUDGE TROUTMAN: Was there evidence that there
24 was work readily available for him and he simply chose to
25 avail - - - not to seek those opportunities?

1 MR. FORD: Yes, Your Honor. Appellant testified
2 that he worked with several employment agencies in New York
3 City that found him work. He testified he never asked them
4 to find him local employment. He testified that during the
5 last six months of the relevant period, he was able to work
6 sometimes in New York City. And he testified that in the
7 two years prior to his testimony, he worked for two years
8 straight in - - - in New York City, establishing he could,
9 in fact, work in New York City. He did not testify he
10 could not work in New York City at all during the relevant
11 period.

12 JUDGE RIVERA: But I - - - but I thought he
13 communicated that being able to go out of state?

14 MR. FORD: He - - -

15 JUDGE RIVERA: And - - - and these were not
16 convenient trips. These were - - - these were exhausting
17 trips on these buses. Because he works in the restaurant
18 industry was one way to increase the amount, again, of
19 these very subsistence wages that he made so that he'd have
20 more money. I mean, he didn't have disposable income.

21 MR. FORD: Yes. He did testify that he thought
22 he could make more money by working out in the city and out
23 of the state, which is why he chose to take those
24 opportunities.

25 JUDGE RIVERA: Would - - - would he - - - would -

1 - - is it possible that he would consider that beneficial
2 to reunification with his child, if he could move above
3 this clear poverty status that he was at?

4 MR. FORD: I would submit to the court that
5 parenting, by its nature, requires parents to make choice -
6 - - tough decisions, and people - - - parents make the
7 decisions that they think are best at the time. I can
8 agree to that.

9 In this particular case he decided - - -

10 JUDGE RIVERA: Can you also agree that the agency
11 might have some responsibility to assist - - -

12 MR. FORD: Certainly - - -

13 JUDGE RIVERA: - - - with the crushing load of
14 some of those decisions in this kind of parent's case?

15 MR. FORD: Certainly, Your Honor. If the barrier
16 to reunification was his mere lack of availability to visit
17 more, and not just his - - - not his understanding of his
18 wife's mental illness and its ability - - -

19 CHIEF JUDGE WILSON: So if - - -

20 MR. FORD: - - - effect on her ability to parent
21 safely.

22 CHIEF JUDGE WILSON: - - - if I - - - if I
23 understand the record correctly, the visits between the
24 father and the child that were arranged by the agency, the
25 - - - the child had been placed in a home where neither



1 Mandarin nor Fuzhou was spoken; is that right?

2 MR. FORD: That's correct.

3 CHIEF JUDGE WILSON: And there was no interpreter
4 provided at those meetings?

5 MR. FORD: When you say "meetings", which you are
6 referring to, Your Honor?

7 CHIEF JUDGE WILSON: The child - - - the visits
8 with the child.

9 MR. FORD: So yes. When they - - - child first
10 entered care - - -

11 CHIEF JUDGE WILSON: So basically they took a
12 child who would have been a native either Fuzhou or
13 Mandarin speaker, away from the parents at birth, put the
14 child in a home where neither of those languages were
15 spoken, and arranged for visits between the child and the
16 parents, where there was no interpreter? And just to
17 finish the point, they also didn't, during the eleven years
18 of this child's life, ever provide instruction to the child
19 in either Mandarin or Fuzhou?

20 MR. FORD: Just one correction for the record - -
21 -

22 CHIEF JUDGE WILSON: Yes.

23 MR. FORD: - - - Your Honor. I believe the
24 dispositional hearing established that the agency did
25 arrange for some Mandarin instruction once he was older and

1 able to start in Mandarin instruction.

2 JUDGE HALLIGAN: So - - - so how many years - - -

3 MR. FORD: - - - but with the - - - my apologies.

4 JUDGE HALLIGAN: Go ahead.

5 MR. FORD: But with regards to the - - - during
6 the fact finding period, yes, my client was placed in an
7 English and Spanish speaking foster home. The agency
8 scheduled twice per week visitation with appellant and his
9 child.

10 CHIEF JUDGE WILSON: A series of three different
11 foster homes, no?

12 MR. FORD: During the relevant period - - -

13 CHIEF JUDGE WILSON: Yes.

14 MR. FORD: - - - it was only one foster home
15 throughout that entire time. And the agency explored - - -

16 CHIEF JUDGE WILSON: And the relevant period ends
17 at age what?

18 MR. FORD: He had just turned three years old, I
19 believe a month prior to - - - a month - - - a month or two
20 prior to the filing of the petition.

21 JUDGE CANNATARO: Was he verbal during that
22 period?

23 MR. FORD: No. He was completely nonverbal,
24 according to the testimony, for the first two years and the
25 third year, he was, quote, "limited in any language".



1 JUDGE HALLIGAN: But during the visits for all
2 three of those years - - - and it sounds like you're saying
3 going forward, even if the - - - the relevant period is not
4 before us, there was no interpreter provided during the
5 visits. And so the father could not communicate verbally
6 at all with his child; is that right?

7 MR. FORD: During the first three years, there
8 were no interpreters at the visits, but I would submit to
9 the court, respectfully, there was no need for an
10 interpreter. Appellant himself testified he did not need
11 an interpreter to speak with his son - - -

12 JUDGE HALLIGAN: Well - - -

13 MR. FORD: - - - when he was a baby.

14 JUDGE HALLIGAN: - - - I - - - I think that many
15 parents do speak to their children even before their
16 children are verbal. And so it might have been, maybe you
17 could agree, beneficial for the father to have had an
18 interpreter that would have enabled him to do that.

19 JUDGE RIVERA: Also - - -

20 MR. FORD: I would submit to the court that - - -

21 JUDGE RIVERA: I'm sorry. Weren't those visits
22 supervised by the caseworker?

23 MR. FORD: Yes, Your Honor.

24 JUDGE RIVERA: So it meant that without the
25 interpreter, there could be no communication with the

1 caseworker?

2 MR. FORD: Yes, Your Honor. Visits were
3 supervised by a case planner throughout the relevant
4 period. With regards to appellant speaking - - -

5 JUDGE TROUTMAN: What was the purpose - - -

6 MR. FORD: - - - to the child, that was - - -

7 JUDGE TROUTMAN: - - - of the caseworker being
8 there?

9 MR. FORD: It - - - visits were supervised by the
10 agency, I believe. It's not - - -

11 JUDGE TROUTMAN: And - - - and do they provide
12 input to the parent if things are not going or they're
13 doing things that are inappropriate?

14 MR. FORD: Their - - - supervision is meant to be
15 there to ensure the visits happen safely and to intervene
16 and/or provide guidance if there are issues or safety
17 concerns.

18 JUDGE TROUTMAN: And how can you provide guidance
19 if you're not speaking the same language?

20 MR. FORD: I would submit sent to the court that
21 there were no safety concerns identified with regards to
22 appellant's ability to communicate or interact with this
23 child during those visits, according to the agency's case
24 planner. Not - - - there's nothing in the record to
25 indicate the agency ever stopped, prevented, or discouraged



1 appellant from speaking to his son in Mandarin or Fuzhou.

2 JUDGE TROUTMAN: What about guidance? You spoke
3 of guidance. In order to receive guidance, one would need
4 to be able to properly communicate with another, correct?

5 MR. FORD: That's correct, Your Honor. But it
6 does not necessarily have to happen in the moment during
7 the visits. The record established that in addition to the
8 biyearly conferences, there was also phone calls between
9 the visits with - - - with an interpreter, during which at
10 any point in time, the agency can raise issues and
11 appellant can ask questions if he has any regarding the
12 visits.

13 In fact, appellant himself initiated several of
14 those phone calls, according to the testimony. So I would
15 submit that there was ample opportunity if there were
16 concerns or questions regarding their interaction, for - -
17 -

18 JUDGE RIVERA: Let me ask you this. It - - - did
19 the father, at any time, refuse to follow through on a
20 service that was recommended? Follow through on a
21 referral? Did he at any time refuse to do what the agency
22 - - - in that sense with respect to the services - - -
23 offered to him and encouraged?

24 MR. FORD: I would submit there were two things.

25 JUDGE RIVERA: Okay.

1 MR. FORD: First, with regard to the visitation.
2 He was offered twice per week and it was only reduced to
3 twice per month at his request, and even then he only
4 visited about half the time once, sometimes less.

5 JUDGE RIVERA: And I thought that was - - - but I
6 thought that was because of the parent's work schedule?

7 MR. FORD: That was because - - - as to his
8 request, because he was working out of state. However, he
9 did testify he would come back to New York City more often
10 if he had things to do and did not if he did not have
11 things to do. The agency provided financial assistance for
12 the actual transportation. Clearly - - -

13 JUDGE RIVERA: On the buses out of state?

14 MR. FORD: On - - - for the MetroCards, and he
15 testified they offered to provide him reimbursement for the
16 bus tickets, but he'd never provide them a receipt. With
17 regard - - - so he had ample opportunity if he chose to
18 prioritize visiting more often to come back to New York
19 City with financial assistance to visit his son more.

20 JUDGE RIVERA: But the financial assistance might
21 mitigate the cost of the travel, but it would not make up
22 for the lost - - - right - - - the lost wages?

23 MR. FORD: Potentially, Your Honor. It's not
24 clear from the record how much time off you would have to
25 take from work, or how much that would cost, or how that

1 would impact - - -

2 JUDGE RIVERA: Let me ask you this. Is - - - is
3 - - - this record aberrational?

4 MR. FORD: In what way, Your Honor?

5 JUDGE RIVERA: Well, the caseworker couldn't
6 figure out for almost a year that the gentleman's primary
7 language was something other than what she had assumed.

8 MR. FORD: I would submit that that is not
9 necessarily an - - - an issue with the agency. I would say
10 that it's an - - - that - - - it's an issue with the fact
11 that appellant did not ever express to the agency he spoke
12 another language, preferred another language, or his first
13 language was not Mandarin. He gave no indication that he
14 could not understand Mandarin or he spoke another language.

15 The agency - - -

16 JUDGE TROUTMAN: Well, how did they make a
17 determination that Mandarin was appropriate?

18 MR. FORD: It's unclear from the record what led
19 to the initial conversation happening in Mandarin, but
20 during that conversation, he confirmed he understood.
21 Never identified another language.

22 JUDGE RIVERA: You know there's understanding and
23 there's understanding, you know? And when you're going to
24 have referrals that might involve both emotional and
25 perhaps highly technical or legal matters, you can't just



1 have the kind of conversation you might have at a
2 restaurant when you're reading a menu. You - - - you've
3 got to be able to know detail and be specific.

4 MR. FORD: Certainly, Your Honor.

5 JUDGE RIVERA: So it - - - it's a little bit - -
6 - I'm - - - I'm a little bit shocked at an agency thinking
7 that - - - you know, for one year or more we got it wrong,
8 but that's okay because there was some back and forth some
9 way or another.

10 MR. FORD: Certainly. I agree there's a
11 difference in understanding different types of
12 conversations. However, appellant himself testified he
13 spoke average Mandarin for a Mandarin speaker. He did not
14 testify any - - -

15 JUDGE RIVERA: Okay. But again - - - again, we -
16 - - how could the caseworker and the agency understand what
17 he meant by average, since the man has already admitted
18 he's illiterate in his own language? His primary language.
19 Speaks a handful of words in English. And it's obvious he
20 can't communicate with the foster parents.

21 MR. FORD: I would submit that the record
22 establishes he speaks Mandarin. He does not testify to any
23 deficiency in understanding or speaking Mandarin. He did
24 not testify that he did not understand any of the
25 conversations with the case planner.

1 JUDGE RIVERA: Okay.

2 MR. FORD: So while I understand the concern that
3 the agency did not specifically inquire or otherwise
4 confirm, according to the record, it's clear that he
5 actually understood. And appellant was not prejudiced by
6 the use of that interpreter, as when they switched to a
7 Fuzhou speaking interpreter for the following two years,
8 there was no change in anything in terms of his
9 understanding or his actions.

10 And I would note that even if this court - - -

11 JUDGE RIVERA: The interpreter was present, how
12 often? Were - - - were they present at every planning
13 session?

14 MR. FORD: There were interpreters at the
15 conferences and at the - - - and the phone calls - - -

16 JUDGE RIVERA: Which were how frequent?

17 MR. FORD: About twice a year. There is
18 testimony that there was no interpreter for two
19 conferences, but they were rescheduled. Appellant himself
20 confirmed on his testimony that he attended at least six
21 during the three years.

22 So there were interpreters at the conferences,
23 during phone calls, home visits. It was just the visits
24 when the focus is on - - - on interacting with his young
25 child and he was nonverbal and appellant could speak with

1 his client - - - with his child in Mandarin or Fuzhou, that
2 there were no visits.

3 And I would submit to the court that even if this
4 court were to find that the use of a Mandarin interpreter
5 during the first year was an issue, based on the record,
6 that does not prevent or preclude a finding of diligent
7 efforts in that there are two out of three years they used
8 a proper interpreter, and only a one-year period is
9 required for a finding of permanent neglect.

10 CHIEF JUDGE WILSON: Thank you.

11 MR. FORD: Thank you.

12 MR. BERMAN: Good afternoon, Your Honors. May it
13 please the Court. My name is Geoffrey P. Berman, and I
14 represent the respondent, Good Shepherd Services.

15 I'm not going to reiterate the arguments of the
16 attorney for the child. I would like to address, first
17 off, though, the - - - what the judge - - - the Family
18 Court judge said about minimal efforts.

19 JUDGE HALLIGAN: Can I just ask you to clarify
20 something?

21 MR. BERMAN: Sure.

22 JUDGE HALLIGAN: You note in your brief, I think,
23 that ACS policy generally requires that an interpreter be
24 present for visits, and I don't think it's in the record,
25 but the ACS language access policy on their website accords

1 with that. In fact, it says that interpretation services
2 must be provided for all in-person services.

3 So why was there no interpreter provided for all
4 of the interactions between the father and the child?

5 MR. BERMAN: So Judge, the - - - initially there
6 was no interpretation at the visits there. It's - - - it's
7 unclear why, but - - -

8 JUDGE HALLIGAN: But during the three years in
9 the record - - - maybe I missed it - - - but I didn't see
10 any indication that there was an interpreter at the visits
11 that the father had with his child. But did I miss - - -

12 MR. BERMAN: No, no. Prior to the - - - prior to
13 the filing date of the - - - of the termination? Yes.
14 There were no interpreters present during his visits. The
15 question was, though, is an interpreter necessary? I know
16 Your Honor had mentioned that a parent does - - - you know,
17 might like to speak to their child.

18 JUDGE HALLIGAN: And I thought in particular, the
19 third year, I thought the record indicated that even if he
20 had some developmental delays, that he had some limited
21 verbal skills in that third year?

22 MR. BERMAN: Very limited. But - - -

23 JUDGE HALLIGAN: Okay. But no ability to
24 communicate in - - - verbally, though, because of the
25 absence of an interpreter. So why was that?

1 MR. BERMAN: Well, with an interpreter, it's - -
2 - it's - - - the child really wouldn't have understood - -
3 - they wouldn't have understood - - - they wouldn't have
4 really been able to communicate. The father would have
5 spoken, the child wouldn't have understood.

6 JUDGE HALLIGAN: But - - - but the policy doesn't
7 strike - - - doesn't appear to me to say you have to have
8 an interpreter for family visits once the child is verbal.
9 It simply says, and - - - and you - - - you seem to concur
10 that policy generally does require that an interpreter be
11 present. So I'm just trying to understand why the policy
12 apparently wasn't followed here.

13 MR. BERMAN: Well, that - - - that is the best
14 practice, and it's unclear why the policy wasn't followed.
15 It's not a requirement for diligent efforts, I would
16 submit. But it would have been helpful.

17 However, the agency was - - - the main purpose of
18 the visits really is to bond. Right? So you want the - -
19 - the parents to bond. You want the father to be able to
20 hold the child. Since he - - -

21 JUDGE HALLIGAN: And presumably as - - - as I
22 think the attorney for the child stated to receive some
23 guidance, which would be not possible. You know, an
24 interaction with - - - with a child, one would think that
25 guidance in the moment is particularly helpful. And I take

1 it that was not possible absent an interpreter?

2 MR. BERMAN: Right. However, the record is
3 pretty clear that there was guidance given after the visits
4 via phone calls, via planning conferences, with the benefit
5 of an interpreter.

6 JUDGE HALLIGAN: Which took place twice a year,
7 perhaps?

8 MR. BERMAN: Well, the conferences did. The
9 phone calls were more frequent. But the planning
10 conferences - - -

11 JUDGE RIVERA: How long were the calls?

12 MR. BERMAN: It was unclear how long the calls
13 were, but an interpreter was utilized for all the phone
14 calls.

15 JUDGE RIVERA: What were the subject areas
16 covered during the call?

17 MR. BERMAN: I believe the caseworker spoke about
18 the visits and spoke about planning. I'm not sure what
19 else.

20 CHIEF JUDGE WILSON: But if you're - - - if
21 you're trying to get a parent and child to bond - - -
22 sorry. Straight ahead of you. Why would you put them in a
23 place where they can't speak the language that is the only
24 language spoken by the parent? I mean, that seems
25 counterproductive to bonding. No?

1 MR. BERMAN: Are you speaking about the foster
2 home or the visits?

3 CHIEF JUDGE WILSON: Foster home or the visits?
4 Well, look, what I'm speaking about, I guess, is you have a
5 child who would have been a native Fuzhou speaker, maybe
6 would have at some point learned Mandarin, probably not.
7 Right? And parents who speak only Fuzhou and Mandarin, and
8 a child who's put in a home where the only exposure to
9 language is not in either of those languages.

10 So if you're trying to get a parent and child to
11 bond, that seems like the opposite of what you do. If you
12 were trying to get them not to be able to bond, you would
13 give them different languages and different cultures.

14 MR. BERMAN: So are you - - - is Your Honor
15 suggesting that they should have tried to put the child in
16 a Fuzhou or Mandarin speaking foster home?

17 CHIEF JUDGE WILSON: There are many things that
18 might have been done. That certainly could have been one
19 of them. And even if the initial placement couldn't have
20 been there, there might have been continuous look for a
21 place that could have provided that. Or, for example, a
22 daycare where Mandarin was spoken, or language instruction
23 in Mandarin even.

24 I mean, the way - - - Judge Halligan was going at
25 this point. The way children learn language is not by

1 being presented books. It's by their parents generally, or
2 some adults, or maybe other children, speaking to them in a
3 language. That's how they learn. That starts when they're
4 born.

5 MR. BERMAN: Yeah. I mean, certainly immersion
6 would be the better way to do it, but in terms of the
7 foster home - - -

8 CHIEF JUDGE WILSON: It's the only way people
9 learn language - - - learn their initial language is
10 immersion. Nobody learns their initial language from a
11 one-year-old by picking up a textbook.

12 MR. BERMAN: Right. But that would - - - that
13 would likely require the agency to have a Fuzhou or
14 Mandarin speaking foster home available at the exact time
15 that the child was placed - - -

16 CHIEF JUDGE WILSON: Or - - - or did they look to
17 see if there's a Mandarin daycare?

18 MR. BERMAN: I don't know if they looked - - -

19 CHIEF JUDGE WILSON: The record say that?

20 MR. BERMAN: - - - to see if there was a Mandarin
21 - - - they did explore the father's resource, who would
22 have been a Fuzhou speaking resource. He presented a
23 resource. The agency explored them, tried to certify them
24 as a foster parent. However, they dropped out for one
25 reason or another, it wasn't clear why. But that would

1 have been a perfect home for the child. If that resource
2 had followed through, that would have been an immersive
3 environment for the child. It would have been a Fuzhou
4 home, not just in Mandarin.

5 JUDGE RIVERA: Or perhaps figure out before one
6 year what the primary language is of the parents. Perhaps,
7 provide the parents greater resources to ensure
8 reunification if that was the plan.

9 MR. BERMAN: Well, Your Honor, in terms of that
10 first year, I think the responsibility is equally on the
11 father. If he didn't understand what was being said - - -

12 JUDGE RIVERA: But that's not the - - - you have
13 a burden. I - - - I'm not disagreeing with you.
14 Obviously, the parent can't undermine the agency's efforts
15 and/or throw their hands up and say, I'm not going to do
16 anything, you've got to serve it to me on a silver platter.
17 But I had asked before and let's see if you have a
18 different opinion.

19 It - - - I thought the record indicated that the
20 father did everything he was asked to do. Got certificates
21 in programs every time he was asked - - -

22 MR. BERMAN: Well, he went - - -

23 JUDGE RIVERA: - - - to take those programs.

24 MR. BERMAN: - - - he went to a parenting
25 program. He did that. And he did it in Mandarin, which

1 the agency found for him. He didn't attend the mother's
2 therapy appointments, which would have been - - -

3 JUDGE RIVERA: But neither she - - - did she many
4 times.

5 MR. BERMAN: Well if - - - if his - - -

6 JUDGE RIVERA: And it's not his therapy, it's
7 hers.

8 MR. BERMAN: It's her therapy. But if this man's
9 plan is to plan together with his wife and she's not
10 attending his therapy, well, that's not a very good plan.

11 JUDGE RIVERA: Well, I thought the agency thought
12 the child can't - - - can't be in the care of the mother?

13 MR. BERMAN: Well, they did, but he didn't. His
14 plan - - -

15 JUDGE HALLIGAN: But - - - so what - - - what
16 about that, though? If, as I understood the record, the
17 mother was attending therapy appointments quite
18 sporadically. Yes?

19 MR. BERMAN: Yes.

20 JUDGE HALLIGAN: Okay. And presumably the
21 father, I - - - I guess, could attempt to persuade her, but
22 he can't compel her to attend the therapy appointments.

23 So - - - so what - - - what should or could he
24 have done? And at what point does the agency have an
25 obligation to identify other routes towards him improving

1 his understanding of her condition and whatever risks it
2 might pose?

3 MR. BERMAN: I think that was really the best
4 route. And again, his - - -

5 JUDGE HALLIGAN: Well, but wait - - -

6 MR. BERMAN: - - - he was to plan to - - -

7 JUDGE HALLIGAN: - - - but - - - but if she
8 wasn't attending regularly, that doesn't provide him with
9 much of an avenue it seems to me, because he can't make her
10 go. So - - - so how is that a - - - a meaningful avenue?

11 MR. BERMAN: So my point is that if they're - - -
12 if they are planning together, right, they want to raise
13 this child together. That's their plan. He has to take
14 some initiative to try to persuade her to go. He can't
15 force her to go, obviously - - -

16 JUDGE HALLIGAN: We don't know whether he did or
17 didn't take some initiative to try to persuade her. I
18 think what we know is that she only went sporadically,
19 right?

20 MR. BERMAN: Right. And the agency encouraged
21 her to go more.

22 JUDGE HALLIGAN: Yeah.

23 JUDGE SINGAS: But he didn't think - - -

24 JUDGE HALLIGAN: But that's her - - -

25 JUDGE SINGAS: - - - that there was an issue.

1 Did he? Did he think - - -

2 MR. BERMAN: No.

3 JUDGE SINGAS: - - - it's not like he's saying, I
4 - - - she needs therapy and she needs to go and I will
5 attend with her.

6 MR. BERMAN: Right.

7 JUDGE SINGAS: He's basically saying she's fine.
8 Let her take care of the kid.

9 MR. BERMAN: He said - - - I believe he said,
10 quote, "it's no big deal. Schizophrenia is no big deal."

11 JUDGE RIVERA: And - - -

12 MR. BERMAN: And that's after - - -

13 JUDGE RIVERA: - - - and isn't that - - - isn't
14 that an indication that the agency needs to do more than
15 say, well, you just don't have insight?

16 MR. BERMAN: But - - - well, they tried to. I
17 think they did the best they could in terms of trying to
18 get him to attend.

19 JUDGE RIVERA: Well, it's not a question of
20 whether or not they did the best they could. It's a
21 question of whether or not they've met the statutory
22 requirement.

23 MR. BERMAN: Right. And I think they - - - I
24 think they did by trying to get him to attend these
25 services with her. It would have been the perfect setting

1 - - -

2 CHIEF JUDGE WILSON: But it did - - - I wasn't
3 clear - - -

4 MR. BERMAN: - - - because it was tailored - - -

5 CHIEF JUDGE WILSON: Sorry. I wasn't clear about
6 the record because I thought the attorney for the child
7 said essentially that the agency found out that the
8 therapist had said that he could attend. Was - - - is - -
9 - does the record say that the agency told him he should
10 attend the mother's sessions?

11 MR. BERMAN: Yes. The - - - the - - - the record
12 does say that - - - so the caseworker testified that she
13 recommended that he sit in on her therapy sessions as
14 allowed. That's in 253 to 254 of the appendix. And also,
15 appellant did testify that he believed he did sit in on
16 some of her sessions, although he wasn't clear about that.

17 JUDGE GARCIA: May I ask something?

18 MR. BERMAN: So I think there was no - - - if he
19 didn't - - -

20 JUDGE GARCIA: I'm sorry.

21 MR. BERMAN: Yes.

22 JUDGE GARCIA: Your light is on and I - - - I
23 just want to ask something somewhat differently. It - - -
24 it seems - - - a different avenue. It seems this petition
25 is filed in April 2017 and there are hearings starting in -

1 - -

2 MR. BERMAN: I - - - I think it was - - - was it
3 August? I think it was August.

4 JUDGE GARCIA: April.

5 MR. BERMAN: Oh, it was April.

6 JUDGE GARCIA: There are - - - there are
7 hearings, fact finding over the course of roughly a year,
8 whatever. And then there's a dispositional hearing that
9 takes exactly a year. And then at the end of 2022, five
10 years later, there's an oral determination entered. Two
11 years later, there's an Appellate Division affirmation - -
12 - affirms that decision.

13 Is this standard that it takes five years to get
14 through these proceedings in - - - in court?

15 MR. BERMAN: Usually not.

16 JUDGE GARCIA: Just before you get to the
17 Appellate Division?

18 MR. BERMAN: Sometimes. Sometimes - - -
19 sometimes when there's - - - there are interpreters, it
20 takes a bit longer depending on if they are virtual
21 interpreters, sometimes it takes a little bit longer to get
22 through cases. That's just my experience.

23 JUDGE GARCIA: And so the first part's a fact
24 finding hearing. The second part's a dispositional
25 hearing?

1 MR. BERMAN: Yes.

2 JUDGE GARCIA: If we were to reverse here, what
3 happens when this goes back?

4 MR. BERMAN: It starts over.

5 JUDGE GARCIA: With a fact finding?

6 MR. BERMAN: Fact finding.

7 JUDGE RIVERA: Do you have to file another
8 petition?

9 MR. BERMAN: Yes.

10 JUDGE GARCIA: And it seems from the Appellate
11 Division decision, and they were talking about the father's
12 request to suspend the judgment. It wasn't warranted
13 because the child was living in a loving foster home where
14 his extensive special needs were being met, and his foster
15 mother wanted to adopt him.

16 The child is now eleven years old, right?

17 MR. BERMAN: Yes.

18 JUDGE GARCIA: So if we send this back, he'll be
19 eleven-plus, and we will start the petition process that we
20 just walked through, again?

21 MR. BERMAN: Yes.

22 JUDGE SINGAS: Where is the child now?

23 MR. BERMAN: The child's still in the same home.
24 And my understanding is he wishes to be adopted. He's
25 looking forward to being adopted. Yeah.

1 JUDGE RIVERA: Well, the father may very well not
2 want his parental rights terminated? So - - -

3 MR. BERMAN: The father? I'm sorry?

4 JUDGE RIVERA: The father may not want his
5 parental rights terminated. That's the point of this
6 appeal.

7 MR. BERMAN: I'm sure he doesn't.

8 JUDGE RIVERA: Right? Yes. And it's - - - it's
9 a bit hard to wrap my mind around the failings of the - - -
10 the system, if there are any. I understand you're saying
11 everything was met and met the standard. But let's say the
12 court disagreed with you that the failings result in the
13 termination of parental rights. That seems the height of
14 injustice.

15 CHIEF JUDGE WILSON: Thank you.

16 MR. BERMAN: Thank you.

17 MS. WALL: I'd just like to make two points
18 regarding the time that the child has been in foster care.
19 And the first is that the New York Legislature enacted a
20 preference for reunification of children with their parents
21 whenever possible. And that's why it made diligent efforts
22 at threshold consideration that has to be determined before
23 any consideration of what is in the child's best interest.
24 And also - - -

25 JUDGE GARCIA: So the child's best interest, as I

1 understand that accurate, is not a factor at all here?

2 MS. WALL: It's not a factor at the fact finding
3 on the termination of parental rights. It's only a factor
4 once permanent neglect has been proven. So if the agency
5 hasn't met their - - - their burden, then the children's
6 interests never are considered.

7 JUDGE GARCIA: It's only considered at the
8 dispositional - - -

9 MS. WALL: That's correct.

10 JUDGE GARCIA: - - - hearing? And - - - but you
11 would have to redo both, right?

12 MS. WALL: Yes. And one thing I want to point
13 out in terms of the timeline, it took about two years for
14 the fact finding to begin, I think in part because the
15 mental health services evaluation of the mother took some
16 time to be completed, and the - - - the delay between fact
17 finding and disposition was because of COVID. The fact
18 finding was completed at right before COVID started.

19 So another point that I just wanted to make
20 quickly was in terms of the interpreters at visits. It's
21 not just so that my client can communicate with the child,
22 although of course, that - - - that's important and that is
23 one of the primary purposes of visits. But also these are
24 an opportunity for the case planning staff and my client to
25 check in. That happens much more frequently than the case

1 planning meetings, which are only twice a year.

2 They would have allowed the case planner to help
3 him prepare for the visit, to think of activities to do
4 with the child, to give him feedback after the visit. They
5 would have allowed - - -

6 JUDGE RIVERA: What - - - what about both
7 counsels' statements that as far as they could tell, the
8 father never indicated that he wasn't able to communicate,
9 that there - - - there was something else he wanted to say
10 or wanted to be heard in a particular way, and he was
11 denied the opportunity to have that kind of communication?
12 Is that what the record reflects, or do you have some
13 opinion or response?

14 MS. WALL: Well, the father did testify that he
15 sometimes didn't know what was going on at the visits, and
16 he felt like a dummy because he couldn't communicate with
17 anybody. So clearly it had an impact on him that that - -
18 -

19 JUDGE RIVERA: But - - - but - - - but they say
20 but then there are these calls where there are interpreters
21 and, of course, at the conferences every six months, there
22 are. And they say he had his opportunity to communicate
23 that to the caseworker at that point, and the agency staff,
24 and apparently - - -

25 MS. WALL: I think - - -

1 JUDGE RIVERA: - - - he failed to do so again.
2 Unless you read the record differently or can point to
3 something else.

4 MS. WALL: I think that the calls - - - I mean, I
5 don't think there's evidence in the record about what
6 exactly the calls consisted of other than - - - you know,
7 probably scheduling related - - - scheduling visits and
8 meetings and things. The case planner testified that the -
9 - - the - - - the conferences were the time when she gave
10 my client feedback about the visits. And I think - - -

11 JUDGE TROUTMAN: What responsibility with respect
12 to reunification was that of your client here?

13 MS. WALL: Well, Your Honor, diligent - - -
14 because diligent efforts is a threshold issue. There's
15 really no consideration of what my client did or didn't do,
16 unless the agency has first met its obligation. And that's
17 in part because of the superior position of the agency.

18 The agency has experience with these types of
19 cases and knowledge and - - -

20 JUDGE TROUTMAN: Could your client obstruct their
21 ability to address his needs?

22 MS. WALL: No. Your Honor, my client was always
23 cooperative with the agency. He did the services that they
24 referred him to. He always stayed in touch with the case
25 planner.

1 JUDGE TROUTMAN: That's what I was asking you.
2 What is his responsibility with respect to the
3 reunification process, if any?

4 MS. WALL: Well, in terms of the - - - the only
5 way that my client's actions come into play in the
6 consideration of whether the agency made diligent efforts
7 is if my client was utterly uncooperative or indifferent,
8 which he was not. He - - -

9 JUDGE TROUTMAN: Okay.

10 MS. WALL: - - - attended the services the agency
11 asked him to attend.

12 JUDGE RIVERA: Can I ask? At the beginning you
13 said there were two aspects of the failure to tailor. And
14 I think we - - - for the most part, you only addressed the
15 first. What was the second?

16 MS. WALL: Yeah. The - - - the first was his
17 understanding of his wife's mental illness - - -

18 JUDGE RIVERA: Yes.

19 MS. WALL: - - - and the second was the impact
20 that his frequent work out of state had on his ability to
21 visit and build a strong bond with the child, which the
22 agency didn't help him solve that problem at all.

23 JUDGE RIVERA: What should they have done?

24 MS. WALL: Well, they could have provided him
25 with employment counseling or helped him find financial

1 assistance or housing assistance so he could have afforded
2 to support himself without needing to frequently work out
3 of state. Or they could have just helped him problem solve
4 like, if it was possible for him to get other work than he
5 was finding through his employment agencies, they could
6 have explored that with him. But they didn't do anything
7 to assist him with - - - with overcoming that obstacle.
8 When he - - - you know, they told him he should visit more
9 frequently. And he said, but I need to work to support
10 myself. And that was apparently the end of the
11 conversation. They didn't further explore whether there
12 was some solution that they could find to - - - you know,
13 to allow him to visit more frequently and build the bond
14 that - - - that was necessary.

15 CHIEF JUDGE WILSON: Thank you.

16 MS. WALL: Thank you.

17 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of In the matter of K.Y.Z., No. 68 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: September 16, 2025

