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COURT OF APPEALS
STATE OF NEW YORK

ABDOCH,

Appellant,

-against-

NO. 38

ABDOCH,

Respondent.

20 Eagle Street
Albany, New York
April 14, 2026

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

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Bobby Hodges
Official Court Transcriber

1 CHIEF JUDGE WILSON: Next case on the calendar is
2 matter of Abdoch v. Abdoch.

3 MS. BATES: Good afternoon, Chief Judge, members
4 of this honorable court. My name is Alison Bates, and I'm
5 the attorney for the Children-Appellant herein. Before I
6 formally begin, I respectfully request that you allow me to
7 reserve two minutes for purposes of rebuttal.

8 CHIEF JUDGE WILSON: Absolutely.

9 MS. BATES: Thank you. May it please the court.
10 Parens patriae works best when it's informed by meaningful
11 advocacy, not when it replaces it. This case asks a simple
12 but very consequential question. Does a child whose rights
13 are impacted by a custody order have the right to appellate
14 review of that order?

15 JUDGE SINGAS: Can I ask a question?

16 MS. BATES: Yes.

17 JUDGE SINGAS: Would your position be different
18 if the mother was not supporting the position of the child?
19 In other words, what happens if the parents' views are
20 contrary to the child's, and then there's a decision made
21 that the parents are unwilling to accommodate? What
22 happens then?

23 MS. BATES: So Judge, I rely on the matter of
24 Bennett v. Jeffreys. Over 50 ago, this court held that
25 children have rights independent of their parents. They're

1 not sub persons of their parents.

2 JUDGE SINGAS: But I'm just asking a practical
3 question, I think. What happens in that situation? I
4 understand this one is different, right? The mom is on the
5 same side as the child as far as we know, correct?

6 MS. BATES: Uh-huh.

7 JUDGE SINGAS: That's still correct?

8 MS. BATES: Correct. Although, to clarify, the
9 mother did not participate at the Appellate Division level,
10 which was why the matter was dismissed for lack of
11 standing.

12 JUDGE SINGAS: Right.

13 MS. BATES: So my request today is that the court
14 adopt the finding in Newton v. McFarlane - - -

15 JUDGE GARCIA: So I think what the question is,
16 let's say - - -

17 MS. BATES: Yeah.

18 JUDGE GARCIA: - - - in a hypothetical case,
19 there's a settlement. The parents settle. And the
20 attorney for the child believes that settlement is not in
21 the best interest of the child. Can the attorney for the
22 child in that hypothetical appeal?

23 MS. BATES: I'm not asking the court to hold - -
24 -

25 JUDGE GARCIA: I know you're not asking. But

1 what do you think is the answer to my question?

2 MS. BATES: I do not think so.

3 CHIEF JUDGE WILSON: Why not?

4 MS. BATES: Because I don't think that the
5 children's rights - - - when the parents have come to an
6 agreement that the children has the right to block a
7 settlement that the parties have agreed to.

8 CHIEF JUDGE WILSON: But why not? I mean, what
9 if it's a terrible settlement - - -

10 MS. BATES: Well - - -

11 CHIEF JUDGE WILSON: - - - that really
12 jeopardizes the child's welfare?

13 MS. BATES: If it jeopardizes the child's
14 welfare, then I would consider the child aggrieved within
15 the meaning of CPLR 5511 and the case law around that. And
16 then I would - - - I would - - -

17 JUDGE HALLIGAN: But how do you sort that
18 question out without giving the child a right to appeal in
19 all cases? I mean, you probably can't ascertain whether
20 it's really terrible for the child unless you review it on
21 appeal.

22 MS. BATES: Sure. I think the attorney for the
23 child, just like all counsel, has an ethical obligation to
24 review the matter and not file a frivolous appeal.

25 JUDGE HALLIGAN: But I think what we're trying to

1 understand is, is the right to file that you're asserting
2 limited to circumstances where one of the parents takes the
3 same position as the child and the attorney for the child,
4 or can the attorney for the child take that appeal even
5 when neither parent endorses in any fashion, whether by
6 letter or actually filing an appeal, but something less
7 than an appeal included? That's what we're trying to
8 understand, I think.

9 MS. BATES: I understand the question, and I
10 don't think - - - I think that the child has the right to
11 appeal so long as - - -

12 JUDGE HALLIGAN: So in all cases?

13 MS. BATES: In all cases where - - - well, with
14 limitation, where there's been aggrievement.

15 JUDGE HALLIGAN: Well, it seems to me - - - this
16 is, I guess, what I'm struggling with - - - that that
17 question, how does that get determined if not on an appeal?

18 MS. BATES: Well, the attorney for the child has
19 an obligation not to file an appeal if there's no
20 aggrievement. So by filing the notice of appeal that is
21 alerting the Appellate Division, there is a - - - there is
22 a person here - - -

23 CHIEF JUDGE WILSON: Well, that's - - -

24 MS. BATES: - - - who's been aggrieved.

25 CHIEF JUDGE WILSON: - - - that's just to say, if

1 you have no - - - if you have no argument on the merits,
2 you wouldn't file an appeal. But if you think - - -

3 MS. BATES: Correct.

4 CHIEF JUDGE WILSON: - - - you have an argument
5 on the merits - - -

6 MS. BATES: Correct.

7 CHIEF JUDGE WILSON: - - - you're - - - so but
8 back to Judge Halligan's question, I think we're all trying
9 to get at is - - -

10 MS. BATES: Yeah.

11 CHIEF JUDGE WILSON: - - - that would mean that
12 an attorney for a child always has the authority to file an
13 appeal, but has discretion not to do so in some cases?

14 MS. BATES: Yes. Authority when there's
15 aggrievement.

16 CHIEF JUDGE WILSON: Well, but that's a merits
17 issue, no?

18 MS. BATES: It is a merits issue. And I'm not
19 asking for this court to expand children's rights today, or
20 to determine on the merits that the child's position always
21 is king. And if the - - - if the decision of the trial
22 court is not in line with the child's position - - -

23 JUDGE HALLIGAN: Well, let's think about it,
24 maybe in a practical way.

25 MS. BATES: Yeah.

1 JUDGE HALLIGAN: How should the Appellate
2 Division, when an appeal by the attorney for the child is
3 filed, proceed to assess whether or not it can hear that
4 appeal, assuming neither parent has either appealed or
5 endorsed that position in any way?

6 MS. BATES: The same way that they would do it if
7 a parent had appealed.

8 JUDGE HALLIGAN: Okay.

9 MS. BATES: Does your - - -

10 JUDGE HALLIGAN: So that means they take briefing
11 on the appeal. They hear argument and they render a
12 decision in every case?

13 MS. BATES: Correct. I'm just asking for
14 standing. Whether or not the child's position holds merit,
15 whether there was substitution of judgment and that was
16 proper, whether there has been a change of circumstances
17 that would be reportable under the matter of Michael B.,
18 those are all merit issues.

19 JUDGE RIVERA: Are you saying it's no different
20 than if one parent - - - a parent, excuse me, the one who
21 feels aggrieved, appeals and the other parent chooses not
22 to submit - - -

23 MS. BATES: Correct. The - - -

24 JUDGE RIVERA: - - - a position or appeared
25 argument?

1 MS. BATES: Correct. The Fourth Department has -
2 - - has hung their hat on this phrase that the children
3 should not be permitted to chart the course of litigation.
4 But the same could be said for a parent who files an
5 appeal, when the other parent is not interested in pursuing
6 the matter past the trial court stage. They're dragged
7 along with that other parent on their notice of appeal.

8 JUDGE CANNATARO: Counsel, can I ask you, does
9 your definition of aggrievement for the child change at all
10 if the AFC is exercising substituted judgment?

11 MS. BATES: I'm glad you brought that up. It
12 doesn't change my opinion, but I think it's all the more
13 important that there's appellate review when there's been a
14 substitution of judgment. The reason for that is that
15 attorneys for children substitute judgment when a child is
16 either incapable of making their own voluntary, knowing
17 decision, or when the child's position would put them in
18 imminent risk of serious harm. So if the attorney for the
19 child is filing a notice of appeal, inherent in that is the
20 presumption that the position that the trial court judge
21 took is one that would put the child, let's say, at
22 imminent risk of serious harm. All the more reason why the
23 Appellate Division should be reviewing it.

24 JUDGE CANNATARO: But what if it's just, you
25 know, something less than risk of serious harm, which is

1 best interests in general? And it's really the attorney
2 who's making that determination, nothing explicitly stated
3 by the child. Is the standing analysis exactly the same?

4 MS. BATES: I think it is exactly the same.
5 Inherent within the standard of best interest of the child
6 within the language itself is a recognition that children
7 have an interest in these proceedings. So you know - - -

8 JUDGE SINGAS: So is there any limitation then,
9 to this standing argument?

10 MS. BATES: There are limitations.

11 JUDGE SINGAS: And what are they?

12 MS. BATES: I know that's a concern of the
13 courts. AFCs, as with all counsel, are bound by the
14 ethical obligations - - -

15 JUDGE HALLIGAN: That gives you a lot of room. I
16 mean, you can bring a nonfrivolous argument, I think,
17 right?

18 MS. BATES: It does. But in addition to
19 requiring an attorney to exercise their professional
20 judgment, aggrievement - - - CPLR 5511 requires true
21 aggrievement, not just a mere disagreement with the
22 decision. And Family Court Act 1120(b), the legislative
23 expectation within that language is that appeals will be
24 pursued selectively and not automatically. So the Fourth
25 Department rule has created a category of litigant who's

1 directly bound, directly affected by the order, yet
2 categorically denied appellate review. It's a clean,
3 acknowledged three to one split with what happens in the
4 other departments, and this court must resolve that split.

5 In doing so I'm asking the court to adopt the
6 finding of Newton v. McFarlane holding in that matter,
7 which stated that a child can be aggrieved, has both the
8 statutory and case law right to appellate review. In any
9 other holding would make a determination that the person
10 most affected by the order is the one - - - only one not
11 entitled to appellate review of that order.

12 So allowing an attorney for the child to pursue
13 an appeal does not displace parental control of the
14 litigation. It simply recognizes a narrow exception.
15 Again, I'm not asking for an expansion of rights. I'm
16 asking to ensure meaningful representation, which is
17 consistent with already existing law.

18 CHIEF JUDGE WILSON: Thank you.

19 MS. BATES: Thank you.

20 MS. YOON: Good afternoon, Your Honors. May it
21 please the court. Jane Yoon for the mother, Fonda Abdoch.

22 I'd like to start with the court's question
23 earlier about whether an AFC can appeal a settlement, and I
24 think they can. Whether or not the AFC has any say in the
25 settlement is really a merits issue. And what we're here

1 today is about whether or not the children can get in the
2 door for the appellate review. So I think there was maybe
3 a consolidation of those - - - those issues and the
4 question - - -

5 JUDGE TROUTMAN: Does the child have to be deemed
6 a party?

7 MS. YOON: I don't think so. The party is
8 defined by Black's Law as a person. And there are
9 different kinds of parties. There's the parties of record,
10 which obviously in a family court custody case would
11 probably be the parents who are named in the caption.

12 JUDGE TROUTMAN: So is aggrievement really the
13 operative?

14 MS. YOON: That is correct, Your Honor. And if
15 you look at CPLR 5511 and the cases that talk about that,
16 they really focus on, was there relief requested? Was it
17 granted? Was it denied in part? And so I think that's the
18 operative question. And I would note, too, that even with
19 the second department in its holding in Newton and in the
20 subsequent cases and other cases prior to Newton, in which
21 they allowed the child to pursue an appeal, they were
22 designated a nonparty appellant. So whether or not they're
23 a caption party shouldn't preclude them from being - - -

24 JUDGE RIVERA: So what's your rule?

25 MS. YOON: The rule should be that all children

1 in contested custody proceedings have the right to pursue
2 an appeal where the children have been aggrieved. So the
3 central question is whether they've been aggrieved.

4 JUDGE SINGAS: So then you're - - - and then you
5 work out in the merits part of it if the parents are taking
6 a contrary position?

7 MS. YOON: I think that would be the appropriate
8 way to do it, Your Honor, because I don't know - - -
9 there's no other way, really, to screen the cases. The
10 problem with the way that the Fourth Department is doing it
11 right now is they're essentially presuming abandonment of
12 an appellate argument.

13 JUDGE SINGAS: So you're asking for really the
14 opposite rule of the Fourth Department as categorical, but
15 just in the opposite direction?

16 MS. YOON: I think the court should adopt the
17 rule that was presented in Newton, in which the child has
18 the right to appellate review when they are an aggrieved
19 party in a contested custody proceeding. So it's just
20 allowing them appellate review. The child may lose - - -

21 JUDGE CANNATARO: What would be aggrievement in a
22 non - - - well, not noncontested, but in the settlement
23 scenario for example? What's aggrievement if both parents
24 agree?

25 MS. YOON: I am aware of a case, and I apologize

1 Your Honor, I don't have the cite for it. I believe it was
2 a Second Department case that allowed the child to appeal.
3 The objection below was that the AFC objected to not being
4 able to participate in the settlement. So perhaps there
5 may be procedural arguments that the court would review.
6 And I think in that case, the court found that - - -

7 JUDGE CANNATARO: Okay. But that's different
8 than the - - - the child or the child's attorney taking the
9 position that the agreement that the parents reached is not
10 in the best interest of the child.

11 MS. YOON: Which is why I think there are
12 situations where there may be a settlement that was the
13 result of the family court order that the child could still
14 pursue, but you don't get to that question unless you can
15 get to the merits. And you can't get to the merits unless
16 the child is permitted to appeal, which is I think that's a
17 central question for the court today. It's not about - - -
18 oh, I'm sorry.

19 JUDGE GARCIA: This is kind of an odd setup here,
20 right? Because we have nobody arguing on the other side,
21 right?

22 MS. YOON: That's correct.

23 JUDGE GARCIA: So let's say the child appeals in
24 a settlement case and there's nobody - - - and the parents
25 want that settlement, but there's nobody on the other side.

1 So then the child just gets to appeal a negotiated
2 settlement, and then the court just hears from the child's
3 attorney?

4 MS. YOON: I think that's the point of the
5 appellate review. So, yes. And ultimately, maybe on the
6 merits, a child doesn't have an argument. Maybe there was
7 a procedural objection the AFC lodged below. But I believe
8 that that should be the case. The child's - - -

9 JUDGE CANNATARO: But you do say aggrievement is
10 a merits based question, right? So you're going to be - -
11 - before whatever appellate tribunal you're talking about -
12 - - and I think you're probably talking about the Appellate
13 Division more than this court, obviously - - - there has to
14 be an examination of the merits of whatever the dispute is?

15 MS. YOON: That's correct. But the question
16 should be about aggrievement and not about whether a parent
17 has abandoned an appeal because a parent's nonparticipation
18 in an appeal doesn't necessarily mean the parent has
19 actually abandoned.

20 JUDGE CANNATARO: Okay. But then back to Judge
21 Garcia's question. It's awfully weird that you're
22 examining the merits of the parties' agreement - - -
23 aggrievement - - - agreement when the parties aren't
24 participating in the appeal.

25 MS. YOON: It does - - -

1 JUDGE CANNATARO: I'm sorry. I didn't mean to
2 use that word parties. Let's say parents.

3 MS. YOON: It does present an unusual situation,
4 I think. But I think it comes within the purview of the
5 merits of the appeal. Whether or not the child has a
6 meritorious argument because they're presenting - - - I
7 suppose there's - - - it's difficult to separate them. I
8 think the question here, though, is really, should the
9 children at least be able to present their appellate
10 argument? They shouldn't be precluded from it simply
11 because the parents - - -

12 CHIEF JUDGE WILSON: I'm not following Judge
13 Garcia's hypothetical. So let me - - - since I don't
14 practice in family law, and I assume you do. You may be
15 able to help me. If two parents have agreed and settled a
16 custody matter, and the - - - we allow the attorney for the
17 child to take an appeal, why wouldn't one or both parents
18 have the ability to appear as respondent in that?

19 MS. YOON: I think there are many reasons that a
20 parent does not appear on the appeal.

21 CHIEF JUDGE WILSON: No, no. Why couldn't they?

22 MS. YOON: Why couldn't they?

23 CHIEF JUDGE WILSON: Yeah. Suppose they wanted
24 the settlement and the child was trying to upset it. Is
25 there a reason - - - is there a legal reason they couldn't

1 appear as the respondent to defend the settlement?

2 MS. YOON: I know that there are some cases that
3 find that children can't litigate the course of the
4 disposition of family court.

5 CHIEF JUDGE WILSON: No. That's not what I'm
6 asking. We - - - assume that we have allowed the child to
7 take the appeal, and the parents like the settlement; they
8 don't want the child to be able to upset the appeal - - -
9 sorry, the settlement. Is there a reason they couldn't
10 appear in the appellate division as a respondent, to your
11 knowledge?

12 MS. YOON: No. There's no reason they couldn't
13 respond. If I'm understanding Your Honor's question,
14 you're asking whether the parents cannot respond - - -

15 CHIEF JUDGE WILSON: Yeah. I think Judge Garcia
16 - - -

17 MS. YOON: - - - to the child's appeal.

18 CHIEF JUDGE WILSON: - - - was worried as - - -
19 because here, today, there's nobody arguing anything
20 different. But I'm not sure why that would be the case
21 where the parents like the settlement and the child
22 doesn't.

23 MS. YOON: In terms of the - - -

24 CHIEF JUDGE WILSON: Yeah.

25 MS. YOON: And I'm sorry.

1 CHIEF JUDGE WILSON: In terms of the appeal.

2 MS. YOON: If you could repeat the question. I
3 want to make sure I understand Your Honor's question.

4 CHIEF JUDGE WILSON: Mom and Dad reach a
5 settlement. Attorney for the child thinks that's a bad
6 settlement for the child. Suppose we say - - - I don't
7 know what we're going to say. Suppose we say that the
8 child - - - the attorney for the child has the ability to
9 take an appeal of that settlement to the Appellate
10 Division. The parents like the settlement. They don't
11 want the child upsetting it. The child is trying to upset
12 it. Is there a reason the parents or one of them couldn't
13 appear as respondent in the Appellate Division and say, no,
14 the child is wrong, this is a good settlement?

15 MS. YOON: No. There's no reason a parent
16 couldn't do that. But - - -

17 JUDGE GARCIA: Would they have to pay for that
18 appeal? Would they have to pay for their own lawyers, or
19 do they get counsel?

20 MS. YOON: The parents?

21 JUDGE GARCIA: Yeah.

22 MS. YOON: That may depend on their status. They
23 certainly have the ability to apply for assigned counsel.

24 JUDGE GARCIA: And if you have parents who are
25 negotiating a settlement because they think this is the

1 best interest of the family, they don't want to litigate
2 against each other anymore. They want this to be done.
3 But now, are they factoring into that settlement the fact
4 that the attorney for the child may not agree with them?
5 So why should we settle this if we're going to have to
6 litigate it anyway?

7 MS. YOON: It might be a consideration. There
8 are times when an AFC will object to the terms of a
9 settlement. And I think whether or not the terms of the
10 settlement, which were approved by the family court below,
11 should be subject to appellate review by a court to
12 determine whether the record substantially supports the
13 court's approval of the settlement, and whether that truly
14 was in the best interest of the children. And so I think
15 that's a situation where there may be a meritorious
16 decision on a settlement. So I think - - -

17 JUDGE CANNATARO: That's as open to appeal - - -
18 the court's approval of the settlement is as open to appeal
19 as the parents' underlying agreement, though in your view,
20 isn't it?

21 MS. YOON: If the AFC has objected below. So I
22 think that's - - -

23 JUDGE CANNATARO: Yeah. I mean assuming
24 preservation is there - - -

25 MS. YOON: Right.



1 JUDGE CANNATARO: - - - if it's framed before an
2 appellate tribunal, as we think the family court judge
3 erred in concluding that this settlement was in the best
4 interests of the children or the child, that would be as
5 appealable as disagreeing with the parents' agreement,
6 wouldn't it?

7 MS. YOON: Yes. I think that would be
8 appropriate for appellate review. And that's really what
9 the children should be entitled to. I see that I have a
10 little bit of time if the court has any other questions. I
11 would just point out to the court that - - -

12 JUDGE RIVERA: Yeah. Can I just clarify the
13 mother's position here, as I understand from these letters,
14 that the mother's position is that not only supports the
15 AFC being able to appeal, but that the mother actually
16 supports the merits argument of the AFC; am I understanding
17 that correctly?

18 MS. YOON: That's correct, Your Honor. And again
19 - - -

20 JUDGE RIVERA: So why does - - - and if I've got
21 this wrong, you can correct me. I thought that the
22 Appellate Division concluded that the mother had abandoned
23 the appeal.

24 MS. YOON: They did, and I'm not clear as to how
25 they came to that conclusion, Your Honor. I know that it

1 was brought up at oral argument that Ms. Abdoch did send
2 the letter to the court and to the AFC. The court does not
3 address that in their decision at all. So it's unclear to
4 me what - - -

5 JUDGE HALLIGAN: So could we decide this case on
6 that narrower ground, which is to say the mother expressed
7 support for the appeal, even if not specifically
8 participating and - - - and not more broadly say that a
9 child - - - the AFC has a right to appeal in every single
10 circumstance where the child is aggrieved?

11 MS. YOON: You could rule on the narrow
12 exception. I would encourage this court not to do that,
13 because there are so many reasons that a parent cannot
14 pursue an appeal, and I think by limiting that exception
15 it's - - -

16 JUDGE HALLIGAN: Well, you could hold that issue
17 for another day, I think.

18 JUDGE CANNATARO: Wouldn't it be prudent to wait
19 until that question was actually here in front of the
20 court?

21 MS. YOON: I think this court could do that, or
22 this court could rule at this time that there are no such
23 limitations. And there - - - I - - - the children should
24 have the right to appeal - - -

25 JUDGE RIVERA: Well, we have a split and the

1 Appellate Division decided it was abandoned. That's their
2 fact finding.

3 MS. YOON: Right. But again, if the court is
4 limiting the exception to where cases have been abandoned,
5 I think you run into the problem of we don't always know at
6 the outset, why a parent has not pursued an appeal. There
7 are so many reasons. Financial, cultural, literacy, just
8 the emotional toll of being in family court and getting an
9 adverse ruling against you. You don't really know what to
10 do or where to go. And then I think you have an additional
11 problem, as you did in this case, where the parent was pro
12 se and so is lacking - - - lack of legal knowledge, lack of
13 where to the extent that maybe Ms. Abdoch did not send the
14 letter to the court in the appropriate manner, it's not
15 clear because it was not addressed in the Appellate
16 Division below. That's because she was pro se. And you
17 know, when she gave up her right to proceed with counsel,
18 she probably took that very literally when the court - - -
19 the family court below said, I hold you to the same
20 standard as any attorney.

21 JUDGE SINGAS: But all of those factors are true
22 in the Appellate Division as well. So a parent might not
23 be able to pay for an appeal. It might be financial, it
24 might be cultural, it might be, you know, not educated
25 about the process. So those things when we say a parent

1 can come in at the Appellate Division and express their
2 views, those same things that you've outlined might prevent
3 them from doing that.

4 MS. YOON: It might. I would still encourage
5 this court to avoid the sort of narrowing of the rule, and
6 certainly we will take it. But I think the court should
7 actually impose the broader rule, saying that children have
8 the right to appeal, whether or not the parents have been
9 involved, to what extent that - - - you know, what is
10 behind those reasons really should be a question on the
11 merits. I think children should be allowed to at least get
12 their feet in the door.

13 CHIEF JUDGE WILSON: Thank you.

14 MS. YOON: Thank you, Your Honors.

15 MS. BATES: Thank you. Just to address the prior
16 question that you asked me about whether children should
17 have a right to appeal settlements. I think I misspoke or
18 misunderstood the question at first. I maintain that they
19 should. I was referring to a situation in a family court,
20 whether a child has the ability to block a settlement from
21 being entered. So I just want to clarify that point. And
22 I will tell you that I was the attorney at the Appellate
23 Division level, and I was the only attorney at oral
24 arguments. And what happened in that matter was the mother
25 sent a letter to the court, I believe, the day before oral

1 arguments. So it didn't make it into the record. The
2 court wasn't even aware of it.

3 JUDGE CANNATARO: I'm sorry, Counsel, can I go
4 back to that first thing you said?

5 MS. BATES: Yes.

6 JUDGE CANNATARO: Because that - - - that's
7 interesting. Your position is that at the trial level in
8 front of the family court, the child can't block the
9 settlement from being entered, but does have a right to
10 appeal. That sounds - - - is that what - - - is that
11 accurate?

12 MS. BATES: That's correct.

13 JUDGE CANNATARO: That sounds like a formula for
14 increasing the number of appeals. If the child can't be
15 involved in the entry and creation of the appeal, why would
16 we then give them a right to appeal? It just seems
17 counterintuitive.

18 MS. BATES: I think they can be involved in it
19 through their advocate, but they can't block it. And the
20 practical - - -

21 JUDGE RIVERA: In other words, they're not a
22 party to it?

23 MS. BATES: I'm not asking the court - - -

24 JUDGE RIVERA: Is that what you - - - no, no, no.

25 MS. BATES: Yeah.

1 JUDGE RIVERA: In terms of the settlement,
2 they're not a party to it - - -

3 MS. BATES: Correct.

4 JUDGE RIVERA: - - - so they can't - - - they're
5 not going to sign off. They don't need their approval - -
6 -

7 MS. BATES: Correct.

8 JUDGE RIVERA: - - - is that what you're saying?

9 MS. BATES: But CPLR 5511 doesn't require party
10 status for the purposes of appeal. The practical
11 implications are that this has been happening in the First,
12 Second, and Third Department for more than ten years
13 without difficulty, which shows that the rule that I'm
14 asking for today is workable. I beg this court not to make
15 a finding on the narrow exceptions. We already have case
16 law from the Fourth Department in the Muriel matter, which
17 says as long as a parent is in some way participating,
18 whether it's sending a letter or some other small
19 participation that the AFC has standing. I wouldn't be
20 here today if I needed a narrow exception. I already have
21 that through Muriel.

22 JUDGE SINGAS: So what is the rule you're asking
23 for?

24 MS. BATES: I'm asking for you to adopt the
25 finding in Newton v. McFarlane, which is upheld in the

1 First, Second, and Third Departments, which holds that
2 attorneys for the children have independent standing to
3 appellate review when they're aggrieved, regardless of any
4 parent participation. The Fourth Department has already
5 ruled in Muriel that children can appeal if there's even a
6 nominal amount of parent participation. We already have
7 that rule. That is where you have a split in statewide
8 authority. It's a clean, acknowledged - - -

9 JUDGE RIVERA: What does that mean - - -

10 MS. BATES: - - - split.

11 JUDGE RIVERA: - - - nominal amount of parent
12 participation? Does that mean one of the parents has to
13 have appealed?

14 MS. BATES: No. It means - - - in Muriel, what
15 happened was the mother just sent a letter in saying, I
16 can't afford an attorney, or I don't want to do this
17 appeal, but I support it. I support the AFC's position.

18 CHIEF JUDGE WILSON: You're just saying that
19 under the Fourth Circuit rule, if this letter had gotten to
20 the court a week earlier and they'd seen it, we wouldn't be
21 here at all because the Fourth Department - - -

22 MS. BATES: Yes.

23 CHIEF JUDGE WILSON: - - - would have allowed you
24 to appeal?

25 MS. BATES: Yes. And while I appreciate my

1 colleague's advocacy, and I'm glad she's here today, I'm
2 asking the court to make a ruling based on as if I was the
3 only one here, because I already have a ruling from the
4 Fourth Department that tells me I can do this if one of the
5 parents has - - - there's some indication that they're
6 interested in the appeal.

7 JUDGE RIVERA: Otherwise, we have inconsistent
8 treatment across the state.

9 MS. BATES: We do. It - - - we have the same
10 statutes, the same procedural postures, yet strikingly
11 different outcomes, which means that a child's rights in
12 New York State right now depend entirely on geography. And
13 that's inconsistent when this court's holding in Bennett v.
14 Jeffreys.

15 CHIEF JUDGE WILSON: Thank you.

16 MS. BATES: Would the court like an update on my
17 client's, in accordance with the matter of Michael B.? I
18 think it will help you make your decision.

19 CHIEF JUDGE WILSON: I think we're okay.

20 MS. BATES: Okay. Thank you, Your Honors.

21 (Court is adjourned)

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

I, Bobby Hodges, certify that the foregoing transcript of proceedings in the Court of Appeals of Abdoch v. Abdoch, No. 38 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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