

## DISTRICT OF COLUMBIA SIJS CASE SUMMARIES

By: Magistrate Judge Julie Breslow, D.C. Superior Court

August 19, 2020

*In re C.G.H.*, 75 A.3d 166 (2013)

- **Background:** F.A. was born in Guatemala, but moved to Washington, D.C. with his mother to escape abusive treatment by his father. F.A. lived with his mother and her boyfriend, C.G.H. After his father died, C.G.H. petitioned to adopt F.A. and for an SIJS predicate order concerning F.A. However, the trial court denied C.G.H.'s request for SIJS findings, opining that two required findings could not be made: granting the petition for adoption did not amount to F.A. being dependent on the Family Court and the final decree of adoption was not akin to placing F.A. under the care of a court-appointed entity or person. C.G.H. filed a motion for reconsideration, which the court denied on the grounds that, because F.A.'s mother continued to care for him as a custodial parent, F.A. was not dependent upon the court and would not be solely under his adoptive father's care. The Court of Appeals vacated the order and remanded for directed findings.
- **Holding: An SIJS predicate finding that the child is placed in the custody of a court-appointed individual may be made when the subject minor child has been adopted in the District of Columbia.** "We conclude that within the meaning of the SIJS statute and the District's adoption statute, an adopted child is 'legally committed to, or placed under the custody off ... an individual... appointed by a ... juvenile [or family] court.'" (at 173) (Citing 8 U.S.C. § 1101 (a)(27)(J)(i) (2009 Supp. II)).
  - The Department of Homeland Security and the Court both interpret SIJ classification to include adopted children and those under a guardianship arrangement. (at 173)
  - The SIJS predicate order should be issued simultaneously with the final adoption decree if the same court is considering both matters. (at 169)

*J.U. v. J.C.P.C.*, 176 A.3d 136 (2018)

- **Background:** The mother of minor child C.J.P.U. filed a complaint for sole legal and physical custody of the child, as well as a request for an SIJS predicate order concerning C.J.P.U. The child's father, who continued to live in El Salvador, filed his notarized consent to both. C.J.P.U. and his mother testified before the trial court and the father agreed with the content of this testimony, namely that C.J.P.U. had never lived with his father, that the father never provided financial support to C.J.P.U., and that he and C.J.P.U. did not have a father-son relationship, as the father had never participated in decision-making or shown affection for C.J.P.U. However, the trial court declined to make the full SIJS predicate findings because it concluded C.J.P.U.'s father could possibly care for him in El Salvador and that the father had not "abandoned" C.J.P.U., as

he visited the home where C.J.P.U. stayed in El Salvador. The Court of Appeals vacated the order and remanded for directed findings.

- **Holding: For SIJS purposes, courts should examine “abandonment” in the broad terms of the parent-child history and its impact on the present feasibility of placement with that parent, instead of utilizing a strict, abstract notion of abandonment appropriate to termination of parental rights decisions.**
  - The *J.U.* court focused on “common-sense practical workability” when analyzing the SIJS findings requirement of viable placement with a parent. (at 140)
  - “Given the flexibility of the concept depending on the context for which the determination is being made, here abandonment is judged by the lifelong history of C.J.P.U. with his father and the bearing of that history on the prospects if C.J.P.U. were to be returned to the immediate custody of the father in the home country.” (at 142)
  - Analysis of parental “abandonment” for SIJS purposes should encompass how the parent’s past contact, caregiving responsibilities, and relationship with the child will affect the success of an immediate placement of the child in that parent’s custody, rather than a more stringent idea of “abandonment” in relation to termination of parental rights. (at 140-41)
  - “A parent’s role is not fulfilled in passivity.” (at 142, FN 11)

*E.P.L. v. J.L.-A.*, 190 A.3d 1006 (2018)

- **Background:** M.L.P. was born in Guatemala and came to live with her mother in the United States when she was approximately four years old. M.L.P. had no contact with her father between the ages of six months and six years old. M.L.P.’s mother filed a complaint for sole legal and primary physical custody of M.L.P., as well as a request for an SIJS predicate order concerning M.L.P. At the initial hearing, the trial court referred M.L.P.’s father for supervised visitation, in order to begin a relationship with his daughter. Two months later, however, M.L.P.’s father had taken no action to visit M.L.P. and admitted he had abandoned M.L.P. The trial court awarded M.L.P.’s mother sole legal and primary physical custody of the child and convened an SIJS factfinding hearing after an additional two months. M.L.P.’s mother testified about the father’s lack of involvement in M.L.P.’s life, the dearth of alternate caregivers for M.L.P. in Guatemala, and the threats of violence the mother would face if she and M.L.P. returned to Guatemala. M.L.P.’s father did not dispute the mother’s testimony or assertions in her pleadings. However, the trial court declined to find that M.L.P. had been abandoned by a parent, citing the mother’s continued care of M.L.P. The trial court further declined to find that it was contrary to M.L.P.’s best interests to return to Guatemala, citing insufficient evidence on the issue. The Court of Appeals vacated the order and remanded for directed findings.
- **Holding: An SIJS predicate finding can be made when one parent has abandoned the child, regardless of whether the other parent is currently caring for the child. (at 1007) Additionally, in the SIJS context, courts must focus on “common-sense practical workability” of whether a child can feasibly live with a parent and**

**whether it is in the child's best interests to return to his or her country of origin.** (at 1007) (Citing *J.U. v. J.C.P.C.*, 176 A.3d 136, 140 (2018)).

- Consideration of “abandonment” for SIJS purposes is distinct from other contexts and must center on the “lifelong history” between parent and child. (at 1007)(Citing *J.U. v. J.C.P.C.*, 176 A.3d 136 (2018)). Here, the trial court made custody findings about the father’s lack of involvement in M.L.P.’s life, and the same factual bases regarding M.L.P.’s day-to-day circumstances should have organized the court’s analysis of the SIJS predicate findings.
- The Court found it illogical that the trial court both awarded sole custody to M.L.P.’s mother and simultaneously felt it did not have enough information to determine whether returning to Guatemala was contrary to M.L.P.’s best interests. Here, it was not feasible for a seven year-old to return to a country without a caregiver.

*Glenda Del Carmen Benitez v. John Doe*, 193 A.3d 134 (2018)

- **Background:** J.V.B. was born in El Salvador, and her mother moved to the United States a year later, regularly speaking to J.V.B. and contributing to her financial support. At approximately nine years old, J.V.B. came to live with her mother in the United States, as a result of specific threats made to the mother and broader safety threats posed by El Salvadorian gang activity. J.V.B.’s mother subsequently began a custody action, during which the man believed to be J.V.B.’s father was excluded through genetic testing. J.V.B.’s mother re-filed her custody complaint and requested an SIJS predicate order concerning J.V.B., naming “John Doe” as the father. Notice to “John Doe” was properly posted in the Family Court Clerk’s Office and the court heard testimony from J.V.B. and her mother. While the court granted the mother sole legal and primary physical custody of J.V.B., it declined to make the SIJS finding that J.V.B. could not be viably placed with her father due to abandonment, reasoning that if the father was unaware J.V.B. was his child, he could not make efforts to develop a parental relationship with her. The Court of Appeals vacated the trial court’s orders and remanded.
- **Holding: In the context of SIJS predicate findings, “abandonment” by a parent does not require establishment of paternity. (at 138)**
  - In considering abandonment in the context of termination of parental rights, the trial court erred by using “too demanding a standard.” (at 138) (Citing *J.U. v. J.C.P.C.*, 176 A.3d 136, 142 (2018))
  - The Court notes that determinations of “abandonment” in neglect cases do not require either the establishment of paternity or a parental intent to abandon the child. (at 138)
  - All SIJS factors are to be understood in light most favorable to determination of abuse/neglect with an eye to the practicalities of the situation and without excessive adherence to standards and interpretations that might normally apply in strictly local contexts (at 139)

**BRLF v. Lilia Marleny Sarceno Zuniga, 2019 D.C.App. LEXIS 66**

per curium opinion (Blackburn/easterly/ferren)

- Quotes Benetiz-- All SIJS factors are to be understood in light most favorable to determination of abuse/neglect with an eye to the practicalities of the situation and without excessive adherence to standards and interpretations that might normally apply in strictly local contexts.
- ...The state court is asked to make the determination in a context quite foreign to its normal responsibilities—indeed, to make a determination informed by the realization that, when refusing to make the findings required for SIJS status, the court’s decision is, in effect a negative immigration decision” Pg. 12 (and also in Ferren’s concurrence, pg. 22: based on the intent of Congress, “all the relevant factors must be understood in the light most favorable to a determination of neglect and abandonment. Congress, of course, has delegated an important measure of discretion to state courts, applying SIJS as a first step toward an immigration decision. But in an ambiguous situation as we have here in assessing “neglect”, the trial court—consistent with the intent of Congress—should ordinarily make a decision favorable to the SIJS petitioner. Such close cases should become ultimately a Federal, not a State, responsibility once a state court has entered a custody order under state law. Otherwise, when state courts apply their local law in this unique, international context, they may well impose narrow formulations of neglect and abandonment at odds with the ultimate judgements that federal immigration authorities would make if an SIJS petition ahs been approved for their consideration.” Pg 22-23 )
- Re: parents who send kids with smugglers to the USA: “A parent who sends a child off on such a journey to the US has “abandoned” the child to the uncertain fate awaiting every child on such a journey” pg. 15; and also Ferren’s concurrence “I am persuaded that whatever the parental motivation—fear of a gang or a mere desire to launch a child toward a better life—the enlistment of human smugglers is presumptively an act of neglect under DC law” pg. 23
- Easterly concurrence: “our objective is not to determine if we should “deprive a parent of custody or...terminate parental rights,” but rather to “assess the impact of the history of the parent’s past conduct on the viability, ie, the workability or practicability of a forced reunification of parent with minor, if the minor were to be returned to the home country.” Citing: Benetiz; EPL v JLA; JU v. JCPC.
- Ferren concurrence: He finds that the fact that the child maintains phone contact with his mom in Guatemala means mom has not “abandoned” the child; she maintains emotional relationship with him; BUT he does find that the mother “neglected” the child by sending him away with smugglers and therefore, that forced reunification would not be viable. The mother’s “decision to entrust one’s child to human smugglers (pejoratively called coyotes) presumptively creates an unreasonable risk of child abuse; it is no tless

neglectful than failure to provide a child with adequate food, clothing, shelter or other basic needs.” Page 21

- Ferren concurrence: Viability of reunification: viability of reunification is not determined simply by reference to a child’s treatment as of the time he or she left the family home. (Cites J.U. ) Viability, rather, turns on a foreseeability inquiry as to whether, at the time of SIJS adjudication, the child would be subject to abuse, neglect, abandonment, or similar treatment if reunified with a parent in the foreign country—an inquiry that focuses on “the workability or practicability of a forced reunification.” (Cites JU) Page 24