

# SELECTED CINA/TPR CASES



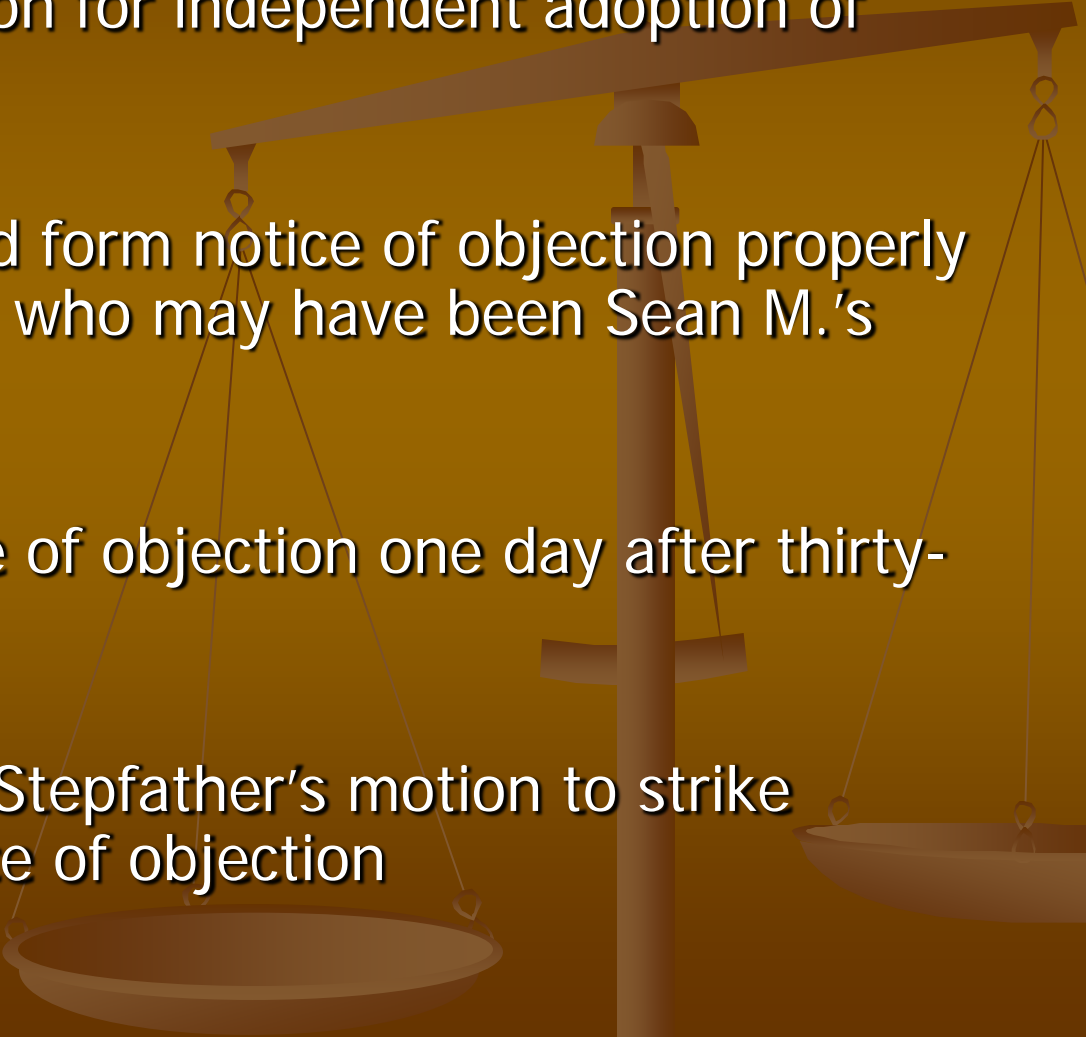
Judge Patrick L. Woodward  
Maryland Court of Special Appeals  
May 7, 2013



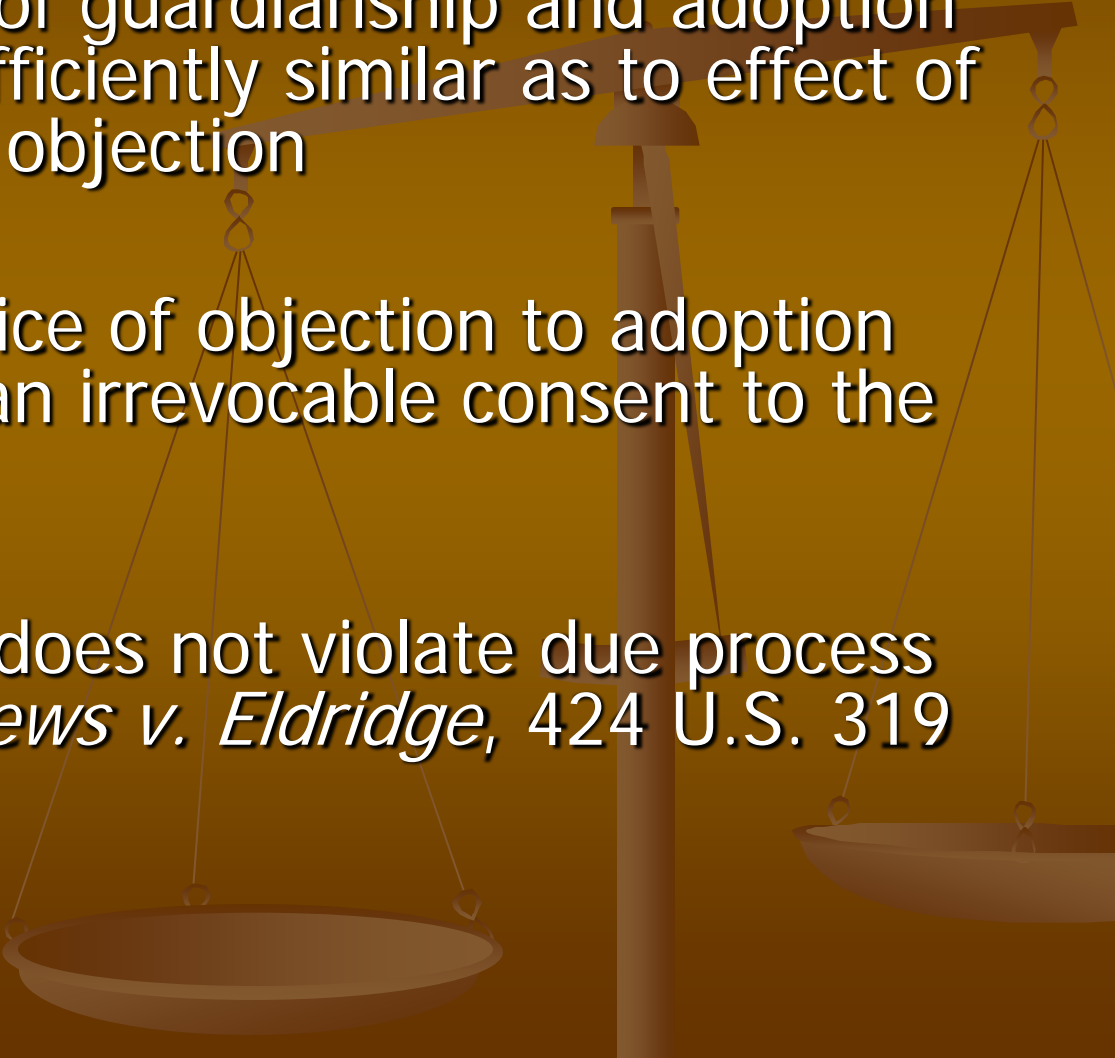
*In re: Adoption of Sean M.*

\_\_\_ Md. \_\_\_, No. 54-12  
(Mar. 22, 2013)

# FACTS

- Stepfather filed petition for independent adoption of Sean M.
  - Show cause order and form notice of objection properly served on William H., who may have been Sean M.'s natural father
  - William H. filed notice of objection one day after thirty-day deadline
  - Circuit court granted Stepfather's motion to strike William H.'s late notice of objection
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# HOLDING: Affirmed.

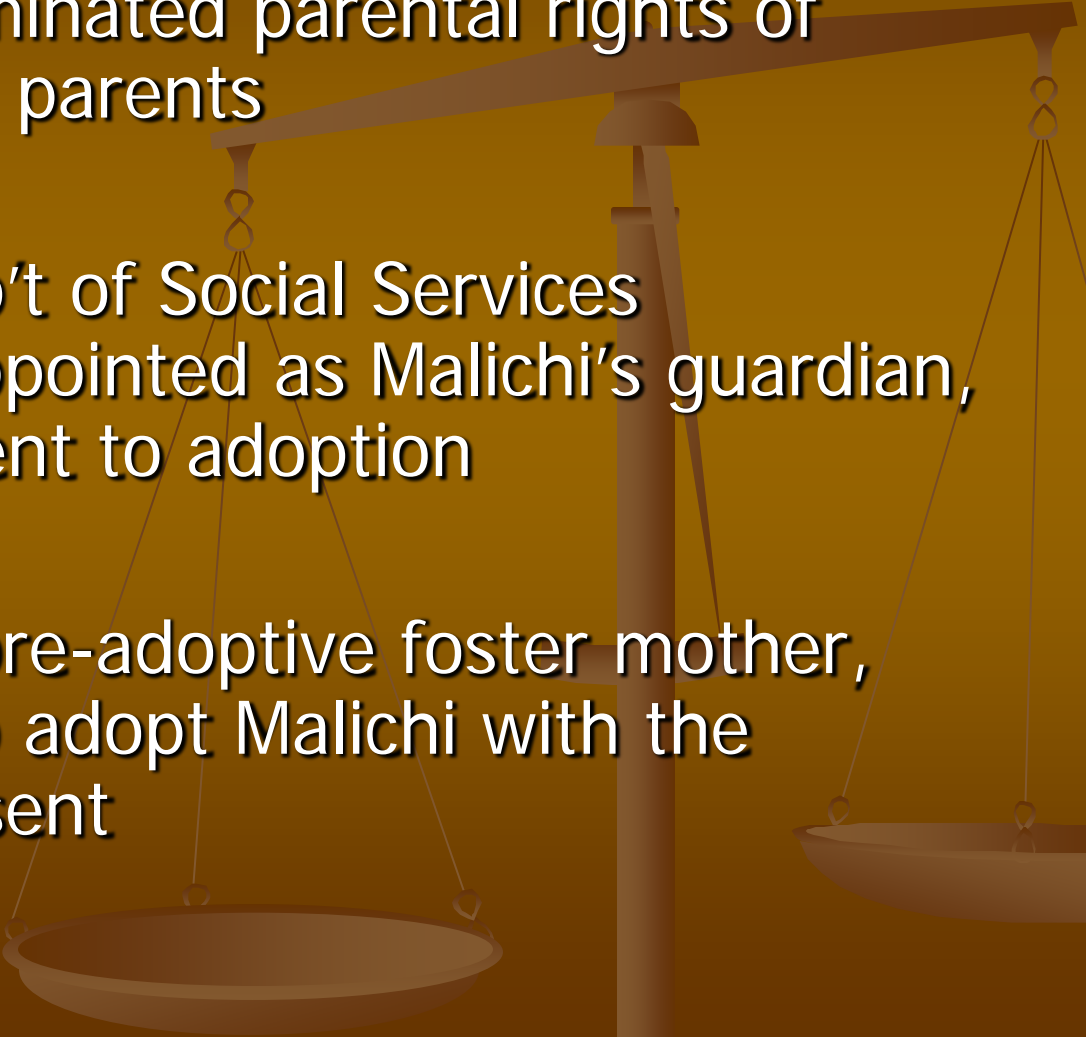
- Statutory schema of guardianship and adoption procedures are sufficiently similar as to effect of late filed notice of objection
  - Late filing of a notice of objection to adoption renders the filing an irrevocable consent to the adoption
  - Statutory scheme does not violate due process rights under *Mathews v. Eldridge*, 424 U.S. 319 (1976)
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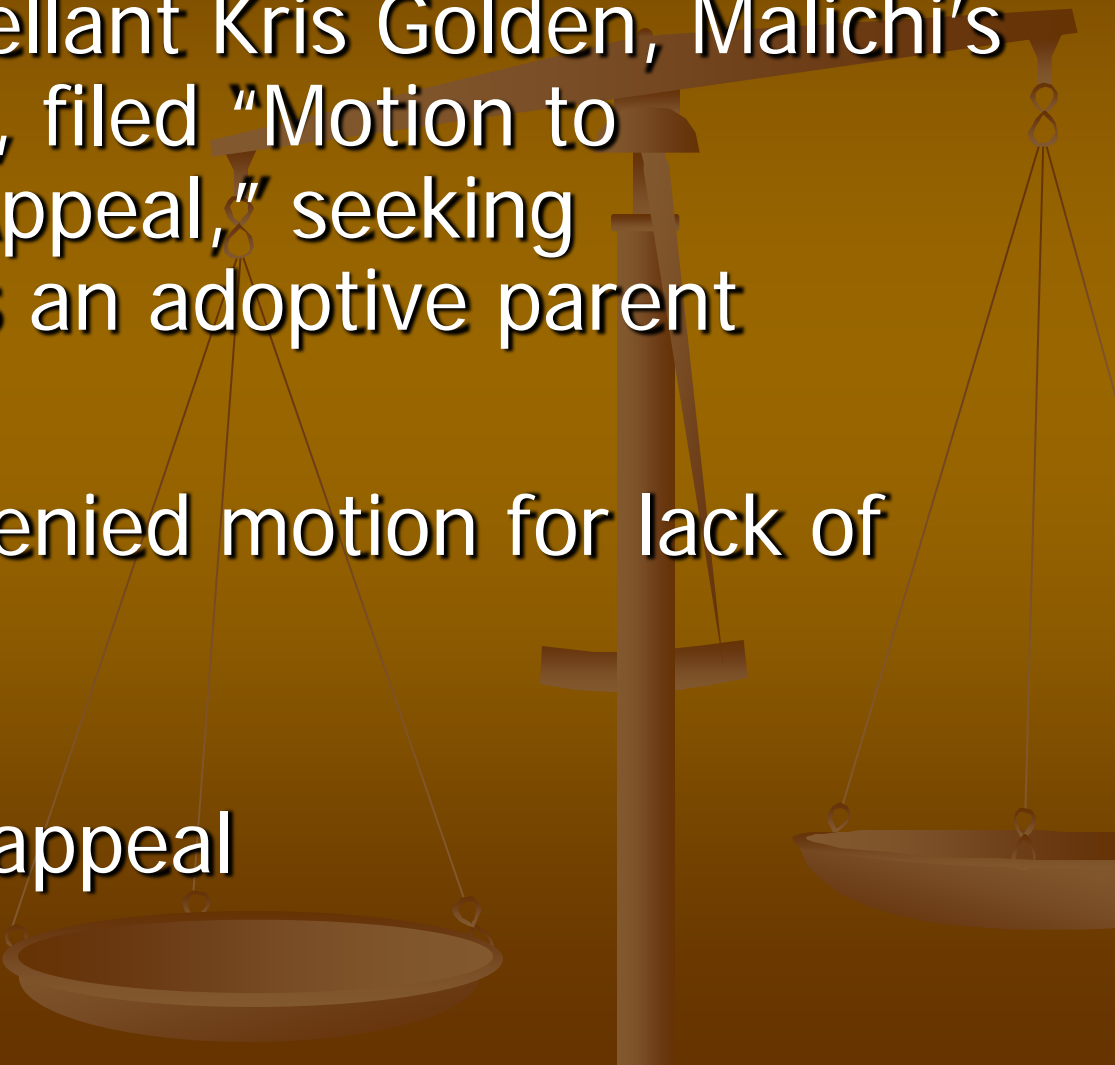
*In re: Malichi W.*

209 Md. App. 84 (2012)

# FACTS

- Juvenile court terminated parental rights of Malichi's biological parents
  - Baltimore City Dep't of Social Services ("Department") appointed as Malichi's guardian, with right to consent to adoption
  - Ms. W., Malichi's pre-adoptive foster mother, petitioned court to adopt Malichi with the Department's consent
- 

# FACTS (cont.)

- Thereafter, appellant Kris Golden, Malichi's maternal cousin, filed "Motion to Intervene and Appeal," seeking consideration as an adoptive parent
  - Juvenile court denied motion for lack of good cause
  - Golden filed an appeal
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# HOLDING: Affirmed.

- Family Law ("F.L.") § 5-345(a) permits any adult to petition juvenile court for adoption of child *post-TPR*; however, any such petitioner must include all written consents required by § 5-350(a)
- Because Department's consent to adoption by Ms. W. had been filed, Golden could not petition for adoption
- **No legal authority (MD statute or rule) exists for non-parental, non-custodial relative to intervene in post-TPR adoption proceeding**





*In re: Adriana T.*

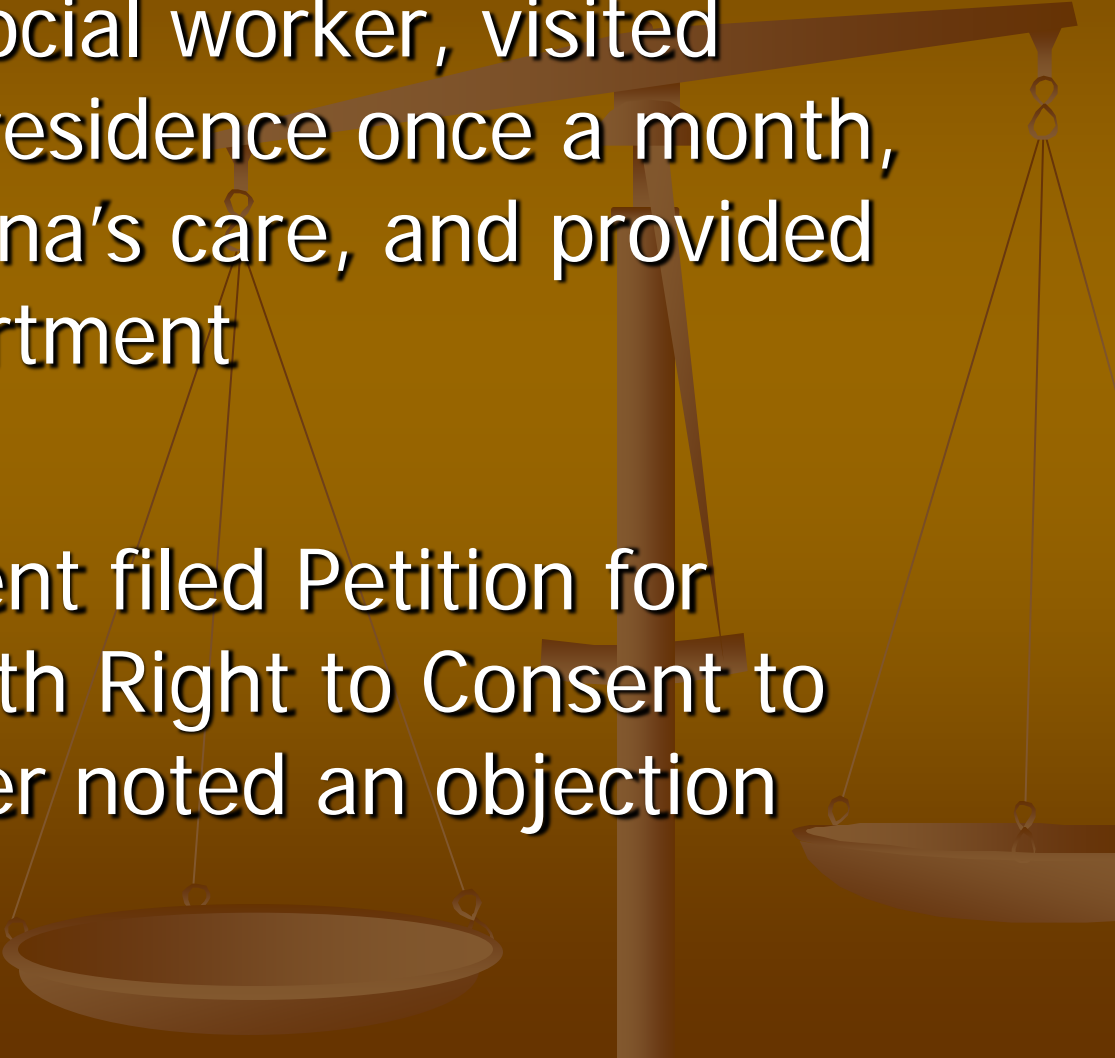
208 Md. App. 545 (2012)

# FACTS



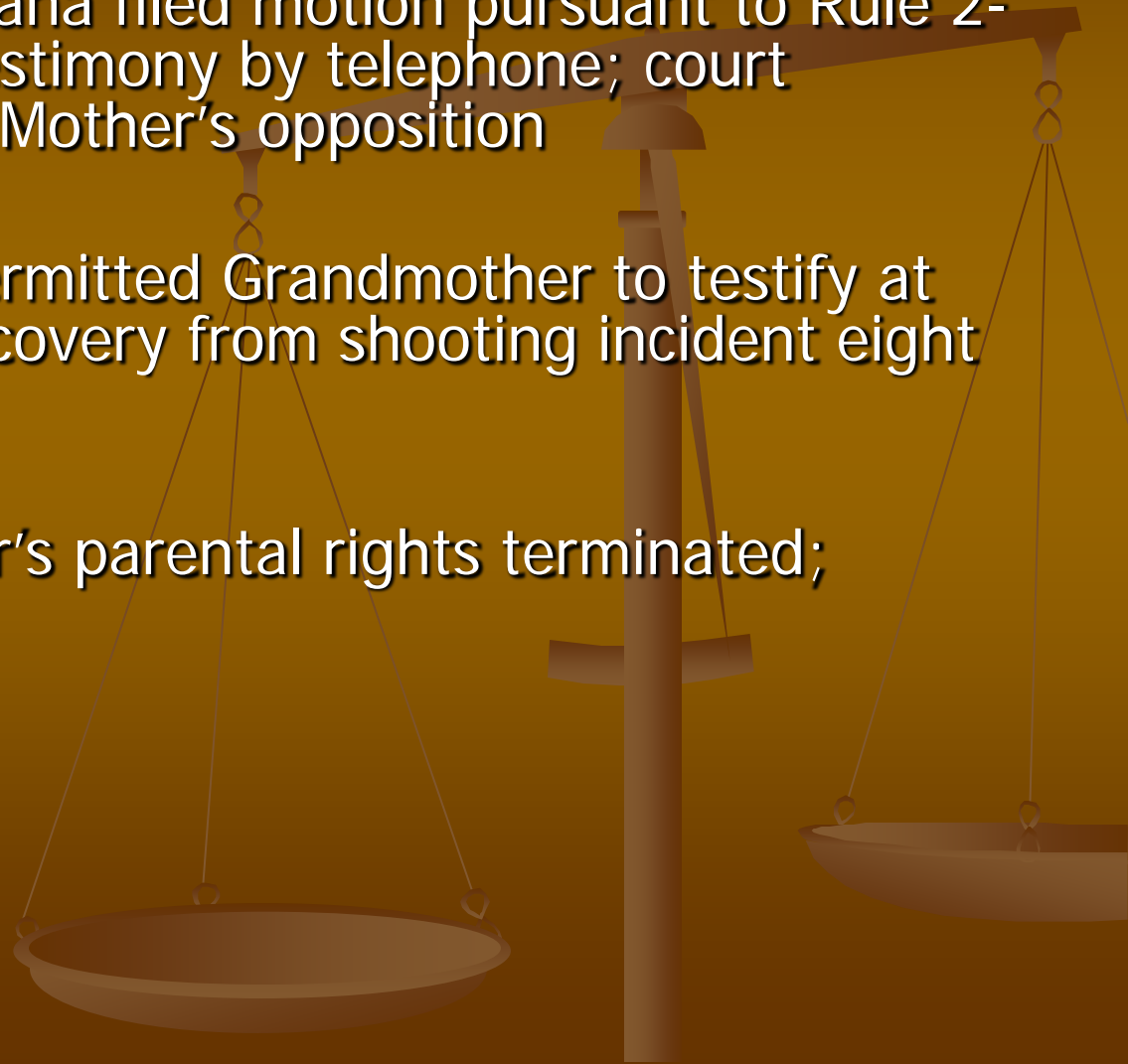
- Prince George's County Dep't of Social Services ("Department") filed CINA petition, alleging that Adriana T.'s mother, Monet T. ("Mother"), was a risk to herself and to others
- Circuit court, sitting as juvenile court, determined that Adriana T. was CINA
- Eight years earlier, Mother suffered psychiatric episode in which she believed her mother, Mary T. ("Grandmother") was part of conspiracy and fired two gun shots at Grandmother; Mother committed to mental hospital
- Department placed Adriana T. with Grandmother in North Carolina

# FACTS (cont.)

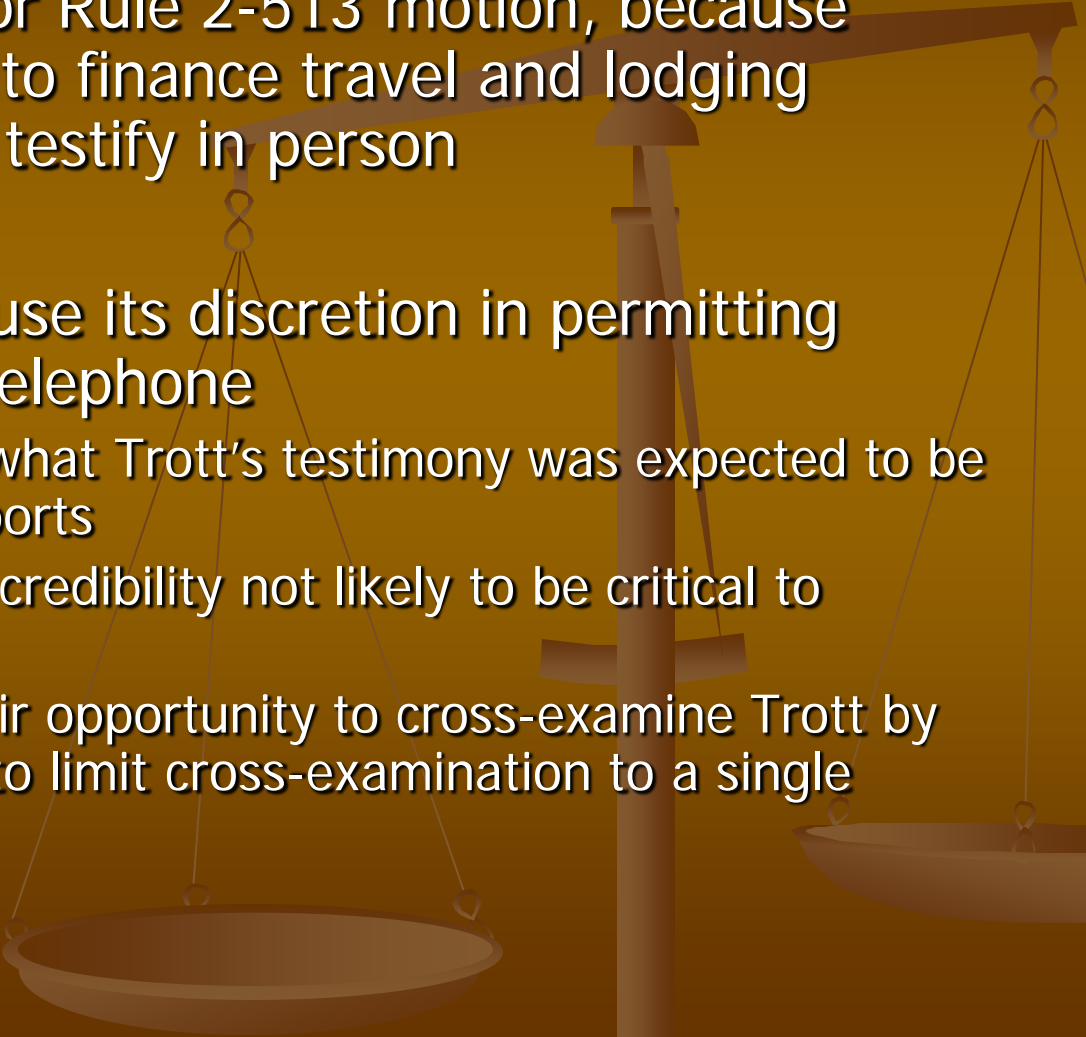
- Joyce Trott, a social worker, visited Grandmother's residence once a month, monitored Adriana's care, and provided reports to Department
  - Later, Department filed Petition for Guardianship with Right to Consent to Adoption; Mother noted an objection
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# FACTS (cont.)

- Prior to hearing, Adriana filed motion pursuant to Rule 2-513 to take Trott's testimony by telephone; court granted motion over Mother's opposition
- Additionally, court permitted Grandmother to testify at hearing about her recovery from shooting incident eight years earlier
- Court ordered Mother's parental rights terminated; Mother appealed

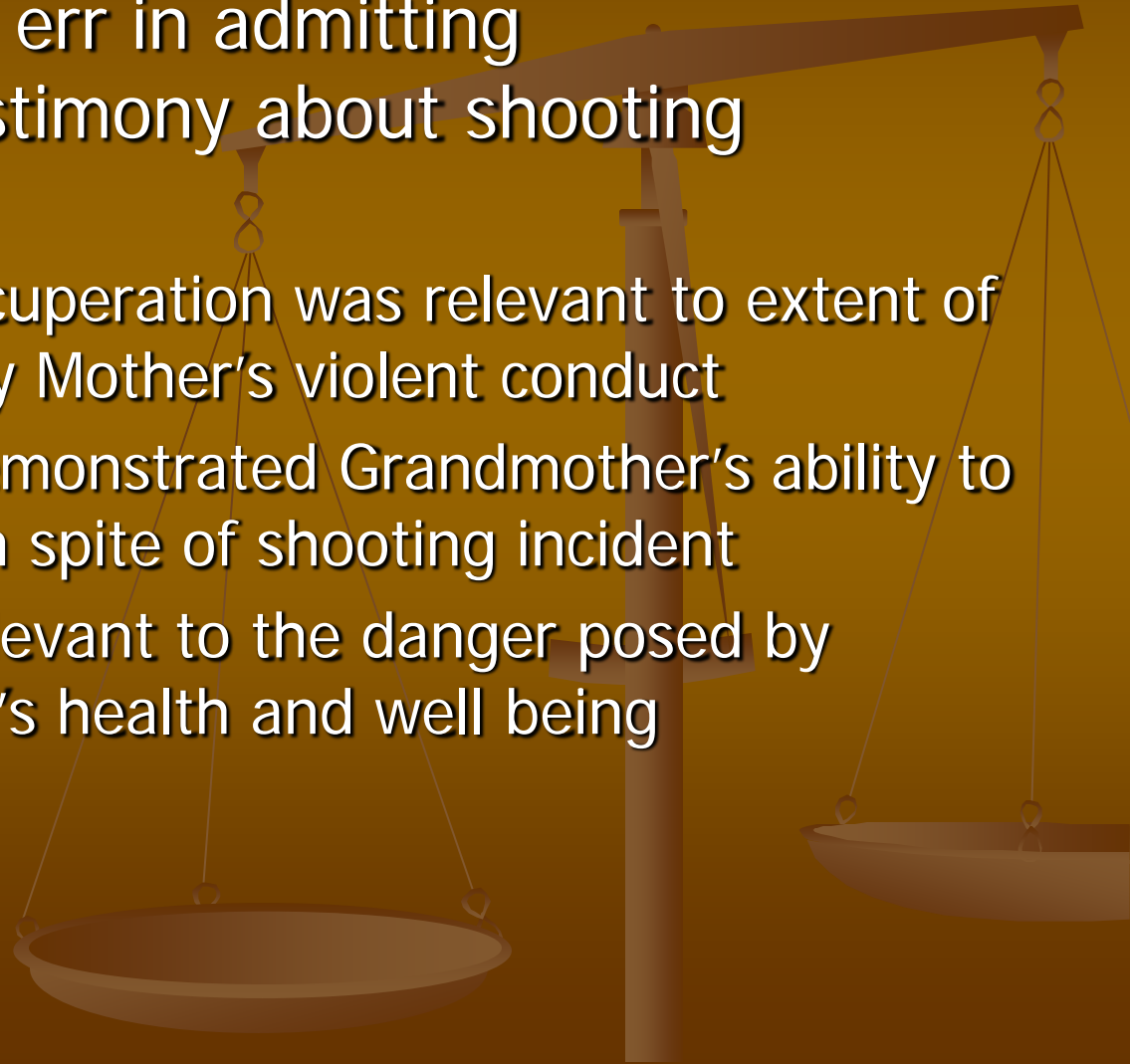


# HOLDING: Affirmed.

- Good cause existed for Rule 2-513 motion, because Adriana lacked funds to finance travel and lodging expenses for Trott to testify in person
  - Trial court did not abuse its discretion in permitting Trott's testimony by telephone
    - Mother had notice of what Trott's testimony was expected to be from Trott's status reports
    - Trott's demeanor and credibility not likely to be critical to hearing's outcome
    - Mother had full and fair opportunity to cross-examine Trott by telephone, but chose to limit cross-examination to a single question
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# HOLDING (cont.)

- Trial court did not err in admitting Grandmother's testimony about shooting incident
  - Grandmother's recuperation was relevant to extent of damage caused by Mother's violent conduct
  - Testimony also demonstrated Grandmother's ability to care for Adriana in spite of shooting incident
  - Testimony was relevant to the danger posed by Mother to Adriana's health and well being





*In re: Victoria C.*

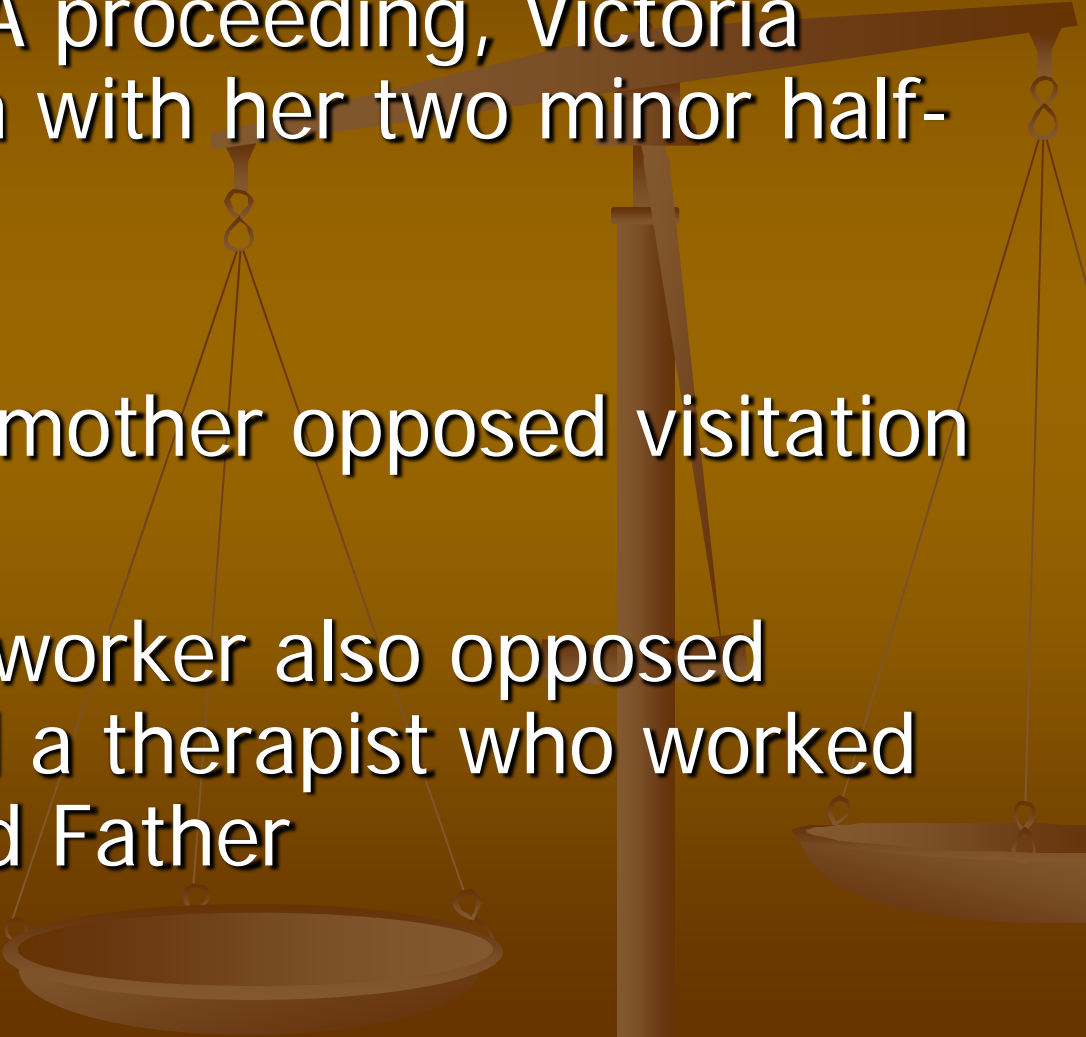
208 Md. App. 87 (2012), *cert.  
granted*, 430 Md. 344 (2013)

# FACTS

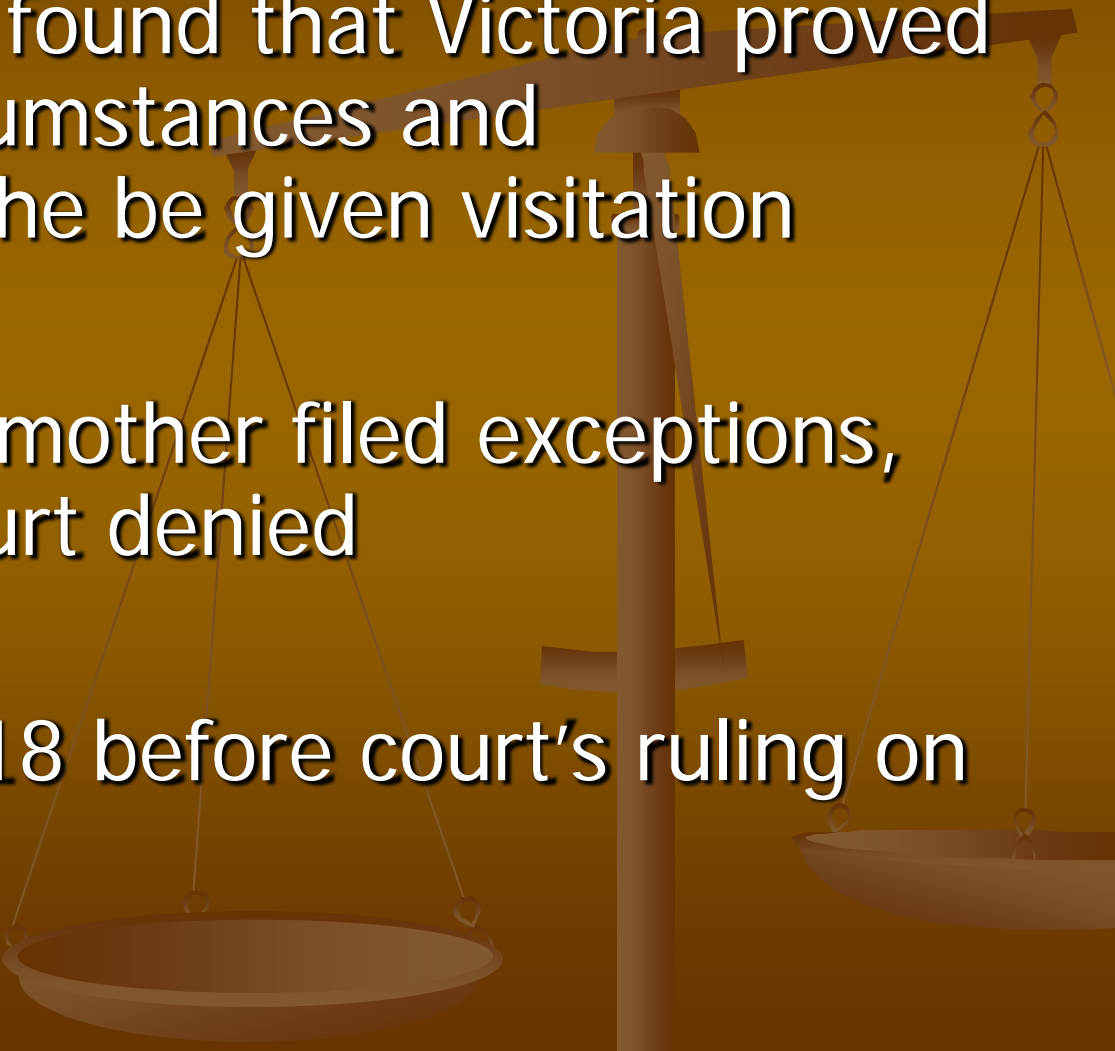
- Victoria C. born in August 1993
- In 2005, after Victoria's mother died, her father, George ("Father") married Kieran ("Stepmother")
- At age 15, after abuse allegation against Father was sustained, Victoria sent to live with maternal aunt in Texas, where she resided for one year before returning to Maryland
- Upon her return, Father refused to let Victoria live in home with Father, Stepmother, and their two sons, who were ages 3 and 5
- Victoria taken into care and custody of Carroll County Dep't of Social Services ("Department") and adjudged to be CINA



# FACTS (cont.)

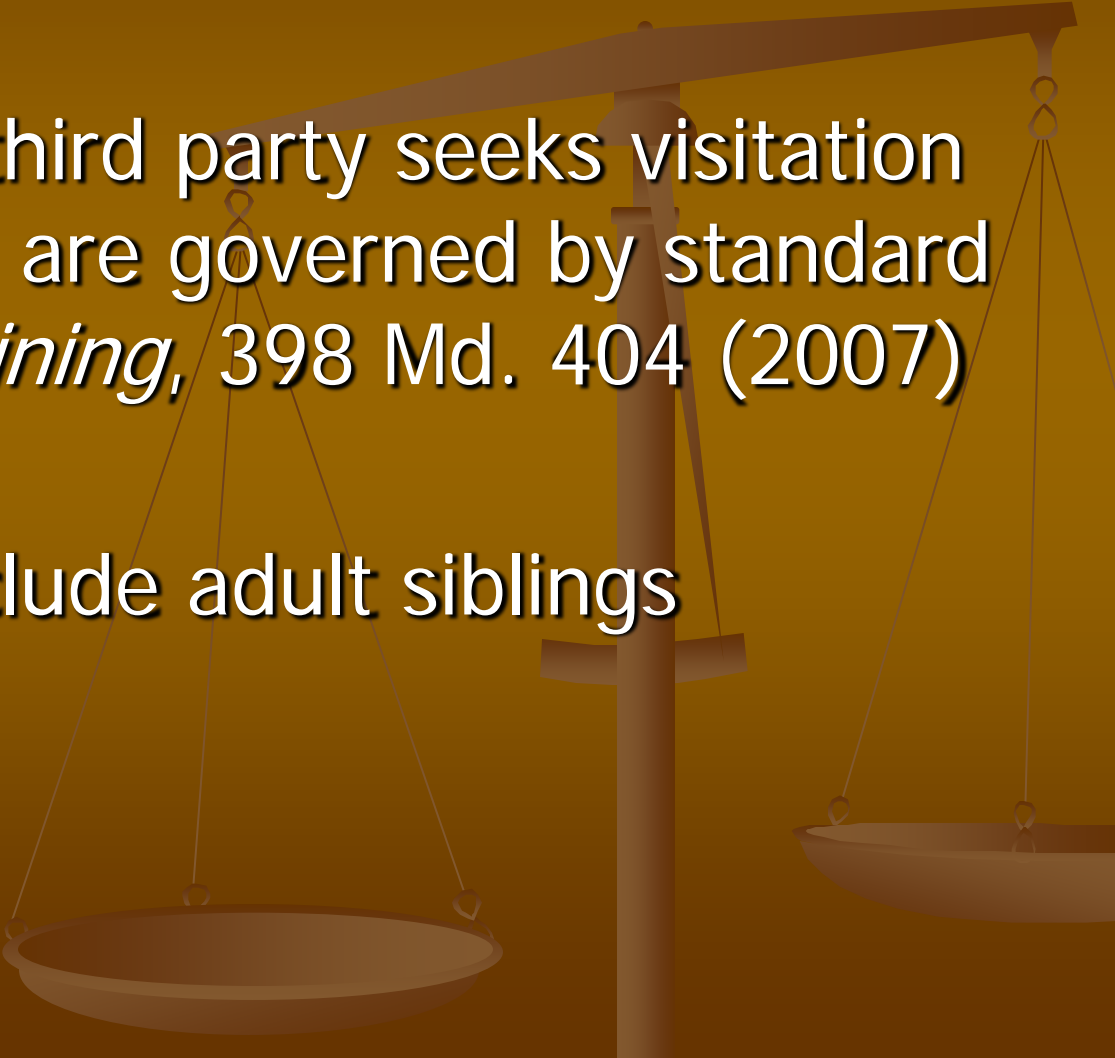
- Ancillary to CINA proceeding, Victoria sought visitation with her two minor half-siblings
  - Father and Stepmother opposed visitation
  - Victoria's social worker also opposed visitation, as did a therapist who worked with Victoria and Father
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# FACTS (cont.)

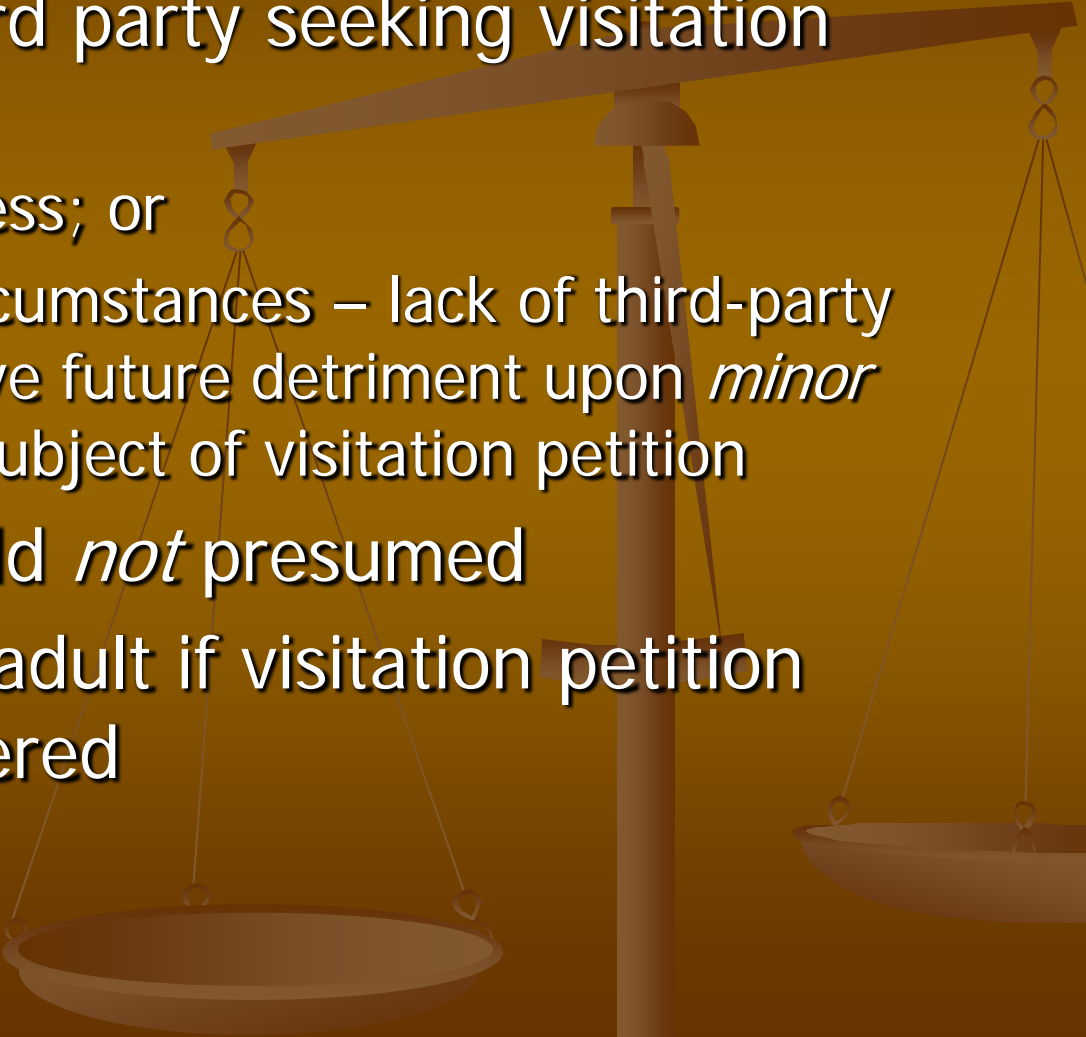
- Juvenile master found that Victoria proved exceptional circumstances and recommended she be given visitation
  - Father and Stepmother filed exceptions, which circuit court denied
  - Victoria turned 18 before court's ruling on exceptions
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# HOLDING: Reversed. No exceptional circumstances.\*

\* Case pending before COA

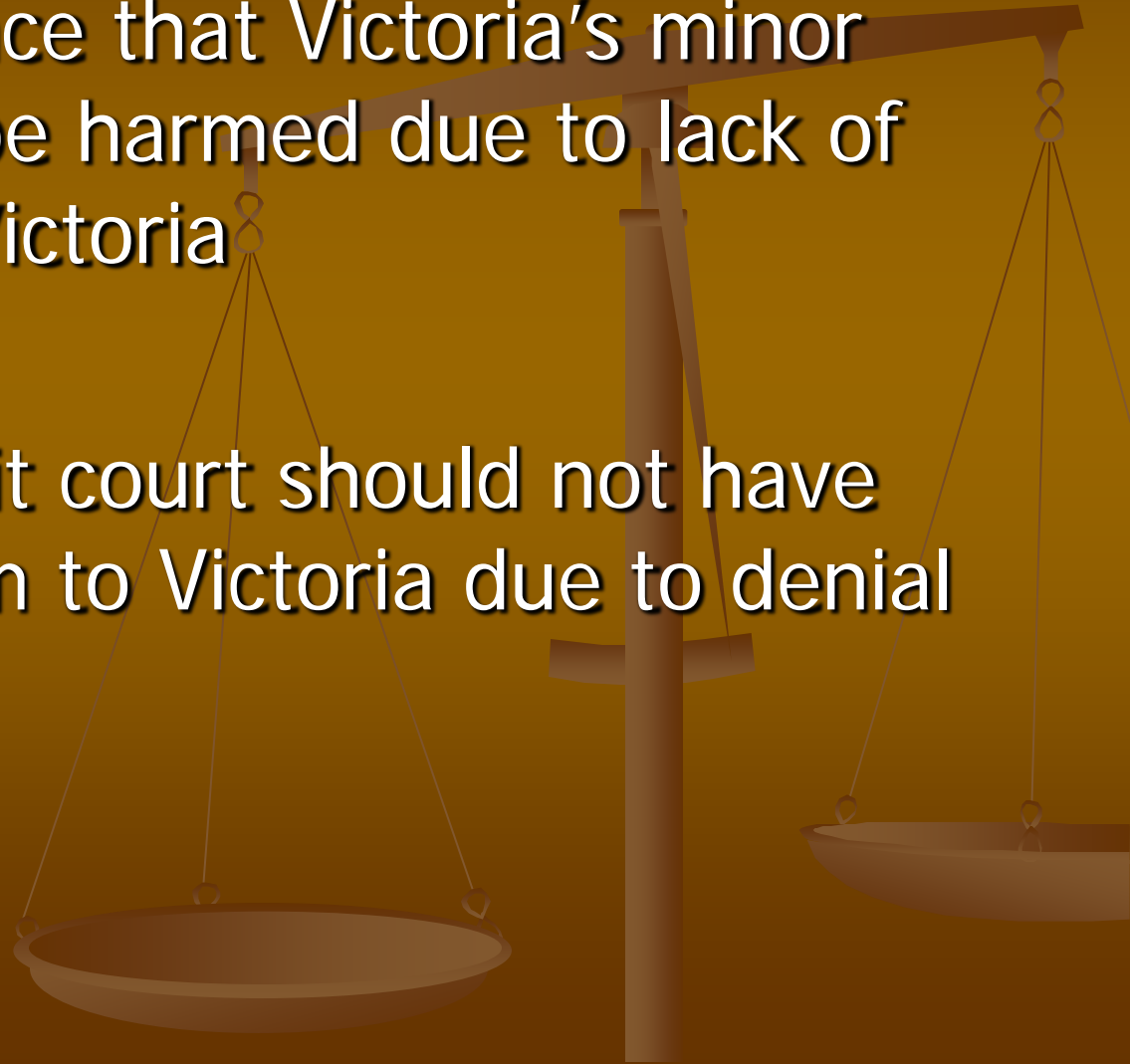
- Cases in which third party seeks visitation with minor child are governed by standard in *Koshko v. Haining*, 398 Md. 404 (2007)
  - Third parties include adult siblings
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# HOLDING (cont.)

- Under *Koshko*, third party seeking visitation must show either:
    - (i) Parental unfitness; or
    - (ii) Exceptional circumstances – lack of third-party visitation must have future detriment upon *minor children* who are subject of visitation petition
  - Harm to minor child *not* presumed
  - Harm suffered by adult if visitation petition denied *not* considered
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# HOLDING (cont.)

- Here, no evidence that Victoria's minor siblings would be harmed due to lack of visitation with Victoria
- Moreover, circuit court should not have considered harm to Victoria due to denial of visitation





*In re: Ryan W.*

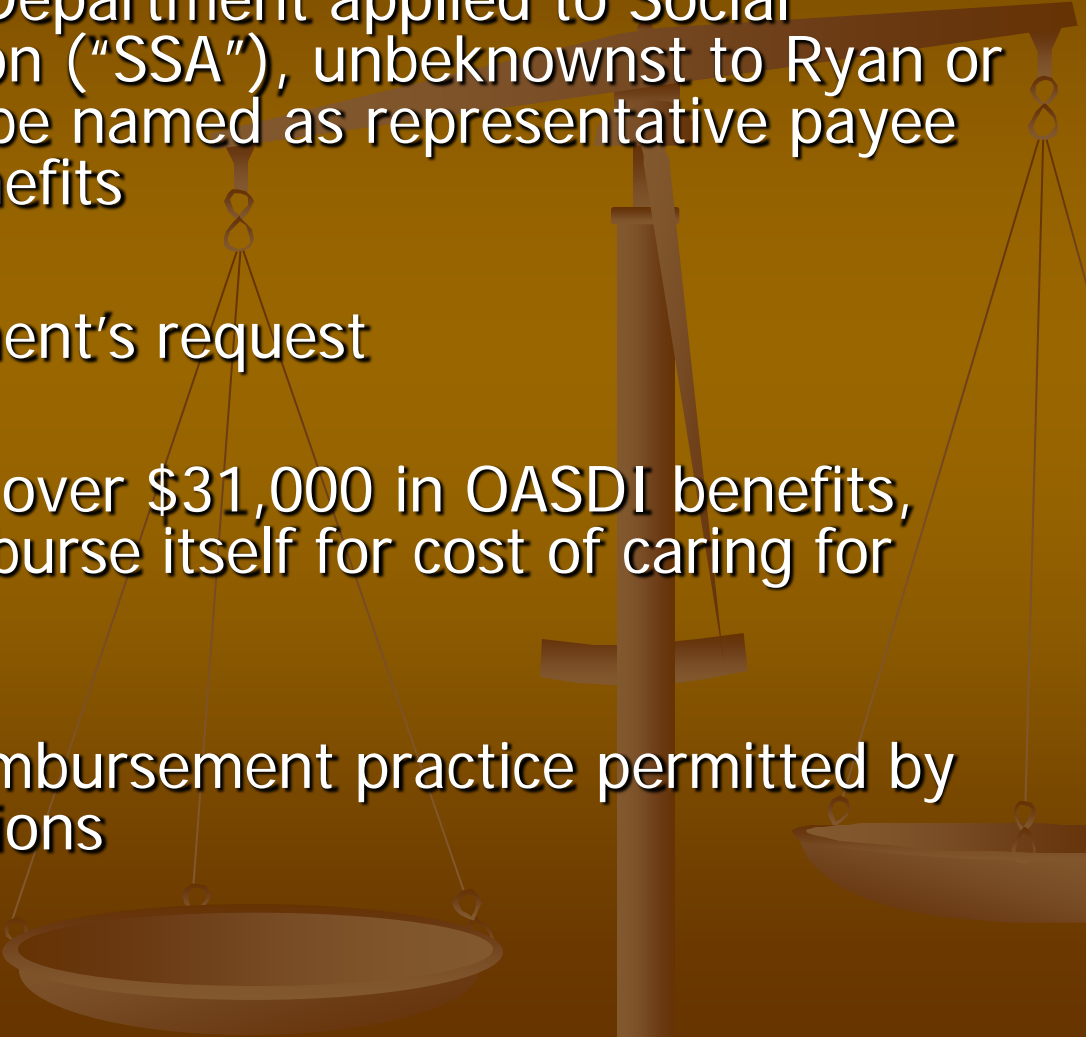
207 Md. App. 698, *cert. granted*, 429  
Md. 428 (2012), *and cert. granted*, 430  
Md. 11 (2013)

# FACTS



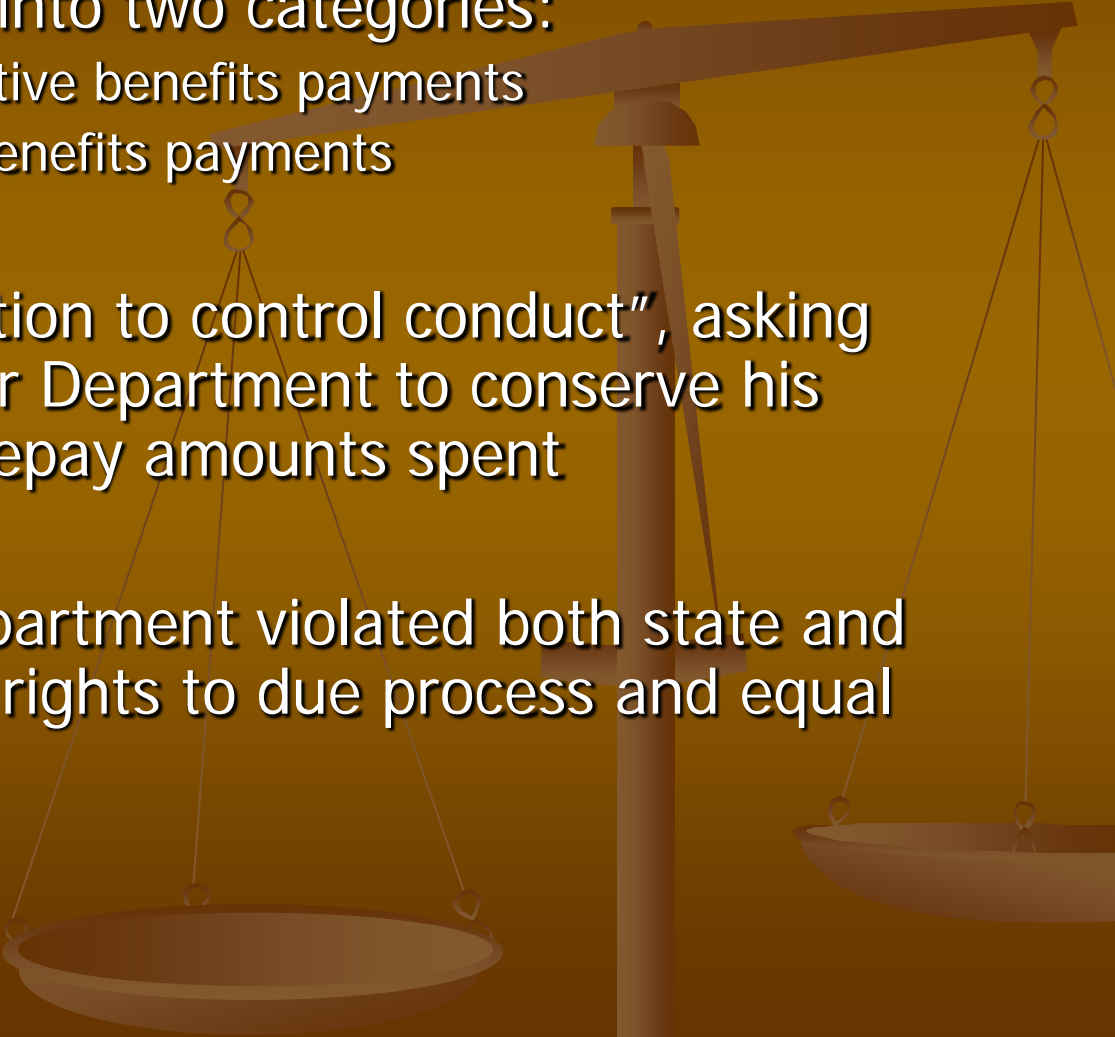
- Remarkably complicated case, primarily involving Social Security benefits
- At age of 9, Ryan W. declared by Circuit Court for Baltimore City to be CINA and committed to care and custody of Baltimore City Dep't of Social Services ("Department")
- After Ryan's mother died, Ryan became eligible for Old Age, Survivor, and Disability Insurance ("OASDI") benefits under Social Security Act, Title II
- Ryan's father later died, at which point Ryan became eligible for additional benefits

# FACTS (cont.)

- When Ryan was 16, Department applied to Social Security Administration ("SSA"), unbeknownst to Ryan or his CINA counsel, to be named as representative payee for Ryan's OASDI benefits
  - SSA granted Department's request
  - Department received over \$31,000 in OASDI benefits, which it used to reimburse itself for cost of caring for Ryan
  - Department's self-reimbursement practice permitted by two Maryland regulations
- 



# FACTS (cont.)

- Benefits received fell into two categories:
    - (i) Lump-sum, retroactive benefits payments
    - (ii) Monthly, current benefits payments
  - Later, Ryan filed "motion to control conduct", asking juvenile court to order Department to conserve his OASDI benefits and repay amounts spent
  - Ryan argued that Department violated both state and federal constitutional rights to due process and equal protection
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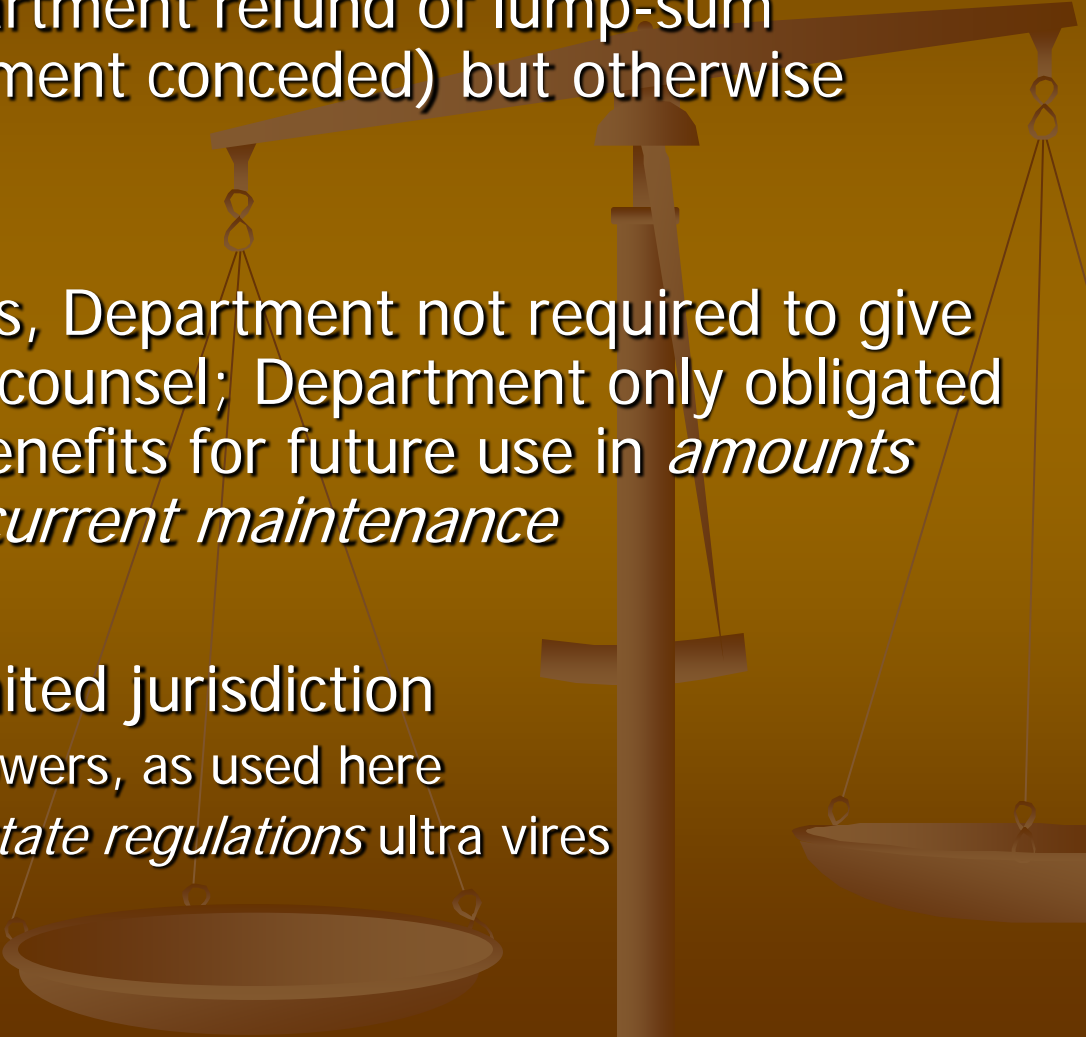
# FACTS (cont.)




- Juvenile court ruled in favor of Ryan, finding that Department both breached fiduciary duties to Ryan and had violated Ryan's due process and equal protection rights
- Juvenile court also declared self-reimbursement regulations *ultra vires* and ordered Department to return the full \$31,000+
- Department appealed, conceding that lump-sum, retroactive payments could only be applied to cover cost of Ryan's care for the month prior to receipt of those benefits, but challenging the remainder of court's ruling

# HOLDING: Reversed.\*

\* Case pending before COA

- Ryan entitled to Department refund of lump-sum payments (as Department conceded) but otherwise denied recovery
  - Under SSA regulations, Department not required to give notice to CINA or his counsel; Department only obligated to conserve OASDI benefits for future use in *amounts greater than cost of current maintenance*
  - Juvenile court has limited jurisdiction
    - No broad equitable powers, as used here
    - *No power to declare state regulations ultra vires*
- 



*In re:*  
*Adoption/Guardianship of*  
*Cross H.*

\_\_\_ Md. \_\_\_, No. 78-11  
(Apr. 29, 2013)