STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED March 14, 2013
In the Matter of T. MULLINS, Minor.	No. 308118 Wayne Circuit Court Family Division LC No. 06-458062-NA
In the Matter of T. MULLINS, Minor.	No. 308119 Wayne Circuit Court Family Division LC No. 06-458062-NA

AFTER REMAND

Before: GLEICHER, P.J., and OWENS and BOONSTRA, JJ.

PER CURIAM.

In our original opinion and order, we remanded this matter to the circuit court as follows:

> The circuit court did not specifically find that maintenance of a relationship with respondents was in TM's best interests. Yet, the court specifically stated that it did not intend to prevent respondents from visiting TM or otherwise disrupt "any kind of emotional bond" they shared with the child. Termination of respondents' parental rights would eliminate all rights to the child, including the legal right to visit. *In re Beck*, 488 Mich 6, 16 n 23; 793 NW2d 562 (2010). Because the trial court intended that TM should be allowed to maintain a relationship with respondents, it clearly erred in finding that termination was in the child's best interests. We therefore vacate the termination order and remand for further consideration of the best interest factors. [*In re Mullins*, unpublished opinion per curiam of the Court of Appeals, issued August 15, 2012 (Docket Nos. 308118, 308119).]

On remand, the circuit court ordered additional best-interest evidence to be presented before a juvenile attorney referee.[1] On September 21, 2012, respondent-mother's counsel filed a written request for a jury trial to be conducted before a judge. The referee informed counsel that his request was not supportable and denied it. The referee should have affirmed respondent-mother's request for the hearing to be placed before a judge, however. See MCR 3.912(B) ("The parties have the right to a judge at a hearing on the formal calendar."). The referee heard evidence on October 11, 2012, opined that termination of his parents' rights was not in the child's best interest, and recommended that the circuit court "have a full hearing on the appropriateness of guardianship." Although the referee suggested that the circuit court should conduct a hearing, she asserted her belief that a guardianship was in the child's best interest. A circuit court hearing had already been scheduled for November 28, 2012.

It appears from the record that no party challenged the referee's recommendations within seven days as advised on the record. Accordingly, the circuit court did not indicate on the record that it reconsidered the referee's opinion that termination was not in the child's best interest.[2] On October 18, 2012, the circuit court signed an "Order of Adjudication" outlining the referee's opinion as follows:

> Court previously found a basis for jurisdiction and clear and convincing evidence of grounds for termination based on both parents' prior termination and unresolved chronic substance abuse. Matter is now on remand from CoA for a reconsideration of best interest factors in light of relative placement. After hearing additional testimony, court is not convinced that termination of parental rights is in [TM's] best interest. Guardianship by the paternal grandmother appears to be a viable and safe plan for [TM]. Matter is referred for a guardianship hearing before the Judge.[3]

Before the scheduled circuit court hearing, the Department of Human Services (DHS) updated its investigation into the propriety and safety of placing TM with his paternal grandmother.[4] Based on that updated study, DHS foster care specialist Troy Miller filed a petition with the circuit court on November 14, 2012, for the paternal grandmother's appointment as the child's guardian. Pursuant to MCR 3.979(B), as there no longer remained

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[1] Such a referee hearing was permitted by MCR 3.913(A) because a best-interest hearing need not be conducted before a judge under MCR 3.912 or MCR 3.913(A)(2)(b).

[2] MCR 3.991 provides that if no party requests in writing and within seven days of the referee hearing a review of the referee's recommendation, see MCR 3.991(B), then the court may enter an order consistent with that recommendation. MCR 3.991(A).

[3] The termination stage of a child protective proceeding is dispositional, not adjudicative. The court's findings should have been noted on an "Order of Disposition," not on an "Order of Adjudication." See *In re Mason*, 486 Mich 142, 154 n 6; 782 NW2d 747 (2010).

[4] Pursuant to MCR 3.979(A)(1) and MCL 712A.19a(9), a circuit court must direct the DHS to conduct such an investigation before entering a guardianship order.

any contest on the issue, the circuit court entered an order on November 30, 2012, appointing the paternal grandmother as the child's guardian and did not conduct a hearing on the issue. We do note, however, that the circuit court should have made some statement on the record that it reviewed the referee's recommendations and agreed that a guardianship in lieu of termination was in the child's best interest.

Respondent-father's counsel subsequently provided this Court with limited documentation regarding the events on remand. Unable to review the issues based on this paltry information, this Court requested from the circuit court the entire record on remand. It appears that this request awakened the circuit court and the DHS to the fact that the child protective proceeding had not been dismissed despite the appointment of the guardian. The DHS then requested the circuit court "to dismiss the underlying neglect case," and the court granted that motion on January 3, 2013.

We do not condone the procedural irregularities that occurred below. The hearing should have been conducted before the judge rather than the referee based on respondent-mother's timely request. Care was not taken to ensure that orders were entered in the proper form. The DHS and circuit court failed to resolve the termination petition until this Court questioned the deficiency of the record presented to us. The dismissal of the neglect case should have occurred contemporaneously with the appointment of the guardian.

We find no reason to prolong this matter, however, by remanding to the circuit court again. The proceedings resolved as respondent-mother desired and she was not prejudiced by the failure to conduct the hearing before a judge rather than a referee. After the best-interest hearing, the DHS changed its position and no longer sought to pursue termination. The parties agreed the paternal grandmother was an appropriate person to serve as guardian and conducted the required investigation into the safety and propriety of that placement. The circuit court had presided over the matter and had previously implied that such a resolution was in the child's best interest. Accordingly, although the proceedings were imperfect, the child's best interests were ultimately served.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Donald S. Owens
/s/ Mark T. Boonstra