STATE OF MICHIGAN

COURT OF APPEALS

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In re CADP, Minor.

Nos. 374390; 374400
Kalkaska Circuit Court
Family Division
LC No. 22-001067-AM;
22-001066-AM

Before: O'BRIEN, P.J., and BOONSTRA and WALLACE, JJ.

PER CURIAM.

These consolidated appeals involve three competing petitions for the adoption of a minor child, CADP. Respondent, the Michigan Children's Institute (MCI), granted consent to the child's maternal grandmother and denied the other petitions. The denied petitioners filed motions under MCL 710.45 ("§ 45 motions"), challenging the denials of consent, which the trial court denied. These petitions are before this Court for the third time. On the most recent remand, following a second § 45 hearing, the trial court again denied the other petitions to adopt the child. Finding no indication that respondent's decisions were arbitrary and capricious, and no indication that the trial court clearly erred by denying the petitions, we affirm.

I. BACKGROUND

CADP was born in October 2018. Child Protective Services became involved with his family when CADP was approximately nine months old. In September 2019, CADP's father passed away. Approximately eight days later, he was removed from the care of his mother and placed with David and Donna Prevo, his paternal grandparents. In November 2019, about six weeks after being placed with his paternal grandparents, the trial court ordered CADP's removal from their home and placed him in the home of his maternal grandmother, Yvonne Robinson, who

also had guardianship of CADP's older sibling[1]. Shortly thereafter, CADP's mother also passed away.

After his parents' deaths, the child became an MCI ward. Robinson submitted a petition to adopt the child, as did the child's paternal aunt and uncle, Daena and Jason Thibodeau, and the Prevos. Diana Moore, as the acting MCI superintendent, formally granted consent to adopt the child to Robinson and denied consent to adopt to the other petitioners.

Moore considered the following factors when making her decisions: (1) the length of time the child had lived in a stable, satisfactory environment and the desirability of maintaining continuity; (2) the willingness and ability of petitioner to assure the physical and emotional well-being of the child on a permanent basis; and (3) the psychological relationship existing between the child and the prospective adoptive parent(s). Under the first factor, Moore found that Robinson provided the child with a stable and satisfactory environment for a significant period of time and provided the child with much-needed security and consistency in light of his childhood trauma. The child also formed strong and positive attachments with Robinson and his brother, who continued to live with Robinson under a legal guardianship. Moore believed it was important to keep the child and his brother in the same home, noting the benefits of keeping children together in placements and the greater likelihood of positive outcomes for both children. As a result, it would not be in the child's best interests to be removed from his current placement with Robinson so that he could be placed with other petitioners.

Considering the second factor, Moore found that Robinson, the Thibodeaus, and the Prevos could meet the child's needs. However, the child was closely attached to Robinson and his brother in a stable environment that allowed him to thrive and meet his developmental milestones. He had experienced childhood trauma that placed him at an increased risk of future challenges, and Moore found that removing the child from a home with Robinson and his brother would cause unnecessary trauma. Finally, under the third factor, Moore found that the child viewed Robinson as his parental figure and was primarily attached to her.

In response to Moore's decisions, the Thibodeaus and Prevos each filed § 45 motions requesting that the trial court review Moore's respective decisions and conclude that her denials of consent were arbitrary and capricious. These proceedings resulted in two prior consolidated appeals before this Court. In the first appeal, this Court vacated the trial court's initial denials because of a discovery issue and remanded further proceedings under MCL 710.45. *In re CADP*, 341 Mich App 370; 990 NW2d 386 (2022). In the second appeal, we found that the trial court had not proceeded consistently with this Court's opinion regarding discovery, again vacated the trial court's order denying the petitions to set aside MCI's denials of consent to adopt CADP, and again remanded to the trial court. *In re CADP*, unpublished per curiam opinion of the Court of Appeals, issued February 22, 2024 (Docket Nos. 366087; 366088).

In this Court's most recent opinion, we held that the trial court erred by only allowing the Thibodeaus and Prevos to access their own files and by allowing Bethany Christian Services (BCS), a nonparty, to participate in the § 45 hearing. *Id*. at 2-8. This Court did not address, at that

[1] CAPD and his older sibling are the offspring of the same mother, but different fathers.

time, whether respondent's denials of consent concerning the Thibodeaus and Prevos were arbitrary and capricious. *Id*. at 9.

Following the second remand, the trial court conducted a § 45 hearing and upheld Moore's denials of consent. Specifically, it held that the Thibodeaus and Prevos failed to prove by clear and convincing evidence that Moore's decisions were arbitrary and capricious. As a result, the trial court entered orders dismissing their adoption petitions.

The Thibodeaus and Prevos both appealed the decisions, and their appeals were consolidated by this Court.[2]

II. STANDARD OF REVIEW

"Pursuant to MCL 710.45, a family court's review of the superintendent's decision to withhold consent to adopt a state ward is limited to determining whether the adoption petitioner has established clear and convincing evidence that the MCI superintendent's withholding of consent was arbitrary and capricious." *In re Keast*, 278 Mich App 415, 423; 750 NW2d 643 (2008). A family court may not decide the adoption issue de novo; rather, it must decide whether there is clear and convincing evidence that the MCI acted arbitrarily and capriciously. *Id*. at 424. "A decision is arbitrary if, although decisive, it is reached by 'whim or caprice' rather than being reasoned and driven by reference to 'principles, circumstances, or significance[.]' " *In re CADP*, 341 Mich App at 380, quoting *In re Keast*, 278 Mich App at 424. "A decision is capricious if it is whimsical, freakish, or humorsome, or apt to being suddenly changed." *Id*. "Whether the family court properly applied this standard is a question of law reviewed for clear legal error." *In re Keast*, 278 Mich App at 423. "A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law." *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009) (quotation marks and citation omitted).

III. CONSENT TO ADOPT

The Thibodeaus and Prevos argue that the trial court erred by upholding Moore's decisions to withhold consent to the adoptions. We disagree.

"The MCI superintendent represents the state of Michigan as guardian of all children committed to the state by a family court after termination of parental rights." *In re Keast*, 278 Mich App at 423, citing MCL 400.203. "The superintendent is authorized to consent to the adoption of any child committed to the MCI as a state ward." *In re Keast*, 278 Mich App at 423, citing MCL 400.209. A superintendent's consent to the adoption of a state ward is required before the family court can approve a prospective adoption. MCL 710.43(1)(b). If an adoption petitioner is unable to obtain the consent required by MCL 710.43(1)(b), the petitioner may file a motion with the family court alleging that the decision to withhold consent was arbitrary and capricious. MCL 710.45(2); *In re Keast*, 278 Mich App at 423-424.

[2] *In re CADP Minor*, unpublished order of the Court of Appeals, entered March 3, 2025 (Docket Nos. 374390; 374400).

"Unless the petitioner establishes by *clear and convincing evidence* that the decision to withhold consent was arbitrary and capricious, the court shall deny the motion described in [MCL 710.45(2)] and dismiss the petition to adopt." MCL 710.45(7) (emphasis added). When evaluating a superintendent's decision to withhold consent to adopt, "[i]t is the absence of any good reason to withhold consent, rather than the presence of good reasons to grant it, that indicates that the decision maker has acted arbitrarily and capriciously." *In re Keast*, 278 Mich App at 425. "Michigan authority is clear that the court is to determine if there is any good reason to support the MCI superintendent's decision; if so, the decision must be upheld." *In re TEM*, 343 Mich App 171, 179; 996 NW2d 850 (2022). Again, this Court reviews for clear legal error whether the trial court properly applied the standard set forth in MCL 710.45(2). *In re Keast*, 278 Mich App at 423.

Moore gave several reasons for denying consent to the adoptions: (1) the length of time the child had lived in a stable, satisfactory environment and the desirability of maintaining continuity; (2) the willingness and ability of petitioner to assure the physical and emotional well-being of the child on a permanent basis; and (3) the psychological relationship existing between the child and the prospective adoptive parents. Moore reasoned that the child had lived in his placement with Robinson and his brother for more than half of his life, and developed strong, positive relationships with them. Further, Moore found that the child viewed Robinson's home as his "home base." While the child did have regular visitations with the Thibodeaus and Prevos, had positive relationships with them, and viewed them as important people or extended family members, he viewed Robinson as his parent figure and looked to her for comfort and reassurance. It was also reported that the child would call Robinson "mom," although she would correct him.

Further, Robinson demonstrated her ability to meet the child's various needs, even in light of his childhood trauma, and the child had a sense of stability and security with Robinson and his brother. Because of these facts, Moore believed that removing the child from Robinson's home could cause him additional trauma and would not be in the child's best interests. The record reflects that Moore's decisions to deny consent to the Thibodeaus and Prevos were not whimsical or determined by caprice. See *In re CADP*, 341 Mich App at 380.

Although the Thibodeaus and Prevos argue that Moore's respective decisions were arbitrary and capricious because she relied on communications that were biased against them, these arguments are unsupported by the record. The Thibodeaus and Prevos largely rely on communications from adoption caseworkers at BCS to further their claims. The Thibodeaus and Prevos reference e-mail messages from a BCS adoption program supervisor, in which the supervisor referred to the Prevos' Child Adoption Assessment as a "doosey," responded to messages from BCS staff about the Prevos' concerns with an "eye roll emoji" and "(insert deeeeeep sigh emoji)," suggested to BCS staff that the child was nervous during visits with the Prevos, and made what appears to have been a negative comment about potential conversations between Donna Prevo and CADP.

While these messages may have been unprofessional or inappropriate, it appears that some of these messages expressed frustration over the number of complaints Donna Prevo made about Robinson to BCS staff. Other messages appear to have been taken out of context, referring to needed edits on documents rather than the Prevos's case. The supervisor and BCS staff denied disliking the Thibodeaus and Prevos, and denied expressing any negative opinions about them to other staff. Even assuming for the sake of argument that the supervisor's e-mails and comments

did reflect his bias against the Thibodeaus and Prevos, there was no evidence in the lower court record that Moore considered these communications or this bias when denying the Thibodeaus and Prevos respective adoption petitions.

The Thibodeaus and Prevos also rely on BCS e-mails indicating that the trial court believed Donna Prevo would be an inappropriate caretaker for the child, as well as MCI conference notes reflecting that the trial court had a negative opinion of the Prevos and a positive opinion of Robinson. The BCS caseworker that created the BCS e-mails regarding Donna Prevo did not recall the context of her e-mail or the circumstances that led to the trial court's alleged comments about the appropriateness of the Prevos as a placement. MCI staff also did not recall any comments about the trial court's opinions of the parties during their case conference. Further, it is unclear how these documents, which appear to only report on apparent concerns of the trial court, reflect bias by BCS or MCI staff. There is also no evidence that Moore heavily relied on these reported opinions when denying consent to adopt to the Thibodeaus and Prevos.

Further, the trial court found that MCI and BCS staff truthfully denied holding or expressing any bias against the Thibodeaus and Prevos, and it found that the BCS and MCI communications and documents presented by the Thibodeaus and Prevos lacked appropriate context. In light of the deference we give to a trial court's credibility determinations, see *Moote v Moote*, 329 Mich App 474, 478; 942 NW2d 660 (2019), the Thibodeaus and Prevos have failed to demonstrate that the trial court's findings of fact, denial of the Thibodeaus' and Prevos' motions, or dismissal of the Thibodeaus' and Prevos' petitions were clearly erroneous, see *Corporan*, 282 Mich App at 605.

The Thibodeaus and Prevos next argue that Moore considered incorrect information and failed to consider information relevant to the child's case, challenging almost every aspect of Moore's decision-making process and evaluation. The Thibodeaus and Prevos take issue with Moore's alleged failure to consider evidence that Robinson was not an appropriate placement for the child, Moore's alleged failure to conduct psychological evaluations of the parties, Moore's consideration of the child's and his brother's relationship, Moore's alleged failure to consider the child's relationship with the Thibodeaus and Prevos, Moore's attempts to move through the child's case without appropriate consideration, and Moore's reliance on improper hearsay evidence.

These arguments rely on mischaracterizations of the record or strategic omissions of relevant testimony—they do not have merit. The record reflects that Robinson was an appropriate placement and adoptive parent for the child because the child met his developmental milestones in Robinson's care, foster care caseworkers found that Robinson's home was safe and appropriate, and Robinson created an alternative care provider plan for the child. Moore did not conduct psychological evaluations in the child's case because those evaluations often relied on self-reported information and she found them to often be unreliable. A foster care caseworker did initially recommend that Robinson and the Prevos complete psychological evaluations, but this request was out of concern for their losses of adult children, not concerns about their stability. Further, Moore testified that she did consider a psychological evaluation of Donna Prevo.

There is also no evidence that Moore relied on incorrect or inaccurate information when considering the child's relationship with his brother, and the record reflects that the child and his brother have a close relationship while living together in Robinson's care. The Thibodeaus and

Prevos provided BCS documentation stating that the child did *not* have a relationship with his brother and did *not* have secure attachments when his brother was around, but Moore and BCS staff testified that this documentation was created early in the child's case and was missing information. Further, there was evidence that the child's attachments and relationships developed while he was in Robinson's care, and evidence that the child has positive and secure relationships while living with Robinson. While Moore considered the child's relationship with his brother, she also explicitly considered the child's relationships with the Thibodeaus and Prevos and sought to maintain them. Robinson did initially resist visits between the child and the Thibodeaus and Prevos, but she later complied with the visitation schedule, and likewise has an amicable relationship with the Thibodeaus. Moore considered how Robinson adopting the child would affect his relationships with the Thibodeaus and Prevos, but she placed greater emphasis on the child's relationship with his parent figure and sibling. Moore believed that the child could maintain his relationship with the Thibodeaus and Prevos while in Robinson's care because of Robinson's relationship with the Thibodeaus.

The Thibodeaus' and Prevos' claims that Moore moved through the child's case without appropriate consideration, and relied on improper hearsay evidence, are similarly unsupported by the record. Early on in the child's case, Moore did ask MCI staff to move the case along without obtaining all of the relevant paperwork. However, Moore and MCI staff testified that her request was based on the incorrect belief that the child's case had been open much longer than it was. The record reflects that MCI staff corrected Moore and she withdrew her request. The record also reflects that Moore spent a considerable amount of time on the child's case.

Further, while the Thibodeaus and Prevos argue that Moore relied on child-welfare articles that were irrelevant and constituted hearsay when deciding to withhold consent to them, the record reflects that these articles regarded sibling placements and were relevant to Moore's decision-making process. The trial court admitted these documents as proper evidence to evaluate whether Moore's decisions were arbitrary and capricious, and there was no evidence that Moore relied on these articles for any purpose other than evaluating the benefits of keeping the child in a placement with his brother. Because the Thibodeaus and Prevos cannot demonstrate that Moore relied on incorrect information or failed to consider relevant information when withholding consent to the Thibodeaus and Prevos, they have failed to demonstrate that the trial court's denial of their motions, and dismissal of their petitions, was clearly erroneous on these grounds. See *Corporan*, 282 Mich App at 605.

Finally, the Thibodeaus and Prevos argue that Moore ignored the statutory requirements of the Adoption Code by placing a greater emphasis on the Department of Health and Human Services' (DHHS) policy regarding sibling placement. MCL 710.22(g) provides the Adoption Code's eleven best-interest factors and states, in relevant part:

> (g) "Best interests of the adoptee" or "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date . . .

The Adoption Code requires the trial court to consider, evaluate, and determine the listed best-interest factors. *Id*. Clearly, when an MCI superintendent is considering the best-interest factors,

in order to make a consent decision, their consideration of a party's ability to keep siblings together does not make the consent decision arbitrary and capricious. See *In re TEM*, 343 Mich App at 179. Further, a superintendent's decision is not arbitrary and capricious when it is overwhelmingly supported by the documentation provided to them and by their independent investigation. See *In re Keast*, 278 Mich App at 435.

The record clearly reflects that Moore did consider and evaluate all of the relevant best-interest factors. While some of the factors that Moore considered and provided in her written decisions did not fall within the 11 best-interest factors of the Adoption Code, the Adoption Code allows for the consideration of additional factors that may be relevant to a particular case. See MCL 710.22(g)(*xi*) (providing that the trial court may consider "[a]ny other factor considered by the court to be relevant to a particular adoption proceeding . . . ." This best-interest factor provided in the Adoption Code allows consideration of other factors not explicitly provided, such as the child's psychological relationship with Robinson and his relationship with his brother. Because of the emphasis that DHHS policy and the Adoption Services Manual place on keeping siblings together, Moore considered the importance of keeping the child and his brother in the same home when making her consent decisions and this consideration did not render her decisions arbitrary and capricious. See *In re TEM*, 343 Mich App at 179.

When deciding to withhold consent to the Thibodeaus and Prevos, Moore considered several documents including the child's Child Adoption Assessment, publications about child welfare, the Adoptive Family Assessment, and the Adoptive Family Assessment Addendum. She also relied on her own observations from her visits with the parties. Because all three parties were appropriate for the child, and would be able to meet his needs, Moore weighed the child's psychological relationship with the parties and his bond with his brother more heavily. In light of the information provided to her and obtained from her own investigation, Moore believed that it was in the child's best interests to remain with Robinson and his brother. The record clearly reflects that Moore considered the Adoption Code's best-interest factors, additional factors relevant to the child's case, the results of her own investigation, documents provided by BCS and the parties, and additional resources regarding child welfare before making thoughtful and well-reasoned decisions supported by the documents provided to her. Accordingly, the Thibodeaus and Prevos cannot establish that Moore's respective decisions were arbitrary and capricious, see *In re Keast*, 278 Mich App at 435, and they cannot establish that the trial court clearly erred by denying their motions and dismissing their petitions, see *Corporan*, 282 Mich App at 605.

Accordingly, the trial court did not clearly err by denying the Thibodeaus' and Prevos' § 45 motions and dismissing their petitions to adopt. See MCL 710.45(7).

Affirmed.

/s/ Colleen A. O'Brien
/s/ Mark T. Boonstra
/s/ Randy J. Wallace