

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

---

IN THE MATTER OF:

Court of Appeals No. 277354

ALYSSA ANNE KEAST and  
AMBER MARIE KEAST,

Newaygo Circuit Court  
Case No. 05-06388-NA

Minors.

---

**APPELLANT'S MOTION FOR IMMEDIATE CONSIDERATION,  
APPELLANT'S MOTION TO WAIVE MCR 7.209 REQUIREMENTS  
FOR STAY REQUEST IN LOWER COURT AND  
APPELLANT'S MOTION FOR STAY PENDING APPEAL**

NOW COMES Appellant, Department of Human Services (DHS), by and through the Attorney General Michael A. Cox, Solicitor General Thomas Casey, and the undersigned Assistant Attorney General, and files a Motion for Immediate Consideration, a Motion to Waive the Michigan Court Rule 7.209 Requirements for requesting a stay in the lower court and a Motion to Stay Pending Appeal states as follows:

**MOTION FOR IMMEDIATE CONSIDERATION**

1. Appellant requests immediate consideration of this matter because Alyssa Keast, a minor child who is seven years old, and Amber Keast, a minor child who is four years old, will be abruptly moved on Wednesday April 18, 2007 from the home where they have resided with their foster mother since December 2005.<sup>1</sup>

---

<sup>1</sup> Exhibit A: April 4, 2007 hearing transcript at 8. "The court order stands, and the only way that that court order is going to not be obeyed essentially is by a Court of Appeals order...sit down, sit down, I am not hearing you. **This transition will take place within two weeks....And I have every intention of locking people up if its not complied with. Your business is with the Court of Appeals, sir**" (emphasis added).

2 The lower court has made it clear that it is not flexible in evaluating what is best for the children as evidenced by the statement that "[t]he court order stands, and the only way that that court order is going to not be obeyed essentially is by a Court of Appeals order...sit down, sit down, I am not hearing you. This transition will take place within two weeks....And I have every intention of locking people up if its not complied with. Your business is with the Court of Appeals, sir" (emphasis added).

3. The lower court proceeded in an abuse and neglect file to terminate the guardianship of the Michigan Children's Institute (MCI) of these children in the middle of a Section 45 adoption hearing in order to place them with the relatives who were denied consent by the MCI Superintendent.<sup>2</sup> There is no statutory authority for the court's action.

4. The lower court has made it abundantly clear to both the Attorney General's office, DHS and counsel for the foster mother that nothing short of an appellate court order will ensure these girls' placement is properly decided under the statutory law and best interest standards.<sup>3</sup>

5. The lower court at the April 4, 2007 hearing failed to follow MCL 712A.13b by disregarding the foster care review board's recommendations on placement to have the children remain with the foster mother and erred in its statutory interpretation that the foster care review board has no ability to participate in proceedings of court ward

---

<sup>2</sup> Exhibit B: February 7, 2007 transcript at 6, 96, 97, 98.

<sup>3</sup> Exhibit B: February 7, 2007 transcript at 96, the lower court refers the Attorney General to the Court of Appeals to remedy its decision. At the April 4, 2007 hearing at 4, 8, 8, 9, 9, and 10, the lower court refers DHS and the foster care mother's counsel to the Court of Appeals if there is an issue with his decisions. Section 45 refers to MCL 710.45.

foster children.<sup>4</sup> "The Foster Care Review Board has no authority to review a placement decision by this Court. The appropriate review of this Court's decision is the Court of Appeals"<sup>5</sup> (emphasis added).

6. Appellant relies on and incorporates more fully the statements and facts in its Motion for Immediate Consideration of its Application for Leave to Appeal, filed on April 12, 2007.

WHEREFORE Appellant prays for immediate consideration of the following two motions.

**MOTION TO WAIVE MCR 7.209 REQUIREMENTS  
TO SEEK STAY OF ORDER BEFORE LOWER COURT**

DHS incorporates the statements in 1 through 6 as to why its request to waive the MCR 7.209 requirements should be granted and further states that:

7. Department of Human Services (DHS) and MCI filed a Motion for Reconsideration with the lower court seeking review of its March 5, 2007 Order, which was denied.<sup>6</sup>

8. Due to the short two week time frame imposed by the court upon DHS and the foster mother by the lower court at an April 4, 2007 hearing requiring the children be relocated to their grandparents, and the court's refusal to objectively consider evidence contrary to its decision, a lower court stay request would be not only impractical and futile, but would impair

---

<sup>4</sup> MCL 712A.13b(5) states that [i]f after investigation the foster care review board determines that the move is not in the child's best interest, the agency shall maintain the current placement until a finding and order by the court, or if the child is under MCI jurisdiction, control, or supervision, a decision by the MCI Superintendent.

<sup>5</sup> Exhibit A: April 4, 2007 transcript at 4.

<sup>6</sup> Exhibit C: Denial of Motion for Reconsideration, filed March 22, 2007.

DHS' ability to have timely appellate review of this case prior to the children being harmed by an abrupt transition. The children have been with the foster mother since December 2005.

9. At the February 7, 2007 hearing, both the guardian ad litem for the children and the prosecutor requested the court follow the foster care worker's recommendations for the children to continue living with the foster mom while adoption alternatives were being explored.<sup>7</sup>

10. As further evidence of the court's refusal to objectively weigh the evidence in this case and its predisposition on the outcome from the onset, the Appellant asks this Court to consider that the lower court noted on April 4, 2007 that there is a "competition to adopt between the maternal grandparents and the foster mother, a single working person employed by the Newaygo County Community Mental Health." The court then disregarded the professional opinions of those involved and the strong support of the foster mother's petition to adopt by DHS, Bethany Christian Services and MCI because the court concluded that the recommendation **"smacks of cronyism and undermines the value of their opinions"** (emphasis added).

11. As further evidence that the court is not objective in its statement that "[t]he Foster Care Review Board's conclusion that the Court's decision has gone against every professional opinion (sic) who has been involved with these children's lives since their original placement and the placement with the grandparents does not meet the best interests of the child provision of MCL 722.23 [MSA 25.312(3)] is nothing more than pure opinion."<sup>8</sup>

12. The court stated: "This case is long on opinion and short on fact."<sup>9</sup>

---

<sup>7</sup> Exhibit B: February 7, 2007 transcript at 3.

<sup>8</sup> Exhibit A: April 4, 2007 transcript at 5.

<sup>9</sup> *Id* at 6.

13. At the April 4, 2007 hearing, the court also denied without fact finding, the foster mother's petition to adopt and denied her oral request for a Section 45 hearing based on his adoption petition denials. A Section 45 hearing is a statutory right under MCL 710.45.<sup>10</sup>

14. Upon denying consent to adopt to the foster mother and her request for a Section 45 hearing, the court again stated, **"I've told you your business is with the Court of Appeals"**<sup>11</sup> (emphasis added).

15. The court states in response to the foster mother's concerns that justice is not being dispensed that: **"Your business is with the Court of Appeals. If they tell me that then I will abide by their order"**<sup>12</sup> (emphasis added).

16. After quoting a newspaper column by Anna Quindlen the court notes "that's the end of this hearing concerning the review, it shouldn't have been conducted to begin with."<sup>13</sup>

17. After ending the hearing on April 4, 2007, the Court stated to the foster mom's counsel that the **"Court of Appeals is only 45 minutes away"** (emphasis added). The court then refused to speak with counsel when counsel attempted to address court's comment by replying "I'm sorry, okay, I'm sorry I addressed you."<sup>14</sup>

WHEREFORE, Appellant prays that this Court waives the requirement of MCR 7.209 because it would be futile to ask for a stay since the circuit court has told the parties to go to the Court of Appeals if they want relief.

---

<sup>10</sup> *Id* 8-9.

<sup>11</sup> *Id* at 6.

<sup>12</sup> *Id* at 9.

<sup>13</sup> *Id* at 7.

<sup>14</sup> *Id* at 10.

**MOTION TO STAY MARCH 5, 2007 NEWAYGO COUNTY CIRCUIT COURT ORDER**

DHS incorporates the prior statements herein in support of the necessity of granting a stay of the lower court's order, and further states that:

18. The stay of the March 5, 2007 Order, which was expounded upon by the court at the April 4, 2007 hearing is essential in order to allow the children to remain in their current placement where they have been since December 2005. There will be visitations with the maternal grandparents while the application for leave is considered on the merits.

19. Due to the lower court's ultimatum that unless the children are living with their grandparents in two weeks from April 4, 2007, Appellant is concerned that employees from DHS and Bethany Christian Services will be held in contempt of court and incarcerated. The immediate transfer mandate provides for no appropriate transition of the minors to a new home and is against all professional recommendations.<sup>15</sup>

20. The children have thrived in their current placement where they have resided for over a year. In fact, the MCI Superintendent has granted consent to adopt these children to the foster mother.<sup>16</sup>

21. DHS has also concurrently filed an Application for Leave to Appeal. However, immediate consideration of this motion for stay is necessary because if the circuit court follows through on its statement that the children's custody must be terminated and that the children be turned over to the maternal grandparents, the children will be uprooted and placed with persons who were not considered a suitable placement by the Michigan Children's Institute, DHS, Bethany Christian Services, the foster care review board and even the court itself when it

---

<sup>15</sup> Exhibit E: Foster Care Review Board Decision at 4.

<sup>16</sup> Exhibit D: MCI Superintendent's consents for Nicole Coppes to adopt Alyssa and Amber Keast signed March 19, 2007.

authorized the removal of these children from these same persons in 2005 due to concerns about the children's well-being in that home.

WHEREFORE, the Appellant requests that this Court immediately stay these lower court proceedings until the appellate proceedings are concluded.

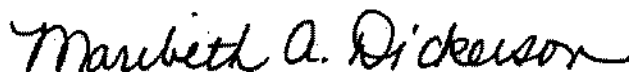
**Conclusion and Relief Sought**

In summary, for the foregoing reasons, DHS respectfully requests this Court to grant its Motion for Immediate Consideration so that the Motion to Stay the March 5, 2007 Order and the Motion to Waive the MCR 7.209 Requirements can be promptly heard and prevent the abrupt change of custody of the children.

Respectfully submitted,

Michael A. Cox  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record



Maribeth A. Dickerson (P68975)  
Assistant Attorney General  
Education & Social Services Division  
Attorney for Defendant/Appellant  
Department of Human Services,  
Michigan Children's Institute  
PO Box 30758  
Lansing, MI 48909  
(517) 373-7700

Date: April 16, 2007