

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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In the Matter of:  
Alyssa and Amber Keast, Minors.

Court of Appeals No. \_\_\_\_\_

On Appeal From Newaygo County Circuit Ct  
Case No. 05-06388-NA  
(The Honorable Terrence R. Thomas)

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**EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

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## **STATEMENT SUPPORTING IMMEDIATE CONSIDERATION**

Appellant seeks immediate consideration of her Application for Leave to Appeal for the grounds more fully set forth in her Motion for Immediate Consideration. In brief, immediate consideration is sought because the Trial Court awarded extensive grandparent visitation of two foster children to the biological grandparents even though the biological parents of the children had their parental right terminated. Further, the Trial Court granted this visitation even after hearing testimony from the Foster Mother and the children's therapists that the girls displayed regressive behavior during and shortly after visitation with their grandparents. Throughout these proceedings, there has also been concern about the grandparents allowing the children to have contact with their biological parents and admissions of drug use in the house while the children were at the grandparents' home. There was no legal authority to allow these grandparents to have extensive visitation with the girls. The issue requires immediate consideration as the visitations will have a negative impact on the girls' behavior and emotional well-being, and are ordered to begin at 6:00 p.m. on Friday, August 10, 2007.

## **STATEMENT OF JURISDICTION**

Appellant Nicole Coppess seeks leave to appeal from the Trial Court's August, 6 2007 order entered by the Newaygo County Circuit Court. In that order, the Trial Court granted maternal grandparents extensive grandparent visitation time. The Court has jurisdiction to hear this appeal pursuant to MCR 7.203(B)(1).

## STATEMENT OF QUESTIONS INVOLVED

- (1) Did the Trial Court err in awarding Maternal Grandparents extensive visitation time where the foster children were in the custody and care of a foster parent who had petitioned to adopt the children and had previously been granted consent to adopt the children by the MCI superintendent?

Appellant answers: Yes.

Appellee answers: No.

Trial Court answers: No.

- (2) Did the Trial Court commit reversible error by interpreting MCL 722.27b as permitting it to issue grandparent visitation to maternal grandparents where the parental rights of the children's biological parents had already been terminated?

Appellant answers: Yes.

Appellee answers: No.

Trial Court answers: No.

- (3) Did the Trial Court err when it issued a grandparent visitation order under MCL 710.45(8) where such orders are only to be issued pursuant to MCL 722.27b?

Appellant answers: Yes.

Appellee Answers: No.

Trial Court Answers: No.

- (4) Did the Trial Court clearly err when it held that it was in the best interests of the children to grant the Maternal Grandparents' visitation time taking effect almost immediately where there was testimony from therapists stating that such visitation would be harmful to the children?

**Appellant answers: Yes.**

**Appellee answers: No.**

**Trial Court answers: No.**

**STATEMENT OF ORDER ON APPEAL, ALLEGATIONS OF ERROR,  
AND RELIEF SOUGHT**

The Application challenges the August 6, 2007 order of the Trial Court. The order is attached as **Exhibit A**. The Trial Court erred in granting the Maternal Grandparents' Motion for Visitation Pursuant to MCL 722.27b where the rights of both of the children's biological parents had previously been terminated. The Trial Court also erroneously used MCL 710.45(8) as improper authority to enter an order that could only properly be issued under the Grandparent Visitation Statute in one of the specific circumstances expressly enumerated in the statute. In addition, the Trial Court erred in construing the Grandparent Visitation statute as permitting it to enter EXTENSIVE visitation to the maternal grandparents and to enter a grandparent visitation order that was really, in substance, a parenting time order. The order granted the Maternal Grandparents visitation equated to partial custody of the children even though such action was unsupported by law or fact. This is especially true since the children were initially removed from the grandparents' home because the grandparents refused to comply with the Trial Court's order in the termination proceedings which stated that the children were to have no contact with their biological mother.

To make matters worse, the Trial Court's decision awarding extensive visitation could potentially cause great harm to the children given the fact that the proceedings regarding the Foster Mother's petition for adoption are still pending and there is a possibility that the adoption will take place. In that instance, the rights of the children's natural family would be severed rendering extensive visitation prior to such action



psychologically damaging as well as confusing to the children.

More specifically, Appellant asks this Court to reverse the Trial Court's August 6, 2007 order and to enter an order denying the Maternal Grandparents' Motion for Visitation until the issues regarding adoption of the children are permanently resolved. In the alternative, Appellant requests that this Court reverse the Trial Court's decision and remand for a hearing that complies with the scope of MCL 722.27b, limiting grandparent visitation to a more healthy and reasonable amount of time. Appellant is also seeking a motion to stay while this application is pending in the Court of Appeals so that the children's current routine is not disrupted until issues in the appellate and trial courts are fully resolved.

## STATEMENT OF FACTS

The minor children whose futures are at stake in this appeal are Alyssa Keast (age 6) and Amber Keast (age 4). They have lived with their Foster Mother, Nicole Coppess ("Foster Mother") for more than two years. By the account of every agency who has examined this matter—including the Trial Court—these young girls are closely bonded to their Foster Mother and want to live with her forever. The Foster Mother has been able to provide these girls the security, stability, and nurturing environment that was so conspicuously absent from their lives prior to their placement with their Foster Mother.

Sadly, the girls were removed from the home of their biological mother after the home the biological mother shared with the girls was raided by the police for drug trafficking. The biological mother had a long history of substance abuse that resulted in the Newaygo County Prosecutor's Office conducting an abuse and neglect investigation. The biological mother's substance abuse history began when she was 14 years old and smoked marijuana with her father. In fact, the Trial Court (with the same judge presiding) removed the girls from placement at the Maternal Grandparents' home in July 2005 because it determined that it was not in the children's best interests to remain with their Maternal Grandparents. The Trial Court reached this conclusion after it was disclosed that the maternal grandfather had smoked marijuana as recently as March 2005 and that the Maternal Grandparents had allowed the girls to see their biological mother unsupervised and that biological mother had also exposed the girls to her boyfriend, all in contravention of the Maternal Grandparents agreement with Agency.

In evaluating the adoption petition of Barb and Tim Atwood ("Maternal Grandparents"), the Trial Court ignored the evidence that the maternal grandfather had a

long history of drug abuse, that his own history of drug abuse and smoking marijuana with his daughter starting when she was 14 years old and as recently as 2004, might have had some bearing on the disaster that the biological mother's life had become. Needless to say, the biological mother's inability to control her own life directly led to the abuse and neglect proceedings and the termination of her parental rights of Alyssa and Amber in March 2006. The termination proceedings were concluded after the girls were returned to their biological mother's care for one week in December 2005. During that short opportunity for the biological mother to be with her daughters, the biological mother attempted suicide in front of her daughters, then aged 3 and 5. Her suicide attempt caused the girls to regress from what progress they had made during the previous 6 months they had lived in their Foster Mother's home.

After MCI granted consent to the Foster Mother to Adopt the children, the Trial Court thwarted the adoption proceedings by terminating MCI's authority over the children, making the children wards of the court, and denying the Foster Mother's consent to adopt and granting the maternal grandparent's petition to adopt and ordering the children be moved immediately. On appeal, this Court issued a peremptory reversal of the Trial Court's decision. (Court of Appeals Order attached as **Exhibit B**). This Court determined that the Trial Court erred in terminating MCI's authority over the children and in placing the children with their maternal grandparents without conducting a review of the best interests of the children under MCL 710.22(g). This Court also reinstated commitment of the children to DHS ordering that the children be immediately returned to the custody of their Foster Mother.

After the appeal, the Atwood's Section 45 hearing was held and the Trial Court held

that MCI's decision to deny Atwood's consent was arbitrary and capricious and engaged in a rant about the ineffectiveness of DHS.<sup>1</sup> (Order attached as **Exhibit C**). The Maternal Grandparents then filed a motion for visitation which was heard on August 2-3, 2007. During that proceeding there was testimony from various parties including therapists. The testimony indicated that it would not be in the children's best interests to allow visitation, much less award custody to the maternal grandparents. Each of the children's therapists testified that the girls had behavioral problems which have improved since the girls have been in the Foster Mother's care. They also testified that this improvement regresses whenever the girls visit with their grandparents. Additionally the Foster Mother testified that she has observed this regressive behavior when the girls are forced to see their grandparents. She also provided testimony about her living conditions, dating relationships, care of the children, and her own childhood.

Although the hearing was noticed as a hearing on the Maternal Grandparents' motion for visitation, the Trial Court also issued an order granting the grandparent's consent to adopt the children.<sup>2</sup> In its Opinion, the Trial Court recognized that the social

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<sup>1</sup> This order entered July 25, 2007 is being appealed by the Attorney General's office on behalf of DHS. It should be noted that resolution of this appeal will render any further proceedings regarding the grandparent's petition to adopt unnecessary as an appellate result in favor of DHS would allow the Foster Mother's adoption proceedings to continue to finality.

<sup>2</sup> Neither party requested this action in pleadings related to this proceeding. In fact, this idea was first brought up by the maternal grandparents' attorney during closing arguments. As a result, Appellant's were given no opportunity to prepare or argue against the action that was taken by the Trial Court. There was also no reason for Appellant's trial counsel to anticipate that such action would be taken as it is procedurally incorrect. The order granting the grandparents' petition to adopt was issued separately and will be appealed separately.

service reports all weighed in favor of the Foster Mother and against the grandparents, yet decided to weigh the best interest factors in favor of the grandparents nonetheless. The only witnesses who testified for the Maternal Grandparents, besides their own testimony, was Mike Atwood, a nephew of the grandparents, and Phyllis Atwood, the children's step-grandmother. Mike testified that the children were smiling when he was there (he visited 3 to 4 times per week). Phyllis Atwood's testimony indicated that she saw the kids when they were very small and only visited with them occasionally. After hearing the testimony, the Trial Court entered an order granting visitation to the Maternal Grandparents from 6:00 p.m. every other Friday evening until 6:00 p.m. Sunday evening, and every Wednesday from 6:00 p.m. to 8:30 p.m. and such other times as the children are committed to child care. The order is to take effect Friday, August 10, 2007 at 6:00 p.m. (Order at 10-11).

## ARGUMENT

I. **Leave should be granted because the Trial Court's decision awarding extensive grandparent visitation time to foster children's biological grandparents was contrary to statute where adoption by the foster mother was already pending and where it was not in the children's best interest**

### A. **Standard of Review**

This case involves a question of whether the Trial Court correctly followed and applied the grandparenting visitation statute, MCL 722.27b, and the Adoption Code, MCL 710.45(8), to award extensive visitation to maternal grandparents where adoption by another party was pending and the parental rights of their own daughter had been previously terminated due to extensive drug use. Questions of statutory interpretation are reviewed by this Court de novo. *In re RFF*, 242 Mich App 188, 198; 617 NW2d 745 (2000). To the extent that resolution of an appeal entails a question of law, review is also de novo. *In re Newton*, 238 Mich App 486, 489; 606 NW2d 34 (1999).

### B. **Preservation of Error**

This issue was preserved at the hearing on the was held under MCL 722.27b on August 2-3, 2007 in the Newaygo Circuit Court. In its ruling, the Trial Court made findings of fact under the Child Custody Act and entered an order consistent with those findings.

### C. **Analysis**

#### 1. ***The Grandparent Visitation Statute falls under the Child***

***Custody Act and is not relevant or applicable to Adoption proceedings like this one where the natural parents rights have already been terminated.***

The proceedings involving the Keast children are governed strictly by the Adoption Code because the girls are in the process of being adopted subsequent to the termination of their biological parental rights two years ago. The statute permitting grandparent visitation, MCL 722.27b, grants grandparents certain narrow visitation rights in cases that are expressly mentioned within the language of the statute; the situation in the case at bar is not one of those specific instances. *Ruppel v Lessner*, 421 Mich 559; 364 NW2d 665 (1984).

If the legislature had intended grandparents to have visitation in Adoption proceedings subsequent to termination proceedings, it would have been expressly included in the statute. The Trial Court did not interpret the statute correctly. The main goal of judicial interpretation of a statute is to give effect to the intent of the legislature. *In re Dawson*, 232 Mich App, 690, 696; 591 NW2d 433 (1998). To give effect to that intent, it is important to look at the plain language of the statute. Section 722.27b provides a list of the only circumstances in which grandparents are entitled to court ordered visitation. The narrow list expressly grants that right in situations where:

- (a) An action for divorce, separate maintenance, or annulment involving the child's parents is pending before the court.
- (b) The child's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.
- © The child's parent who is a child of the grandparents is deceased.
- (d) The child's parents have never been married, they are not residing in the

same household, and paternity has been established by the completion of an acknowledgment of parentage under the acknowledgment of parentage act, . . .

(e) Except as otherwise provided in subsection (13), legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of the home and does not reside in the home of a parent.

(f) In the year preceding the commencement of an action under subsection (3) for grandparenting time, the grandparent provided an established custodial environment for the child as described in section 7, whether or not the grandparent had custody under a court order. . .

MCL 722.27b. None of these specific circumstances is present in this instance. While the Trial Court was persuaded that MCL 722.27b was applicable to the case at bar due to the fact that the children were placed in the custody of a third party (Foster Mother), a closer reading of the statute reveals that this is not the case. In this instance, the children were placed with their Foster Mother subsequent to termination proceedings where the rights of both parents were terminated. The grandparents are equally not entitled to visitation under MCL 722.27b(f) as they have not provided a custodial environment with the children during the past year. The Foster Mother is the person who has provided a custodial environment for the children during the past two years.

The statute does not contemplate the instant scenario. In fact, sub-section (13) of the statute expressly states that adoption of a child or placement of a child under the Michigan Adoption Code terminates the right of a grandparent to commence an action for grandparenting time with that child. Just like adoption, termination of parental rights cuts off the rights of the natural family and the same reasoning should apply. By not expressly listing the termination of both natural parents' rights under the section allowing for visitation "in the following circumstances:" the legislature displayed an intent not to include these



types of cases. *Frame v Nehls*, 452 Mich 171, 550 NW2d 739 (1996) (providing list of circumstances in which grandparents may seek visitation).

A probable explanation for the legislative decision not to include termination cases where the adoption of the children was pending is more apparent after a review of relevant case law. One key illustration was made by this Court in *Nelson v Kendrick*, 187 Mich App 367, 370-371; 466 NW2d 402(1991), where the term "including" located in MCL 722.27b was a word of limitation instead of a word of enlargement, showing that the word was meant to limit grandparenting time to disputes involving the custody of children. This Court reasoned that a review of the entire Child Custody Act showed that "include" in Section 722.27b(2) was meant to be a term of limitation. The phrase "child custody dispute" or variations thereof is located in each section of the Act and appears to apply to any number of situations or actions where the placement of a child must be determined. The term or phrase is not accorded a definition other than its normal usage in any section of the Act other than Section 722.27b. Therefore, because the term is broad and is not defined in other sections, its specific definition in the section must be interpreted as a limitation on its broad general usage. In *Nelson*, this Court concluded that a paternity suit was not a custody dispute for purposes of permitting an action for grandparenting visitation under MCL 722.27b. *Id.*

It makes sense then that an adoption proceeding is not properly a custody dispute within the scope of MCL 722.27b because the children have already been placed with their Foster Mother, who has also petitioned to adopt the children. In fact, the children have been with the Foster Mother for two years and this Court recently determined that there

was adequate progress toward their adoption. (COA Order, **Exhibit B**). Had the Trial Court not ignored proper procedure by terminating the authority of MCI over the case, it is likely that the adoption would be close to finalized, if not final already.

This type of case cannot be within the scope of cases where grandparents are entitled to visitation given the fact that it is well-established that adoption cuts off the grandparents rights to petition for visitation completely, with the exception of stepparent adoptions (which the legislature specifically mentioned). *In re Toth*, 227 Mich App 548, 577 NW2d 111 (1998). In adoption cases, the natural parents no longer have any rights to the child, nor does the natural family because any rights that they had derived from the natural parent's rights. On the same token, where the natural parent's rights have been terminated, the natural relatives cannot be said to have legal rights that are traditionally derived from the natural parent's legal relationship to the child. Although there is no authority directly on point, this is a logical conclusion given the effect of legal termination of parental rights.

If the legislature intended grandparents to have the right to extensive grandparenting time with their biological grandchildren in cases where the children are close to adoption by a party who has already established a custodial environment and where it is unlikely that the children will maintain such a relationship with those grandparents after the adoption, then it is a very cruel piece of legislation. This is especially an area of concern where visitation with natural family members could disrupt the stability and emotional well-being of children across the state that who tragically find themselves abandoned by parents whose rights have been terminated.

**2. The Trial Court erroneously entered a grandparenting visitation order under MCL 710.45(8)**

The Trial Court did not have jurisdiction under MCL 710.45(8) to enter an order for grandparent visitation to the Maternal Grandparents where the rights of the biological parents had already been terminated. Section 45 of the Adoption Code addresses a party's ability to challenge a denial of consent to adopt given to another party.

Subsection 8 of Section 45 provides :

If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall issue a written decision and may terminate the rights of the appropriate court, child placing agency, or department and may enter further orders in accordance with this chapter or section 18 of chapter XIA as the court considers appropriate . .

The Trial Court issued the order for grandparent visitation apparently relying, at least partially, on the language of subsection 8 "may enter further orders" as permitting it to issue any order relating to any Michigan statute. However, the subsection only refers to orders "in accordance with this chapter." An order for grandparent visitation falls under the Child Custody Act and is not applicable to Adoption Proceedings subsequent to termination of parental rights under MCL 712.19b.

The Trial Court's citation of authority under subsection 8 of section 45 to issue an order for grandparent time illustrates that it may have had doubts about whether MCL 722.27b applied to allow grandparents to petition for visitation after parental rights were terminated and where adoption proceedings following termination were pending. The Trial Court attempted to use another source of authority that does not pertain to an order that is solely governed by a section of the Child Custody Act.

If the Trial Court is permitted to apply "any other order" provisions like subsection

8 of Section 45 to proceedings that are not even part of the same chapter, chaos will ensue. For example, if the Trial Court is permitted to enter a visitation order for grandparent visitation under 710.45(8), than another trial court might be able to enter an order granting custody under 710.45(8) even though custody would be properly governed by another statute. It is not logical to construe the "any other orders" provision as granting a Trial Court authority to enter orders which are only properly governed by other specific statutory provisions such as MCL 722.27b. The Trial Court erred in construing the subsection as granting such a broad magic-wand of authority.

**3. *The Trial Court acted contrary to the purposes of the Adoption Code by granting extensive visitation to the maternal grandparents.***

The Trial Court lost sight of the fact that the Maternal Grandparents' motion for visitation was in the context of Adoption proceedings and acted contrary to the purpose of the Adoption Code by issuing extensive grandparent visitation where the adoption proceedings could be resolved in a short period of time. All of the hearings relating to Alyssa and Amber Keast are also relevant to their pending adoption and are governed by the Adoption Code to which the courts must strictly adhere. The purposes of the Adoption Code are enumerated in MCL 710.21a, and are as follows:

(a) To provide that each adoptee in this state who needs adoption services receive those services.

(b) To provide procedures and services that will safeguard and promote the best interests of each adoptee in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the right of the adoptee and the rights of another, the rights of the adoptee shall be paramount.

© To provide prompt legal proceedings to assure that the adoptee is free for

adoptive placement at the earliest possible time;

(d) To achieve permanency and stability for adoptees as quickly as possible; and.

(e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.

MCL 710.21a; *In re Barlow*, 404 Mich 216, 228-229; 273 NW2d 35 (1978). From these five enumerated goals it is apparent that the primary focus of the legislature in enacting legislation regarding adoption procedures was (1) protecting the best interest of the child, and (2) achieving permanency for the adoptee as quickly as possible.

These overriding goals cannot possibly be achieved by allowing maternal grandparents extensive custody where progress has been made toward adoption and it is likely that visitation would cease completely when the adoption is completed. The Trial Court purported to analyze the children's best interests in its opinion, but in doing so, it grossly misrepresented the testimony and failed to weigh unfavorable testimony against the Maternal Grandparents.<sup>3</sup>

The Trial Court first displayed its bias against the social service system, of which the Foster Mother is an employee, when it weighed the emotional ties of each parties with the children stating that as to the grandparents, such love is demonstrated by, "their dogged determination in the face of the weight of the state's social service system to deprive them even of visitation with these children." The Trial Court went on to show further bias toward

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<sup>3</sup> The Trial Court did not cite which statutory best interest factors it was using, however it is clear that it was not the factors provided in MCL 722.7b(6)(a)-(j). In fact, it is not clear which statute the factors were derived the factors from. For purposes of this appeal allegations of error in weighing the "factors" will be in terms of the factors that the Trial Court actually used, rather than those it should have used.

the Foster Mother when it severely mis-characterized her testimony. The Trial Court stated in its Opinion that the Foster Mother testified that if the grandparents were granted adoption of the children, she would have nothing to do with them stating that it was "an all or nothing relationship." (Order at 3).

To the contrary, her actual testimony was that she thought that if the children were permanently placed with the grandparents via an order of adoption, it would be harmful and confusing to the girls if she were to have a continued relationship with them. This is hardly equivalent to stating that she "would have nothing to do with them." In fact, the Foster Mother's testimony demonstrates that-regardless of her own personal feelings- she is looking out for the best interests of the children.

Next, the Trial Court found in favor of the grandparents as to the capacity and disposition of the parties involved in this case to give the children love, affection, and guidance and to continue education and raising of the children. The Trial Court failed to mention any of the testimony in favor of the Foster Mother. Conversely, the Trial Court was persuaded only by the fact that the grandparents had previously been subjected to substance abuse and psychological testing; whereas, the Foster Mother had not. The fact that the Foster Mother had not received such testing is irrelevant to her capacity to love and educate the children. Moreover, the grandparents had been ordered to undergo psychological and drug testing due to admitted drug problems and after raising a daughter who was so incapable of parenting that she had her rights terminated. Once again, the Trial Court completely chose to ignore any testimony that favored the Foster Mother although she had provided a stable and loving home to the children for two years.

The Trial Court also found, in error, that the parties' ability to provide the children

with food, clothing and medical care was equal. This factor clearly favored the Foster Mother. For example, there was testimony that neither of the grandparents works and that they receive food stamps. On the other hand, the Foster Mother has a steady income, is a homeowner, and does not require food stamps in order to feed the children. Additionally, testimony revealed that while the children are with their Foster Mother, she ensures that the children receive psychological counseling, but the grandparents have only had the children complete an initial counseling intake which is common and not a method of treatment such as the girls need.

The Trial Court erroneously concluded that the length of time the children have lived in a stable satisfactory environment was not applicable in this case as the children have not had such an environment. However, testimony showed that the children had been with the Foster Mother for two years and that there was evidence that she was providing a satisfactory environment for the children.

The Trial Court correctly found that the grandparents had a permanent family unit as they have been married to each other for a long time. The Foster Mother is single and has not been married. However, there was testimony that showed that she is in a committed relationship. Regardless, of her marital status, the Foster Mother is undeniably capable of providing these child with a permanent and stable environment and she and both of her parents have a close and loving relationship with each other and with both children.

The Trial Court also found that there were concerns regarding the moral fitness of both the grandparents and the Foster Mother. The only testimony sparking any shred of moral turpitude regarding the Foster Mother is that she spends the night at the apartment

of her serious boyfriend and brings the girls with her. During these visits, the girls are given full attention at all times and there was no testimony revealing that the girls were exposed to any contact of a sexual nature between the Foster Mother and her boyfriend.

Having a boyfriend pales in the shadow of immense moral delinquency revealed by the grandparents' testimony. The Trial Court minimizes the impact of the testimony by representing that the grandfather had never exposed the children to his drug use, although he admitted smoking marijuana in the past. Yet the grandfather actually testified that when he smoked marijuana while the girls were home, they were either outside or in another room. This hardly constitutes no exposure. Certainly the secondhand marijuana smoke could linger in the air and was undoubtedly breathed or at least smelled by the children. The grandfather also had a history of smoking marijuana with the girls' biological mother when she was as young as 14.

The Trial Court looked at the willingness and ability of each party to encourage a continuing relationship with the other party and found in favor of the grandparents. Yet again, the Trial Court ignored the Foster Mother's testimony. She testified that she thought that a continued relationship with the maternal grandparents would be harmful to the children.

In this finding, the Trial Court also ignored the testimony of the children's therapists. The therapists testified that the girls have significant behavioral problems which included trouble eating food with silverware. When the girls were first placed with the Foster Mother both of them had trouble sleeping. The sleep problems included night terrors and frequent nightmares. Instead of communicating verbally, Alyssa expressed her anxiety by pulling out clumps of hair and picking her ears until they bled. Both of the girls, Alyssa especially,



had severe problems communicating with people. She was unable to express herself at all. Now, the girls are capable of communication with others. Alyssa even orders her own ice cream at the ice cream shop. Upon their arrival at the Foster Mother's home, the Foster Mother observed that the girls had no regard for their own safety. For instance, the girls would just run into the street without showing concern for the presence of traffic. The girls did not even know to stay with the Foster Mother while shopping at the grocery store or at any other public location. It was as though nobody had ever taught the girls the most basic rules of safety.

Although these problems and issues have been addressed and abated significantly while in the care of their Foster Mother, they re-occur shortly after the girls are exposed to their grandparents, or in the past when they were exposed to their biological mother. The therapists testified that during the two years the girls have been in the Foster Mother's care, they have made marked improvements. However, their behavior regresses during and shortly after visits with the maternal grandparents.

One counselor, Heather Derwin, testified that the girls had separation anxiety when they were away from Nicole. She noted that the girls' regressive behavior started during the grandparents' visits and not when they came home. Alyssa's therapist, Kellie Holme, testified that the transition was difficult for Alyssa. In fact, Alyssa had a complete meltdown on June 26 where she was screaming and crying uncontrollably.

The Trial Court failed to address the substance of the therapists' testimony or the Foster Mother's observations of the girls' regressive behavior despite the fact that it was un-rebutted and explained why the Foster Mother would be hesitant to allow the girls to be shipped back and forth because it would not be good for the girls.

The Trial Court again displayed its bias toward the Foster Mother and the social service system by using the Foster Mother's employment status against her. The Trial Court pointed to it as a "relevant factor of concern." Its reasoning was that DHS is biased in their professional opinions recommending the Foster Mother because the therapists are her co-workers. Consequently, the Trial Court questioned whether the foster care placement was properly supervised even where there was no evidence that it was not properly supervised.

In addition to creating a fictional and unsupported bias, the Trial Court ignored the actual testimony of the therapists (Foster Mother's co-workers) who testified that they had taken extra steps to make sure that the case was handled ethically in accordance with department procedures. The girl's files are under lock and key and the Foster Mother does not have access to these files. The Foster Mother is never "on the clock" when the girls are in the office for any type of procedures related to their case. In fact, these allegedly biased co-workers testified that they brought the case to the supervisor's attention. After carefully reviewing the circumstances, the supervisor found that there were no ethical or procedural problems with any of them working on the case and that it could still be done properly.

In explaining this "catch-all" factor further, the Trial Court alluded to the "reported dysfunction in the Foster Mother's background and the estrangement from her biological father" and asked rhetorically whether psychological testing was in order. However, in making these sarcastic and unsupported comments, the Trial Court ignored the fact that the Foster Mother has a wonderful relationship with her mother and her stepfather. Her step father, Lavon Hamp helped raise her from a very young age and is heavily involved

with her and the two children currently. The Foster Mother is working on her relationship with her biological father, but such efforts have been hampered by distance as he resides in South Dakota. There was no testimony indicating that any event or relationship in the Foster Mother's past has caused her to suffer any current psychological trauma or impairment. The Trial Court clearly erred in using this against the Foster Mother. The Trial Court further erred in determining that the opinions in the social service reports in favor of the Foster Mother are to be given no weight because they are "unsupported by fact." The testimony showed that these opinions were substantially explained and wholly supported by fact.

The testimony at the hearings on August 2 and 3 painted a picture of a Foster Mother who earns a good-living, owns a home, and has worked diligently to improve the children's well-being. It also reveals that the placement has been conducted in a manner in which this state has handled similar cases for the past thirty years by honest and ethical therapists and caseworkers.

Despite overwhelming testimony in the Foster Mother's favor, the Trial Court erroneously decided the majority of the factors in favor of a grandfather who is willing to smoke marijuana while the children are home and a grandmother who allowed the children to have contact with their drug-addicted biological mother whose parental rights were terminated. The Trial Court's actions in this order just as others in the past, shows an extreme animosity and bias against Michigan's social service system and hardworking employees within it. If the testimony had been appropriately considered as a whole in accordance with the best-interest factors, it is clear that grand parent visitation is not in the children's best interest.

- 4. Even if the maternal grandparents were entitled to petition for visitation, Trial Court erred by ordering an unreasonable amount of visitation that was equivalent to partial custody.**

The Grandparent Visitation Statute only permits a Trial Court to enter an order granting "reasonable" visitation, not partial custody. MCL 722.27b(6). In this case the Trial Court entered an unreasonable amount of grandparenting time. The Trial Court's order directs that the Maternal Grandparents get visitation every other weekend from 6:00 p.m. Friday evening until 6:00 p.m. Sunday evening, and every Wednesday from 6:00 p.m. to 8:30 p.m. and "such other times as the children are committed to child care." Essentially, the Trial Court granted an amount of visitation equivalent to the amount that a non-custodial parent could expect to get pursuant to a judgment of divorce.

In fact, this Court has held that parenting time should be "in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and parent granted parenting time," subject to MCL 722.27a(1). *Pickering v Pickering*, 268 Mich App 1; 706 NW2d 835 (2005). In contrast there is no such construction or direction that grandparenting time be ordered in an amount necessary to achieve a certain type of relationship. In addition, the grandparenting time statute excludes language describing the type of relationship to be facilitated by the award of grandparenting time. Reading these statutes together, it is clear that the legislature recognized the difference between parental rights to visitation (i.e., establishing a strong relationship) and an award of grandparent visitation, which must only be "reasonable." Visitation is clearly different than parenting time under Michigan statute.

The visitation granted to the maternal grandparents is in an amount more in

accordance with parenting time and is, in this scenario, unreasonable. Most children do not see their grandparents every weekend and every other week and in this case it is especially unnecessary and unreasonable to allow for such extensive visitation.

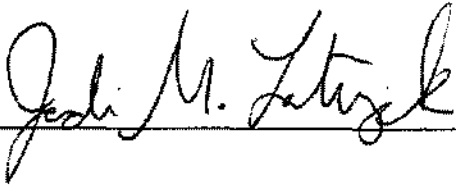
The Trial Court's order also stated that the grandparents are to have the children when ever they need child care. This is wholly inappropriate as it takes away the Foster Mother's ability to chose appropriate child care for the children. Pursuant to this order, the Foster Mother is required to take the children to their grandparents' home even if she only needs child care for an hour. Given the lack of proximity between the homes (approximately 45 minutes by car) of each party, this is unrealistic and extremely unreasonable. The Foster Mother is no longer permitted to chose a babysitter or even let her parents watch the kids without fearing contempt of court charges. The order is not only unsupported by law, but it flies in the face of all logic, is over-broad and fails to consider hardships in achieving the result by burdening only the Foster Mother. As a result, the order should be reversed.

### **CONCLUSION AND REQUEST FOR RELIEF**

Appellant requests this Court grant the Emergency Application for Leave to Appeal and reverse the Trial Court's August 6, 2007. Appellant further requests that this enter an order reversing the grandparent's any visitation time with the children until the adoption proceedings have been finally resolved as custody proceedings should not work interchangeably with adoption proceedings. In the alternative, Appellant requests that if this Court determines the Custody Act provision regarding grandparent visitation to be applicable in this context, it remand the for a hearing to determine a reasonable amount

of grandparenting time that is more consistent with grandparent visitation, rather than a parenting time order before a different judge.

Respectfully Submitted:



A handwritten signature in cursive script, reading "Jodi M. Latuszek", is written over a solid horizontal line.

August 9, 2007

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