STATE OF MICHIGAN
IN THE SUPREME COURT

TIMOTHY AND BARBARA ATWOOD

Plaintiffs-Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF HUMAN SERVICES

Defendant-Appellees.

~~Docket No. 134443~~

Court of Appeals No. 277354

Lower Court No. 05-06388-NA

/

MICHIGAN DEPARTMENT OF HUMAN SERVICES BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

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Dated: August 6, 2007

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I. **MCR 7.302(B) sets forth the standard for the granting of an application for leave to appeal. Among the requirements are that the decision must involve a substantial question of law, be of significant public interest, involve principles of major legal significance or is clearly erroneous. The Court of Appeals based its order on the legal precedent of a published Court of Appeals decision, an interpretation of the statutes and a review of the factual record. Accordingly, have Appellants met any of the grounds for granting leave to appeal?**

The Circuit Court responds: Yes

Appellants respond: Yes

Appellees respond: No

The Court of Appeals responds: No

II. **The Juvenile Code provision MCL 712A.19c requires a court to conduct post-termination review hearings to ensure appropriate permanency planning is being conducted. MCR 3.978 permits the court to enter orders at review hearings it considers necessary in the best interests of the child. The Adoption Code provision MCL 710.45 only allows for the Michigan Children's Institute (MCI) Superintendent to make decisions regarding the adoption of a child when that child is committed to MCI. Do the provisions of the Juvenile Code and the Michigan Court Rules supersede the MCI Superintendent's authority in the Adoption Code and permit the placement and adoption of the child contrary to the decision of the MCI Superintendent?**

The Circuit Court responds: Yes

Appellants respond: Yes

Appellees respond: No

The Court of Appeals responds: No

III. Was the Court of Appeals correct in finding that the lower court erred in holding that there was no progress toward permanency planning when the record is replete with evidence of documented progress by DHS to facilitate permanency planning and the adoption of the children?

The Circuit Court responds: Yes

Appellants respond: Yes

Appellees respond: No

The Court of Appeals responds: No

COUNTERSTATEMENT OF ORDER APPEALED FROM AND RELIEF SOUGHT

The Court of Appeals in an April 17, 2007, order[1] reversed the March 5, 2007, Newaygo County Circuit Court order, which revoked the commitment of the minor children to Department of Human Services (DHS), found no reasonable efforts were made to place the children for adoption in a timely manner, and placed the children with their maternal grandparents without conducting a best interests review.[2] The Court of Appeals properly concluded that under the statutes, court rules and published case law of *In the Matter of Griffin*, a commitment to DHS, once made, is irrevocable.[3] The Court of Appeals determined the circuit court erred in its determination that reasonable efforts were not being made by DHS toward placing the children for adoption in a timely manner.[4] The Court of Appeals found that further error was committed by the circuit court in placing the children with their maternal grandparents without conducting a best interest review as required by MCL 710.22(g).[5]

The March 5, 2007, circuit court order was entered after post-termination review proceedings and removed the children from the care and custody of DHS. The order placed the children with their maternal grandparents who were previously denied consent to adopt by the Michigan Children's Institute (MCI) Superintendent on January 17, 2007. The MCI Superintendent's denial of consent to the grandparents was due to environmental and safety concerns. Additionally, the March 5, 2007, circuit court order was entered while an MCL 710.45 (Section 45) denial of consent to adopt hearing was partially completed.[6]

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[1] April 17, 2007 Michigan Court of Appeals Order (Exhibit A).
[2] March 5, 2007 circuit court order (Exhibit B).
[3] *In the Matter of Griffin*, 88 Mich App 184, 277 NW2d 179 (1979) (Exhibit C).
[4] (Exhibit A).
[5] (Exhibit A).
[6] The record of these two proceedings is co-mingled and is included as Exhibit D.

The appellants' application must demonstrate that one of the grounds for jurisdiction found in MCR 7.301(2) and, concomitantly, MCR 7.302(B) has been met. The appellants fail to demonstrate in their Application for Leave to Appeal that any of the grounds have been met. The appellants' Application for Leave to Appeal should be denied.

COUNTERSTATEMENT OF FACTS

Petitioner's facts are not accepted as complete for this Court to understand the nature of the controversy. This case involves the welfare of two minor females who were committed to the Michigan Children's Institute (MCI) of the Department of Human Services (DHS) on May 10, 2006, for adoption facilitation upon the court's termination of parental rights.[7] The children's names are Alyssa Anne Keast, born January 22, 2000, and Amber Marie Keast, born August 18, 2002.

The chain of events leading up to parental rights termination began on March 14, 2005, when police raided the home of the Keast children's biological mother and her boyfriend.[8] The biological mother and her boyfriend were arrested on charges of drug trafficking and possession of narcotics.[9] The children were residing in the home of the biological mother prior to and during the drug raid.

In an effort to maintain family placement, the children were initially placed with their maternal grandparents from March 14, 2005, to June 25, 2005.[10] The children were removed from the grandparent's home on June 25, 2005.[11] This removal occurred due to the grandparent's noncompliance with a no-contact order that resulted in the children being exposed to their former mother's boyfriend. Of additional concern was the grandfather's admitted marijuana use, including use with his daughter who is the biological mother whose drug use caused her to lose

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[7] The court terminated the father's parental rights on February 22, 2006. The mother's parental rights were terminated on May 10, 2006 (Exhibit E). The children were committed to DHS for permanency planning, supervision, care and placement under MCL 400.203 on May 10, 2006 (Exhibit F).

[8] Exhibit G: Bethany Christian Services Child Adoption Assessments on Alyssa and Amber Keast.

[9] (Exhibit G).

[10] Exhibit G: Alyssa Keast at 5.

[11] Exhibit G: Alyssa Keast at 5.

her children.[12] The grandparents appealed this removal and the removal was supported by the Foster Care Review Board and Judge Thomas of the Newaygo County Family Division Court.[13]

After removal from the grandparent's home, the children resided for one week with an uncle who requested their removal from his home because he was unable to handle them.[14] The children then resided in two non-relative foster homes until they were moved to their present foster home on July 16, 2005.[15] A reunification with the children's mother was attempted on December 9, 2005.[16] This reunification ended with the children being removed on December 16, 2005, after their mother attempted suicide by overdose in front of the children.[17] The children were returned to the same foster home they resided in from July 16, 2005, until the unsuccessful reunification effort.[18] The children have continued to reside in this foster home and are closely bonded with the foster mother (3/5/07 Circuit Court Order, p 3).

The maternal grandparents applied to adopt the children and were assessed for suitability as adoptive parents.[19] The initial recommendation of Bethany Christian Services to the MCI Superintendent was that the grandparents were not a suitable placement.[20] The grandparents requested a case conference to address the recommendation for denial of consent.[21] The case conference was held but did not change the recommended denial. The MCI Superintendent,

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[12] Exhibit G: Alyssa Keast at 5.
[13] *See* attached Exhibit H, Foster Parent Appeal Investigation dated July 13, 2005.
[14] (Exhibit H).
[15] Exhibit H at 5.
[16] Exhibit H at 5.
[17] Exhibit H at 5.
[18] Exhibit H at 5.
[19] *See* Exhibit I, Adoptive Family Assessment of applicants Timothy and Barbara Atwood dated, October 26, 2006.
[20] Exhibit I at 16.
[21] *See* Exhibit J, Letter from Bethany Christian Services acknowledging receipt of case conference request and setting conference date.

upon reviewing the recommendations and the written statements from the maternal grandparents, speaking to various agency workers, and holding a special meeting to re-consider the initial agency recommendations, also concluded that consent to adopt should be withheld from the maternal grandparents.[22]

The foster mother was in the process of being evaluated as an adoptive placement prior to the February 7, 2007, post-termination review.[23]

[22] *See* Exhibit D, Transcript dated, 2/7/07, File No. 06-505-AF and 06-506-AF, pp 70-85.
[23] *See* Exhibit K, Motion for Reconsideration at 2.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

Petitioner's procedural history is not accepted as complete in order to enable this Court to understand the history of this controversy. The Section 45 motion and adoption petitions were filed by the maternal grandparents on December 12, 2006.[24] The Section 45 petition was filed prior to the grandparents being denied consent to adopt the children by the Superintendent of the Michigan Children's Institute. The MCI denial occurred on January 17, 2007.[25] The initial Section 45 motion was prematurely filed upon the Bethany Christian Services recommendation to deny consent to adopt.

This motion resulted in a hearing with the judge, the maternal grandparents and their counsel.[26] Contrary to MCL 710.45(5), no one was provided notice of this hearing other than the petitioners and the biological parents whose rights had already been terminated.[27] Contrary to MCL 710.45(2), the hearing occurred before a decision was made by the MCI Superintendent. At this hearing, the circuit court granted the adoption petition of the maternal grandparents[28] and concluded the decision of the agency was "arbitrary and capricious."[29]

The error of lack of service was later recognized and a new hearing was noticed for January 31, 2007.[30] The parties noticed in the second notice were again not in accord with MCL 710.45.[31] The new notice was sent on January 10, 2007, which was again prior to an MCI decision being reached.[32] The third notice that was sent out was not accompanied by a proof of

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[24] *See* Exhibit L.
[25] *See* Exhibit M.
[26] *See* Exhibit N, Transcript dated, 1/3/07, File No. 06-505-AF and 06-506-AF.
[27] *See* Exhibit O, Notices of Hearing and Proofs of Service dated, 12/15/06.
[28] *See* Exhibit N at 5.
[29] Exhibit N at 5.
[30] *See* Exhibit P.
[31] Exhibit P.
[32] Exhibit P.

service when it arrived at the Attorney General's office, so it is not clear who was noticed. However, the notice was never properly served upon the Superintendent of MCI[33] (2/707 Tr, p 8).

The post-termination review hearing occurred on February 7, 2007, and the proceedings were co-mingled with those of the MCL 710.45. This post-termination review and the partially completed MCL 710.45 hearing also held on February 7, 2007, resulted in the issuance of the circuit court's March 5, 2007, order finding a lack of reasonable efforts toward permanency planning.[34] The Section 45 denial of consent to adopt case was heard, in part, immediately following the post-termination review[35] (2/7/07 Tr, pp 3-7). The Section 45 was adjourned until further notice to enable the circuit court to consider whether it could terminate the state's wardship and order the placement of the children with the grandparents.[36] The circuit court issued its March 5, 2007, order terminating the commitment to MCI prior to the Section 45 proceedings being concluded. A motion for reconsideration of the March 5, 2007, order was filed by DHS with the circuit court.[37] This motion was denied on March 21, 2007.[38]

DHS filed an emergency appeal with the Court of Appeals. During the appeal period on April 4, 2007, the Newaygo County Circuit Court Judge Thomas issued an ultimatum that the children were to be moved within two weeks, by April 17, 2007, or people would start going to

[33] *See* Exhibit D. The Attorney General's Office waived the issue of insufficient notice in order to expedite the proceedings in the children's best interests.
[34] *See* Exhibit D.
[35] MCL 710.45 provides for an appeal to circuit court by persons who are denied consent to adopt by the Michigan Children's Institute (MCI) Superintendent; or by a court when the child is a ward of the court.
[36] *See* Exhibit D.
[37] Exhibit K.
[38] Exhibit Q.

jail[39] (4/7/07 Tr, p 8). The circuit court's ultimatum was issued without consideration of an appropriate transition period or plan and necessitated the DHS' motion for immediate consideration and stay.

The Court of Appeals issued its order reversing the circuit court on April 17, 2007. After the appellate court reversal, the Appellants filed a motion for reconsideration with the Court of Appeals on May 8, 2007, which was denied on June 5, 2007.[40] The Section 45 was completed on May 23 and 24, 2007, and resulted in an opinion by the circuit court that the MCI Superintendent's denial of consent to the grandparents was found by "clear and convincing" evidence to be "arbitrary and capricious" (6/21/07 Opinion). The Newaygo County Circuit Court then used MCL 710.45(8) to terminate the DHS commitment and to make the children court wards. An order based on the June 21, 2007, opinion was entered on July 25, 2007,[41] and is being appealed by right to the Court of Appeals.

[39] Exhibit R at 8.
[40] Exhibit S: Michigan Court of Appeals Denial of Motion for Reconsideration.
[41] Exhibit U.

ARGUMENT

I. MCR 7.302(B) sets forth the standard for the granting of an application for leave to appeal. Among the requirements are that the decision must involve a substantial question of law, be of significant public interest, involve principles of major legal significance or be clearly erroneous. The Court of Appeals based its order on the legal precedent of a published Court of Appeals decision; a proper interpretation of the statutes and court rules; and a review of the factual record. Accordingly, Appellants cannot meet any of the grounds for granting leave to appeal.

A. Standard of Review.

MCR 7.302(B) provides that an appellant must demonstrate on or more of the following:

(1) the issue involves a substantial question as to the validity of a legislative act;

(2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;

(3) the issue involves legal principles of major significance to the state's jurisprudence;

(4) in an appeal before decision by the Court of Appeals,

(a) delay in final adjudication is likely to cause substantial harm, or

(b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid;

(5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or

(6) in an appeal from the Attorney Discipline Board, the decision is erroneous and will cause material injustice.

B. The Court of Appeals properly determined the family court did not have the authority to terminate Michigan Children's Institute's (MCI) guardianship in order to circumvent the MCI Superintendent's adoption consent decision; the Court of Appeals did not misapply *In the matter of Griffin*.

For the application to be approved for review, the standard of review must be met. The applicants have not shown under MCR 7.302(B) that this case involves a substantial question as to the validity of a legislative act or that it has significant public interest. The case does not involve legal principles of major significance to the state's jurisprudence because the issues involved have been settled through statutory enactment and case law. The applicant does not demonstrate otherwise. Although not established or asserted by the applicant, the only basis for review arguably may be MCR 7.302(5). This would require the decision of the Court of Appeals to be "clearly erroneous" and to cause "material injustice" or to conflict "with a Supreme Court decision or another decision of the court or appeals." A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.[42] However, the statutory and case law is in accordance with the decision reached by the Court of Appeals in the instant matter so no clear error is present.

The Court of Appeals correctly applied the court rules, statutes and case law to reach its decision to reverse the circuit court order. The primary goal of statutory interpretation is to give effect to the intent of the Legislature.[43] If the statute is unambiguous, the court applies its language as written.[44] The issue that was before the Court of Appeals was whether a court can eviscerate the authority of the MCI Superintendent by means of the post-termination review process.

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[42] *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994).
[43] *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).
[44] *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).

The issue of whether progress was being made towards the permanency planning and adoption of the children was also examined by the Court of Appeals. However, the record provides overwhelming support for the Court of Appeals to determine there was progress being made toward the children's adoption in a timely manner and the lower court erred in its determination that progress was not being made. Therefore, no clear error occurred by the Court of Appeals and no material injustice has resulted.

II. The Juvenile Code at MCL 712A.19c requires courts to conduct post-termination review hearings and does not vest the circuit court with the authority to unilaterally terminate the Michigan Children's Institute's (MCI) guardianship; nor does the MCR 3.978 which permits courts to enter such orders as it considers necessary and in the best interests of the children empower the court to unilaterally terminate MCI guardianship.

A. Standard of Review

This case involves a question of statutory interpretation and application, which is reviewed *de novo*.[45] The primary goal of statutory interpretation is to give effect to the intent of the Legislature.[46] If the statute is unambiguous, the Court applies its language as written.[47] "In Michigan, adoption proceedings are governed entirely by statute."[48] The interpretation and application of court rules also present a question of law and are reviewed *de novo*.[49]

B. Analysis

The Juvenile Code at MCL 712A.19c requires courts to conduct post-termination review hearings in order to monitor the permanency planning progress being made for children who have had parental rights terminated. The statute does not speak to the entry of orders by the

[45] *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36, 40; 709 NW2d 589 (2006); *Benejam, et al v Detroit Tigers*, 246 Mich App 645; 635 NW2d 219 (2001).
[46] *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).
[47] *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).
[48] *In re Toth*, 227 Mich App 548, 554; 577 NW 2d 111 (1998).
[49] *Barclay v Crown Bldg & Development, Inc*, 241 Mich App 639, 642, 617 NW2d 373 (2000).

court at these review hearings. However, Michigan Court Rule 3.978(C) states that the court "must make findings on whether reasonable efforts" have been made toward permanency planning for a child and that the court "may enter such orders as it considers necessary in the best interests of the child."

Specifically, MCR 3.978 and MCL 712A.19C address post-termination review hearings and court monitoring of the progress toward permanent placement of a child. However, these provisions do not confer upon courts the ability to terminate MCI's authority unilaterally in order to mandate placement where the family court deems more appropriate. The failure of these provisions to confer that power is especially salient when that attempted mandated placement is with a party who has previously been denied consent to adopt. Accordingly, the family court can review the progress towards permanency and may issue orders to speed up the process, but cannot usurp the role of the MCI Superintendent to consent to or deny adoptions.

When read in concert with the *Griffin* analysis that a commitment of a child to MCI for purposes of adoption is permanent unless specified as temporary, the scope of a court's authority is only to oversee the placement agency. The court possesses the ability to enter orders to mandate specific steps to be taken and timeframes a placement agency must meet in order to facilitate a permanent placement in the child's best interests, however, not to unilaterally terminate the rights of the MCI outside of adoption proceedings and to order the child placed in the custody of persons the court deems "most suitable."

The MCI is a statutorily created entity[50] that is mandated to provide for the guardianship of state ward minors through the MCI Superintendent.[51] The statutes creating the MCI require

[50] MCL 400.201, *et al.*
[51] MCL 400.203.

the Superintendent to consent to adoption.[52] The Michigan Adoption Code at MCL 710.43 specifies those persons authorized to provide consent for an adoption. For children whose parental rights have been terminated who require consent to adoption, the statute lists "an authorized representative of the department . . . to whom the child has been permanently committed by an order of the court."[53] The statute identifies the court as an entity authorized to consent to adoption for a child the court has retained permanent custody over, however, does not specify the court as authorized to consent to an adoption for state wards.[54] The statutory language reinforces the importance of this duty to provide or deny consent for adoptions through its provision prohibiting courts from allowing an adoption petition to be filed without the representative's consent or the appropriate motion to have the denial of consent judicially reviewed.[55]

Whether an applicant is denied consent by a court for a court ward or the MCI Superintendent for state wards, the statute at MCL 710.45 provides for the denied applicant to challenge the court's[56] or Superintendent's decision in court, thereby according due process to all involved. If through clear and convincing evidence, a denial of consent to adopt is determined to be "arbitrary and capricious," the court may terminate the rights of either the MCI, or the denying court, and enter the orders that it deems appropriate.[57] The statute does not provide for the rights of either MCI or the denying court to be terminated *prior to* the MCL 710.45 hearing,

[52] MCL 400.209.
[53] MCL 710.43(1)(b).
[54] MCL 710.43(1).
[55] MCL 710.45(1).
[56] For applicants denied consent by a court, the statute requires a visiting judge to hear the motion MCL 710.45(9).
[57] MCL 710.45(8).

only after the basis of the decision has been objectively reviewed and determined under the standards to be arbitrary and capricious.

The case law is also clear that a trial court is not to decide the denial of consent to adopt on a *de novo* basis.[58] The court's focus is:

> not whether the representative made the "correct" decision or whether the probate judge would have decided the issue differently than the representative, but whether the representative acted arbitrarily and capriciously in making the decision. . . . It is only after the petitioner has sustained the burden of showing by clear and convincing evidence that the representative acted arbitrarily and capriciously that the proceedings may then proceed to convincing the probate court that it should go ahead and enter a final order of adoption.[59]

The case law reinforces that a finding on the denying authority's decision must be reached *prior to* the court evaluating whether it should go ahead and enter the orders that it deems suitable.

The circuit court opined in its March 5, 2007, order that MCL 712A.19c supersedes case law to the contrary for the "reason that it is the Legislatures [sic] response to case [sic] such as this." The Court of Appeals included *In the Matter of Griffin* in its order to affirm that it is still good law. The Legislature certainly could not have intended that the courts could remove the statutory authority of the MCI Superintendent and substitute a court's preferred judgment; especially, as in this case, where the documentation reflects that progress towards adoption was being made.

[58] *In re Cotton*, 208 Mich App 180; 526 NW2d 601(1994).
[59] *In re Cotton*, 208 Mich App 180, 184-185; 526 NW2d 601 (1994).

III. The record is replete with evidence of documented progress by DHS to facilitate permanency planning and the adoption of the children. The Court of Appeals properly concluded that the lower court erred in reaching its determination that no progress was being made toward permanency planning on the minors.

A. Standard of Review.

The standard of review for a "best interests" decision or the factual issue of whether the lower court erred in its decision that MCI-DHS was not making adequate progress toward permanent placement for the Keast children is *clearly erroneous*.[60] A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.[61]

A. Analysis

The Court of Appeals was correct in determining a clearly erroneous mistake occurred by the circuit court when it stated that "[p]rogress towards the children's adoption was not made in a timely manner" (3/5/07 Order, p 2). The Court of Appeals also correctly determined that clear error occurred by the circuit court when it stated that since the issuance of the May 10, 2006, permanency planning order "virtually nothing has been done towards the adoption goal other than disapprove the grandparents. . . ." (3/5/07 Order, p 2). These circuit court conclusions are not supported by the record and reconsideration by the circuit court was requested and denied.[62] The record establishes that the matter of weighing and determining the issue of the maternal grandparents as being fit, or unfit, to adopt the children was resolved on January 17, 2007, when the MCI Superintendent issued a decision. The circuit court expressed its view that the girls were *placed* two years ago.[63] However, no adoption facilitation can take place until all parental

[60] *In the matter of Patricia Ann Cornet, et al v Betty Cornet and Prentis Cornet*, 422 Mich 274; 373 NW2d 536 (1985).
[61] *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994).
[62] Adoption Progress Report Document, dated February 6, 2007, attached as Exhibit V.
[63] March 5, 2007 Review Order at 3.

rights are terminated. The parental rights termination occurred on May 10, 2006.[64] The court order committing the children to MCI, for placement, was not executed until May 10, 2006.[65] In the February 6, 2007, Adoption Progress Report[66] submitted to the court at the February 7, 2007, proceedings, the **report indicates that it "is anticipated the girls will be adoptively placed by April 2007."** Bethany was not notified of MCI's denial of consent to adopt by the maternal grandparents until mid-January 2007. In less than one month, Bethany had moved forward with adoption by the foster family through initiating the home study process and requesting an adoption subsidy. The court in its decision referenced an October 2006 report rather than a more current February 2007 report. **At the time the October report was reviewed, the judge entered a post-termination report indicating that adequate progress *had been* made.**[67] Furthermore, no concerns were raised by the court at prior post termination review hearings to DHS, MCI, Bethany, or the guardian ad litem about the progress towards adoption. If the circuit court had been concerned about lack of reasonable progress toward permanency planning, it could have entered orders setting deadlines for placement milestones but did not.

Additionally, if concerns had been raised to the DHS or the MCI about the progress being made towards adoption of the Keast children, additional documentation would have been provided to the court. This additional documentation was provided to the circuit court in DHS' motion for reconsideration.[68] The additional documentation provided further evidence of the

[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] Exhibit W: Post-termination review order, dated November 8, 2006.
[68] Attached as Exhibit K.

interagency efforts and progress being made towards permanently placing the Keast children prior to the February 7, 2007 post termination hearing.

The record reflects the following actions by Bethany Christian Services other than those taken in regard to the Appellants, which occurred prior to the March 5, 2007 order, and may be summarized as:[69]

- August 8, 2006 — Home visit with children and foster mother
- August 23, 2006 — Interview with Alyssa Keast's therapist, Kelly H[redacted], Newaygo CMH
- August 23, 2006 — Interview with Deb M[redacted], Grant Primary Center's school social worker
- August 24, 2006 — Interview with Amber Keast's therapist, Heather D[redacted], Newaygo CMH
- August 29, 2006 — Additional conversation with Deb [redacted] by phone
- August 29, 2006 — Additional conversation with Heather D[redacted] by phone
- September 6, 2006 — Case conference with Char A[redacted] (DHS), Lacey G[redacted]-B[redacted] (DHS), Dave G[redacted] (BCS) and Suzanne A[redacted] (BCS)
- September 11, 2006 — Psychological reports received from Holm and Derwin for the girls
- October 6, 2006 — Contact with MCI office
- October 6, 2006 — Adoption Progress Report completed and submitted
- October 10, 2006 — Child Adoption Assessment completed
- October 15, 2006 — Child Adoption Assessment approved by DHS supervisor
- November 29, 2006 — Conversation with interested adopter who is also the foster mother

[69] The information summarized relates to the Keast children's adoption by another family, not the assessments and contacts that occurred with the biological grandparents. However, child adoption assessments must be completed prior to adoption by any party.

- December 4, 2006 Conversation with interested adopter who is also the foster mother
- December 5, 2006 Conversation with interested adopter who is also the foster mother
- December 6, 2006 Conversation with interested adopter who is also the foster mother
- December 7, 2006 Contact with Subsidy Office
- December 11, 2006 Contact with Subsidy Office
- December 11, 2006 Conversation with interested adopter who is also the foster mother
- December 19, 2006 Adoption Progress Report Completed, stating foster mother's interest in adopting
- December 29, 2006 Conversation with Adoption Applicant who is also the foster mother
- January 12, 2007 Conversation with Adoption Applicant who is also the foster mother
- January 31, 2007 Adoption applicant signed Subsidy Intent Statement
- January 31, 2007 Licensing Records Clearance Request submitted for Adoptive Applicant and fiancé
- January 31, 2007 Muskegon County Sheriff local check of Adoption Applicant and her fiancé submitted
- February 1 & 11 & 12 & 13 & 17, 2007 References received and reviewed
- February 2, 2007 Adoption Support Subsidy Application submitted
- February 5, 2007 Licensing Records Clearance Request returned, clean
- February 6, 2007 Adoption Progress Report Completed and submitted stating Adoption Applicant's home study was in progress and subsidy requested.
- **February 7, 2007 Post-termination hearing**
- February 8, 2007 Muskegon County Sheriff local checks returned, clean
- March 5, 2007 Face to face contact with Adoption Applicant

- March 5, 2007 Physical examination report received for Adoption Applicant
- March 5, 2007 Home Study completed and submitted for MCI consent

Full consideration of the information and reports cited in the March 5, 2007, order clearly results in the conclusion that reasonable progress was being made toward an adoption for the children and a solid basis for the Court of Appeals to determine clear error was committed by the circuit court.

The appellants cannot meet any of the grounds for granting leave as set forth in MCR 7.203(B) for the reasons described above. Furthermore, the Appellants do not make any effort to establish the basis for meeting the standard of review for this Honorable Court other than a summary statement that the court can consider the case under MCR 7.301(2).

CONCLUSION AND RELIEF SOUGHT

The Court of Appeals properly recognized, addressed, and rejected the Circuit Court's Juvenile Code statutory and rule arguments. The Court of Appeals properly reversed the Circuit Court's March 5, 2007 order de-committing the minors from DHS due to lack of permanency planning. Appellants cannot meet any of the standards for granting leave expressed in MCR 7.203(B). The appellants' Application for Leave to Appeal should be denied.

Respectfully submitted,

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