

STATE OF MICHIGAN
IN THE 27TH JUDICIAL CIRCUIT COURT – FAMILY DIVISION
NEWAYGO COUNTY

IN THE MATTER OF:

ALYSSA ANN KEAST and
AMBER MARIE KEAST,

Minors.

Case No: 05-06388-NA
06-505-AF and
06-506-AF

HON. TERRENCE A. THOMAS

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**BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION
OF ORDER AFTER POST-TERMINATION REVIEW**

Issue

Whether palpable error occurred in the Court's reliance on the underlying facts in making its determination for the Order after Post-Termination issued on March 5, 2007.¹

¹ See MCR 2.119(F).

Facts and Procedural History

The parental rights to the parents of Alyssa and Amber Keast were terminated on May 3, 2006. The permanency planning hearing resulting in the issuance of the March 5, 2007, order finding a lack of reasonable efforts toward permanency planning occurred on February 7, 2007. Immediately following the February 7, 2007, post-termination hearing, a Section 45² adoption case was heard in part, and adjourned until further notice. The Section 45 petition was filed by the Keast children's biological maternal grandparents on December 12, 2006. The Section 45 petition was filed prior to the Atwood's being denied consent to adopt the children by the Superintendent of the Michigan Children's Institute. The MCI denial occurred on January 17, 2007.

The Keast children have been residing in the current foster care home since December 2005.³ The Court references in its findings that both girls are closely bonded with their foster mother and are doing well in their placement.⁴ The close bond between the foster mother and the children is also frequently referenced in agency documents such as the girls' adoption assessments.⁵

Argument

"Palpable" is defined by the Michigan Court of Appeals⁶ as "[easily] perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." Under the court rule, the moving

² 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.

³ March 5, 2007, Review Order at p 2.

⁴ *Id.*

⁵ Attached documentation in Exhibit B.

⁶ *Stamp v Mill Street Inn, et al*, 152 Mich App 290, 294; 393 NW2d 614, 616 (1986); citing *Black's Law Dictionary*, West Publishing Co (5th ed., 1979), p 1000.

party must show that the court and the parties have been misled and a different disposition of the motion must result from correction of the error.⁷

Palpable and clear error occurred by the Court when it stated that "[p]rogress towards the children's adoption was not made in a timely manner."⁸ Palpable and clear error also occurred by the 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. . . ."⁹ These conclusions are not supported by the record and require reconsideration. The DHS and MCI request that the information in Exhibit A,¹⁰ cited and relied upon by the Court, be taken into consideration.

In the February 6, 2007, Adoption Progress Report¹¹ 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 the 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. The DHS and MCI believe that if this Court were to *revisit the February 2007 report, a different result would occur.*

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

⁷ *Id.* at 293-94; 616; *citing* MCR 2.119(F)(3).

⁸ March 5, 2007 Review Order at p 2.

⁹ *Id.* at 3.

¹⁰ Adoption Progress Report Document, dated February 6, 2007, attached as Exhibit A.

¹¹ *Id.*

Superintendent issued a decision. The Court expressed its view that the girls were *placed* two years ago.¹² However, no adoption facilitation can take place until all parental rights are terminated. The parental rights termination occurred on May 10, 2006.¹³ The Court order committing the children to MCI, for placement, was not executed until May 10, 2006.¹⁴

Given that permanent adoptive placement progress was clearly established in the records cited by the Court in its March 5, 2007, order, it appears the Court failed to consider this information in making its determination. The MCI and Bethany believe that sufficient progress was being made when at the post-termination review, no concerns were raised to these agencies or the lawyer guardian ad litem about the progress towards adoption.

If concerns had been raised to DHS and MCI about the progress being made towards adoption of the Keast children at the February 7, 2007, post-termination hearing, additional documentation would have been provided to the court. DHS and MCI respectfully request this additional documentation be considered by the court. This documentation is attached as Exhibit B.¹⁵ The additional documentation provides further evidence of the interagency efforts and progress being made towards permanently placing the Keast children prior to the February 7, 2007, post- termination hearing. The following actions by

¹² March 5, 2007 Review Order at p 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Attached as Exhibits B are redacted versions of: Child Adoption Assessments, Adoption Consent Requests and related forms, Support Subsidy applications, Physician's Report for Adoption for Adoptive Applicant, Licensing Records Clearance Requests for Adoptive Applicant and her fiancé; Muskegon County Sheriff's Office criminal checks for Adoptive Applicant and her fiancé, Reference Letters for Adoptive Applicant, Adoption Progress Report, and Adoptive Family Assessment.

Bethany Christian Services, which occurred prior to the March 5, 2007, order, may be summarized as:¹⁶

- August 8, 2006 Home visit with children and foster mother
- August 23, 2006 Interview with Alyssa Keast's therapist, Kelly Holm, Newaygo CMH
- August 23, 2006 Interview with Deb Miller, Grant Primary Center's school social worker
- August 24, 2006 Interview with Amber Keast's therapist, Heather Derwin, Newaygo CMH
- August 29, 2006 Additional conversation with Deb Miller by phone
- August 29, 2006 Additional conversation with Heather Derwin by phone
- September 6, 2006 Case conference with Char Anderson (DHS), Lacey Gonzales-Borstler (DHS), Dave Glerum (BCS) and Suzanne Adams (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
- 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

¹⁶ 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. If the Court would like to review the file supporting the summary of events, the file can be submitted for the Court's review.

- 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 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

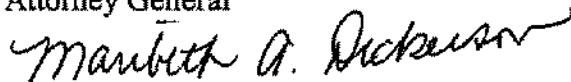
If the Court would fully consider the information and reports cited in its order, it would conclude that progress was being made toward an adoption for the Keast children. The additional documentation, attached as Exhibit B reinforces this conclusion. The Court opined that MCL 712A.19c supersedes case law to the contrary for the "reason that it is the Legislatures [sic] response to case [sic] such as this." However, 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 is being made. This is particularly true when this Court acknowledges a close bond between the children at issue and the prospective adoptive family.¹⁷

Conclusion

Based on the foregoing, the Michigan Department of Human Services and Michigan Children's Institute respectfully request this Court reconsider its order terminating the MCI guardianship of Alyssa and Amber Keast and placing them with their maternal grandparents, Timothy and Barbara Atwood and allow the adoption process already underway at the time of the February 6, 2007, Progress Report to proceed.

Respectfully submitted,

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¹⁷ March 5, 2007 Review Order at p 2.