

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF NEWAYGO

FAMILY DIVISION

2007 AUG -6 AM 9:07
NEWAYGO COUNTY
CIRCUIT COURT

IN THE MATTER OF : FILE NOS. 05-6388-NA
ALYSSA ANN KEAST, d/o/b, 1/22/00; 06-505-AS
AMBER MARIE KEAST, d/o/b, 8/18/02. 06-506-AS

OPINION AND ORDER RELATIVE TO MATERNAL
GRANDPARENTS MOTION FOR VISITATION

This matter concerning the above named permanent wards of this court is before this court on the motion of the maternal grandparents for visitation. After almost two days of hearing and taking judicial notice of the voluminous abuse and neglect and adoption files of this court, the court finds it to be in the best interest of these children that the motion be GRANTED.

The court's jurisdiction in this matter is conferred by MCL 710.45(8) and the order of the court determining Alyssa and Amber to be permanent wards of the court and by the grandparent visitation statute, MCL 722.27b, which provides for situations such as exists here that, "...legal custody of the child has been given to a person other than the child's parent, or the child is placed outside of and does not reside in the home of the parent."

Further, the court is satisfied that the presumption created by MCL 722.27b(4)(b) does not apply to this situation in that no entity or party currently involved in these proceedings is sufficiently familiar with these children so as to fall within the definition of “ a fit parent” as such was intended by the State Legislature.

The court recognizes that in this proceeding pursuant to the Michigan Adoption Code, consideration of best interests of the child factors is not adversarial in the sense that there is two competing parties. However, in the present circumstances there does exist a competition, recently developed, between the foster mother and the maternal grandparents to adopt these children. Both of these parties were admitted to the bar to present evidence and argued their respective positions which they did. Also admitted was an assistant prosecuting attorney who participated in the proceedings as a representative of the State’s interest with the same privileges.

As to the best interests of the children, the court finds as follows:

1. As to the love, affection, and other emotional ties existing between the parties involved and the children, the court finds clearly and convincingly in favor of the maternal grandparents. The fact is that until the Department of Human Services removed the children from their custody, these grandparents had been an integral part of these children’s lives since

birth. They provided sustenance of some form for most of the children's existence. Further, throughout , the now two years of separation, the love and affection has been constant, faithful and unyielding as 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.

Further, the court is satisfied that these grandparents are committed to these children for life and as such would accept any role permitted of them in these children's lives however expansive or minimal.

As to the foster mother the court feels that there is some love, affection and emotional ties that have developed during the two years she has had the children. However, this is an all or nothing relationship. She testified that if these children are ultimately adopted by the grandparents she would have nothing more to do with them.

2. As to the capacity and disposition of the parties involved in this case to give the children love, affection, and guidance and to continue the education and raising of the children the court would again find in favor of the grandparents. The grandparents have been subjected to substance abuse and psychological testing the results of which support this finding. Further, the history of sustenance prior to court involvement support this finding.

As to the foster mother, the court would find that she also possess

these capacities and dispositions however, she is untested.

3. As to the capacity and disposition of the parties involved to provide the children with food, clothing, medical care or other remedial care the court would find the parties to be equal. In this respect there are two grandparents and only one foster mother. Both grandparents are available 24 hours a day seven days a week whereas the single foster parent is employed 40 hours per week. In addition to the adoption subsidy which is approximately \$1,200. per month, the state also pays for daycare.

4. As to the length of time the children have lived in a stable, satisfactory environment, and the desirability of maintaining continuity, in this court's view this factor is not applicable as the children have not experienced a lengthy stable, satisfactory environment. This is the goal of these proceedings.

5. The permanence of the family unit favors the grandparents. They are life long residents of the community and long time married. They live in an appropriate home. The foster mother is single, never been married and has been dating her current boy friend since December, 2006. She is not engaged and thus there is no current prospect of marriage. The foster mother does own her own home in Muskegon County and has considered moving to the Grant area in Newaygo County.

6. As to the moral fitness of the parties, there are issues of concern with both the grandfather and the foster mother. The grandfather has admitted smoking marijuana in the past albeit there is no evidence that the children were ever exposed to this illegal behavior. Drug and alcohol screening and testing indicate no addiction, present use or risk.

The foster mother sees nothing inappropriate with "sleep overs" with her current boy friend in the presence of the children. She met this divorced father of three children in September of 2006, began dating him in December and apparently shortly thereafter, as a matter of convenience, on occasion, he sleeps in her bed with her at her house. At his apartment, since he does not have a bedroom, he and she sleep on a hide-a-bed or futon with the children on the floor. This court views this behavior as a totally inappropriate example for youngsters in any circumstance and a serious violation of the public trust placed with her as a foster parent. It also raises questions as to whether she subscribes to other free love behaviors that are inconsistent with community standards.

7. There is nothing to indicate that the mental or physical health of either the grandparents or the foster mother would preclude them from the custody of these children. However, due to the reported family dysfunction

in the foster mother's past, the court believes a psychological evaluation, as such the grandparents submitted to, is in order.

8. The home, school and community records of the children are not at issue and given their tender ages are not significant.

9. The court interviewed the children in chambers in the presence of the respective attorneys and a court employee and determined them not of sufficient age to express a preference.

10. As to willingness and ability of the parties to encourage a continuing relationship with the other party, the grandparents said that they would and the foster mother said that she wouldn't. Further, when visitation with the grandparents was previously ordered, the foster mother, according to her on direction of the Department of Human Services, sent nothing with the children, no change of clothing or toys. She considers the grandparents to be "inappropriate" to have any relationship with these children and demonstrated this at an incident that took place at a local gas station when she and the children and the grandparents by chance met. As previously noted, her relationship with these children are all or nothing.

11. Domestic violence does not appear to be an issue as to either party.

12. As to other relevant factors of concern to this court is the relationship of the foster mother to the limited social service community that this court

relies upon. Her position as a co-worker creates an appearance of bias in the "professional" opinions offered by the other social workers involved in this case. The Superintendent of the Michigan Children's Institute denied the grandparents consent to petition because of the grandfather's admission that he had smoked marijuana in the past and that the grandparents had put the children at risk by allowing unsupervised visitation with the children's mother yet the drug and alcohol screening reports and the psychological reports were not submitted to him. The court questions whether this foster home placement is being properly supervised. The court doubts the Department of Human Services knows of these "sleep-overs" and the nature of the other relationships these challenged children are exposed to. Given the reported dysfunction in the foster mother's back ground and the estrangement from her biological father, is not psychological testing in order?

In short, the court recognizes that the weight of opinion in the social service reports favor the foster mother and disfavor the grandparents. Those opinions are supported by impression and unsupported by fact.

THEREFORE, IT IS ORDERED that the maternal grandparents, Timothy and Barbara Atwood, be granted parenting time alternating weekends 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.

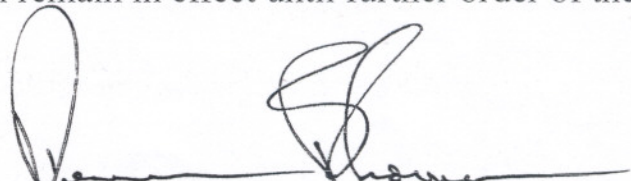
This parenting time shall commence Friday, August 10, 2007, at 6:00 p.m.

The foster mother shall be responsible for transporting to and from the grandparents home at the appointed times.

The foster mother shall provide suitable clothing, toys, medications and such other materials necessary to insure successful parenting time periods.

This visitation order shall remain in effect until further order of the court.

Dated: August 5, 2007.



Terrence R. Thomas, Circuit Judge