

STATE OF MICHIGAN
COURT OF APPEALS

JODI LOVELESS,

Plaintiff-Appellee,

and

RICHARD LOVELESS and PATRICIA
LOVELESS,

Appellees,

v

ROBERT THOMAS TREFIL,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 199331

Montcalm Circuit Court

LC No. 91-00N31-DP

Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

HOOD, J. (dissenting in part).

I must respectfully dissent from that portion of the majority opinion that holds that the trial court did not err in merely adopting the findings of the Friend of the Court (“FOC”) investigator regarding the child’s best interests without making an independent determination as required by MCL 722.23; MSA 25.312(3). As was pointed out in *Daniels v Daniels*, 165 Mich App 726, 730; 418 NW2d 924 (1988), a trial court is generally required to make explicit factual findings on the factors that determine a child’s best interests on the record or reversal is required. *Id.* While reversal is not required where it would be futile, *Constantini v Constantini*, 171 Mich App 466; 430 NW2d 748 (1988), the present matter falls within the general rule. Here, the trial court simply adopted the findings set forth in the FOC investigator’s report, which was not in evidence. Although the FOC investigator testified before the lower court, she did not provide a detailed explanation of her findings on subsection (j) and did not even discuss subsection (g). What is more, at times the FOC investigator’s findings and the lower court’s opinion actually conflicted. For instance, in its opinion, the lower court indicated that it spoke with the child, but it did not explain whether the child had indicated a reasonable preference as required by the statute. By contrast, the FOC investigator stated in his report that the child indicated a “very strong

preference.” I would not find the failure to object determinative. Since the lower court failed to adequately address the best interest factors as set forth in MCL 722.23; MSA 25.312(3) and to state its findings on the record, I would reverse the lower court's order denying defendant's petition and remand for further proceedings.

In all other respects, I agree with the majority opinion.

/s/ Harold Hood