STATE OF MICHIGAN

COURT OF APPEALS

In re CHRISTOPHER RAY CLARK and KATRINA LYNN CLARK, Minors.

PAMELA WILLIAMSON and JAMES WILLIAMSON,

Petitioners-Appellants,

v

FAMILY INDEPENDENCE AGENCY, MICHIGAN CHILDREN'S INSTITUTE, JOHN BRAUNLICH and COLLEEN BRAUNLICH,

Respondents-Appellees.

UNPUBLISHED
April 23, 2002

No. 231011; 231012
Monroe Circuit Court
LC Nos. 00-003420-AD;
00-003421-AD

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

In these consolidated cases, petitioners appeal as of right the family court's order upholding the Michigan Children's Institute's denial of consent for petitioners to adopt the two minor children, Christopher and Katrina Clark, and dismissing their petitions for adoption. We affirm.

Petitioner Pamela (Roush) Williamson is the maternal grandmother of the Clark children.[1] Respondents Colleen and John Braunlich are the paternal aunt and uncle of the Clark children. The father of the Clark children, Colleen Braunlich's brother, is deceased. The parental rights of the Clark children's mother, Juanita Clark, were terminated in February 1999.[2] The Clark children and one of their half-siblings, Tiffany Schultz,[3] had lived with their maternal

[1] James Williamson is Pamela Williamson's husband.

[2] This Court affirmed the termination of Juanita Clark's parental rights to her four children. *In re Christopher Clark, Katrina Clark, Tiffany Schultz and Araya Mina Ouellette*, unpublished opinion per curiam, issued 11/30/99 (Docket No. 218387). The Supreme Court denied leave to appeal. *In re Clark*, 462 Mich 861 (2000).

[3] The parental rights of Tiffany's father, Jeffrey Schultz, had been terminated in December 1998.

grandmother, petitioner Pamela Williamson, apparently for several years before their mother's parental rights were terminated.[4]

The Clark children became state wards of the Michigan Children's Institute (MCI). On March 13 1999, the Clark children were removed from Pamela Williamson's home and placed with respondents Braunliches, who live in Ohio, by order of the family court.[5] This order was not appealed. However, during the following year, both families sought consent to adopt the Clark children, and petitioners additionally sought to adopt Tiffany Schultz, who is also a grandchild of Pamela Williamson, and who remained with petitioners. The superintendent of the MCI granted consent to petitioners to adopt Tiffany, but denied their request to adopt the two Clark children and dismissed their adoption petitions. The superintendent granted the Braunliches' request to adopt the two Clark children.

Pursuant to MCL 710.43(1)(b), a party seeking to adopt a ward of the state must obtain the consent of "the authorized representative of the department or of a child placing agency." If consent is not given, a party can challenge the denial of consent under MCL 710.45(2), which provides: "[i]f an adoption petitioner has been unable to obtain the consent required by section 43(1)(b), (c), or (d) of this chapter, the petitioner may file a motion with the court alleging that the decision to withhold consent was arbitrary and capricious." A hearing on this matter is commonly referred to as a § 45 hearing. In this case, a § 45 hearing was held, and the family court determined that the MCI Superintendent's denial of consent was not arbitrary and capricious.

The family court's decision was a statutory review. Under MCL 710.45, the burden was on petitioners at the § 45 hearing to establish by clear and convincing evidence that the MCI superintendent's decision to withhold consent was arbitrary and capricious. *In re Cotton*, 208

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[4] The guardian ad litem of the Clark children states in his appellate brief that petitioners "are correct in their assertion that the minor children largely resided with them during the pretermination phase of this matter."

[5] The Attorney General's appellate brief emphasizes that the MCI superintendent did not remove the Clark children from Pamela Williamson's home, but rather, the family court did. The Attorney General notes in this regard:

> It is the MCI Superintendent's position and that of the Attorney General's office that placement decisions regarding an MCI ward are within the sole discretion of the MCI Superintendent. *See, In Re: Griffin*, 88 Mich App 184, 192; 277 NW2d 179 (1979) (the commitment of a minor to the MCI "divested the [court] of any further jurisdiction"); *Foster v Foster*, 237 Mich App 259, 263; 602 NW2d 610 (1999) (*per curiam*) (legal and physical custody of MCI ward rests with the State.) However, in the current appeal the MCI Superintendent chose not to contest Judge Costello's Order removing the child [sic children] in March of 1999, after subsequently becoming aware of it months later.

The superintendent testified at the § 45 hearing that he learned of the Clark children's move to the Braunliches before the end of 1999.

Mich App 180, 184; 526 NW2d 601 (1994). This Court reviews the family court's determination for clear error. *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996).

Petitioners first argue that the decision of the MCI's superintendent, William Johnson, was arbitrary and capricious because it contradicts the FIA's stated policy that children should not be separated unless there is clear and convincing evidence that it is not in their best interests to do so. Petitioners state that the superintendent did not show by clear and convincing evidence that it was in the best interests of the children to be separated from their sister. However, this misstates the inquiry of a § 45 motion and hearing, which involves review of the superintendent's decision withholding consent to adopt, not review of the decision to take the children out of petitioners' home and away from their half-sister.

Because the focus of this inquiry relates to review of the superintendent's decision regarding adoption, review of that decision is appropriate at the time it was made, as opposed to reviewing every decision leading up to the denial of consent. Here, when the decision was made, the Clark children had lived with the Braunliches for more than one year. Johnson stated that, despite the overarching policy of trying to keep siblings together, the FIA also employs another policy of keeping children in a stable environment, and not moving children from the environment unless the transition is justified. Johnson testified that this is so particularly when the children have already adjusted to an environment, acclimated to a school, and established friends and activities that are important to them. In this regard, the superintendent's decision is supported by the policies of the FIA, even if the earlier decision to separate the children from their sister and petitioners may not have been. As the *Cotton* Court stated, it cannot be said that a decision is arbitrary and capricious if there exists a good reason for it. *Cotton, supra* at 185. Here, the decision by the superintendent was based, at least in part, on the policy of keeping children in an environment to which they have adjusted absent evidence of why it is in their best interests to be moved. In this regard, petitioners fail to show that the decision was arbitrary and capricious.

Petitioners next argue that the decision was arbitrary and capricious because the superintendent was not aware of all the facts or evidence received by the FIA. Petitioners' argument on appeal is that the superintendent failed to consider that petitioners had requested to adopt the children soon after their mother's parental rights were terminated. Petitioners represent to this Court that petitioner Pamela Williamson first requested adoption in March 1999, and that she later submitted an adoption petition in August 1999. Johnson testified that he did not learn of petitioners' intent to adopt the children until May 2000. Petitioners suggest in their brief on appeal that this delay in forwarding their petition from the Monroe County FIA case workers to the superintendent prejudiced them.

The record does not support petitioners' claim. The record shows that Pamela Williamson filed a motion for visitation of the Clark children in August 1999. The record shows that in October 1999, she filed a motion for specific unsupervised visitation or, in the alternative, for the children to be returned to Monroe County. Although petitioner testified that she requested to adopt the children months earlier, there is nothing in the record to support the "intentional disregard" petitioners suggest. Moreover, petitioners fail to show, by reference to the record, how they were affected by what they perceive to be a delay in handling their request. Rather, petitioners speculate that if the superintendent had handled their request earlier, the

outcome would have been different. Although it is true that the superintendent stated that he generally consents to adoptions when the children have established relationships for over one year, there is no evidence that the superintendent would have approved petitioners' request had it been received any earlier. In fact, Johnson's testimony reveals that he may have made the same decision even if the children had been with the Braunliches for less than a year:

> What I think is more important than just the time frame is the age of the children, and in light of their developmental state, the length of time they have been there. . . . The ages that these kids were at and the length of time that they had been in that home, um, it was, it was important to recognize that the family placement, and the family unit is very important to kids' emotional growth and development. So even if they hadn't been there - - and a great deal has been made about twelve months - - even if it had been less than twelve months, the fact that they had been in that home and formed an emotional attachment and were being well care for at the age - - at the state of development that those children were at, I felt was significant.

Considering the absence of any showing, by reference to the record, that any perceived delay prejudiced them, petitioners have failed to show that the family court's ruling was clearly erroneous.

Affirmed.

/s/ Helene N. White
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald