STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DANIEL GLEN DOUGHERTY, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SUE ELLEN JARVIS,

Respondent-Appellant,

and

BRIAN DOUGHERTY,

Respondent.

UNPUBLISHED
April 15, 2004

No. 251195
Presque Isle Circuit Court
Family Division
LC No. 03-000005-NA

In the Matter of ELIZABETH R. JARVIS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SUE ELLEN JARVIS,

Respondent-Appellant,

and

GRANT JUNIOR HAVEN,

No. 251197
Presque Isle Circuit Court
Family Division
LC No. 03-000004-NA

Respondent.

Before: O'Connell, P.J., and Jansen and Murray, JJ.

MURRAY, J. (*concurring*).

I fully concur in the majority opinion affirming the trial court's decision. I write separately only to briefly point out that, although in rendering its decision the trial court *articulated* an incorrect legal proposition, it did not *apply* that principle to the facts of this case.

Before making it's ruling, the trial court stated:

> The Court must now turn its attention to the issue of whether or not termination of parental rights to the minor D.G.D. is clearly not in the child's best interests. With this change in statutory philosophy, *courts in essence are focused on comparing the parental abilities of the biological parent whose rights are sought to be terminated with a set of adoptive parent whose identity is not yet known.* In light of this consideration, the Court must attempt to determine with a projective analysis the type of life which the minor can expect if parental rights are not terminated and he is left in the care and custody of his biological mother, or in the custody of another person with the respondent mother being a part of his life [emphasis added].

However, in *In re JK*, 468 Mich 202, 214 n 21; 661 NW2d 216 (2003), our Supreme Court stated that it is inappropriate to perform any comparison between the natural parents and the adoptive or foster parents:

> Several of the trial court's written findings of fact on remand suggest that it may have been influenced by the relative advantages of the adoptive home compared to the mother's home. We remind the family division judges of what we said nearly fifty years ago:
>
> > "It is totally inappropriate to weigh the advantages of a foster home against the home of the natural and legal parents. Their fitness as parents and question of neglect of their children must be measured by statutory standards without reference to any particular alternative home which may be offered to the [child]." [*Fritts v Krugh*, 354 Mich 97, 115; 92 NW2d 604 (1958), overruled in part on other grounds. *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993).]

Thus, the principle articulated by the trial court was incorrect. However, the trial court did not apply that principle because the foster parents were unknown, and thus no comparison could be made. As such, the trial court's decision is properly affirmed.

/s/ Christopher M. Murray