STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CHRISTOPHER MICHAEL ECKLES, Minor.

WILLIAM REID and DEBRA REID,

Petitioners-Appellees,

v

MICHIGAN CHILDREN'S INSTITUTE,

Respondent-Appellant.

UNPUBLISHED
September 28, 2004

No. 252709
Emmett Circuit Court
Family Division
LC No. 02-000997-AM

In the Matter of CHRISTOPHER MICHAEL ECKLES, Minor.

WILLIAM REID and DEBRA REID,

Petitioners-Appellees,

v

MICHIGAN CHILDREN'S INSTITUTE,

Respondent,

and

TIMOTHY BONDY and LIZZETTE BONDY

Appellants.[1]

No. 252893
Emmett Circuit Court
Family Division
LC No. 02-000997-AM

[1] The designations assigned for the parties in the captions for both Docket Nos. 252709 and 252893 do not match the designations assigned to the parties by the clerk's office as reflected in this Court's docket sheet. We have religned the parties to more accurately reflect their respective positions in this litigation.

Before: Griffin, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In these consolidated appeals, the Michigan Children's Institute (MCI)[2] and Timothy and Lizzette Bondy appeal by leave granted from the circuit court's order terminating MCI's rights to the minor child, returning the minor child to William and Debra Reid, and allowing the Reids to proceed with their petition to adopt the minor child. We affirm.

I. Facts and Procedure

Christopher Eckles was born on September 29, 2000, and was taken from his natural parents at six months of age because of neglect.[3] On March 30, 2001, Christopher was placed in foster care with the Reids, whose household at the time included three half-sibling foster children: Ashley, born on January 8, 1987; Joshua, born on July 3, 1991, and Spencer, born on April 24, 2000. In December 2001, the Reids adopted Ashley, Joshua, and Spencer. Christopher's disposition improved after being placed in the Reids' care. However, on May 2, 2002, Christopher was removed from the Reids' home and placed with the Bondys after a complaint alleging that the Reids had been physically abusing their older children. The Reids appealed to the Foster Care Review Board the decision to remove Christopher from their home. On June 5, 2002, the Foster Care Review Board recommended, after conducting a hearing, that Christopher be returned to the Reids' home. In reaching this recommendation, the Foster Care Review Board stated:

> The agency failed to establish that it had reasonable cause to believe the foster child suffered sexual abuse, non-accidental physical injury, or that there was substantial risk of harm to the child's emotional well-being. Thus, the agency failed to demonstrate the removal was driven by harm or risk of harm to the child.

On July 23, 2002, a petition was filed in Antrim County, indicating that the Reids used corporal punishment on Ashley and Joshua, which included spanking, slapping, and the use of a belt and a stick. A jury trial was held regarding the Antrim County petition alleging that the Reids physical abused Ashley and Joshua, and the jury found that the children should not be subject to the jurisdiction of the court. Meanwhile, a hearing was held in Otsego County regarding Christopher's placement. In August 2002, the Otsego Family Court terminated the natural parents' parental rights, ordered that Christopher be returned to the Reids' home, and committed Christopher to the MCI for adoptive placement and planning. On the same day, a

[2] The MCI is under the control and management of the Michigan Social Welfare Commission, which is in charge of the administration of the powers and duties of the Family Independence Agency. MCL 400.2; MCL 400.202.

[3] The natural parents' parental rights to Christopher were terminated in August 2002.

notice of intent to revoke the Reids' foster care license was mailed to Child and Family Services.[4]

Because both the Reids and the Bondys expressed interest in adopting Christopher, the MCI followed the court's order to place Christopher with the Reids, but gave the Bondys regular visitation. Christopher was returned to the Reids at the end of August 2002. In December 2002, the Reids filed a petition to adopt Christopher. In January 2003, the Bondys filed a petition to adopt Christopher. In response to the families' competing petitions to adopt Christopher, the MCI met with the families and reviewed documentation submitted by the families.[5] After considering the circumstances of the case and Christopher's best interests, the superintendent of the MCI, William J. Johnson, decided to deny the Reids' petition to adopt Christopher, place Christopher with the Bondys, and give the Bondys consent to adopt Christopher. Johnson based this decision in part on the Reids' use of "harsh and threatening physical discipline."

The Reids filed a motion with the Emmett Family Court under MCL 710.45(2),[6] alleging that Johnson's decision to withhold consent to adopt Christopher was arbitrary and capricious, and the court conducted an evidentiary hearing regarding the matter (a "§ 45 hearing"). The Bondys did not participate in the hearing. Following the hearing, the circuit court determined that Johnson failed to fully investigate the issue of corporal punishment and placed too much weight on that issue, while failing to adequately consider other circumstances surrounding the case, such as the length of time Christopher had spent in the Reid home and Christopher's relationship with the Reid family. The court also expressed concerns that agency bias had infected the proceedings and Johnson's decision. The court concluded that the Johnson's decision was arbitrary and capricious, terminated that MCI's right to Christopher,[7] and ordered that Christopher be returned to the Reids to commence adoption proceedings. The Bondys filed a motion for reconsideration, but the trial court ruled that the Bondys lacked standing to challenge the order and denied the Bondys' motion.

II. Analysis

A. The Bondys' Standing

[4] At the time of the § 45 hearing, the administrative hearing regarding the revocation of the Reids' foster care license was still pending.

[5] Under § 43 of the Michigan Adoption Code, a person seeking to adopt a child must obtain the consent of the authorized representative of the department to whom the child has been permanently committed. MCL 710.43(1)(b).

[6] "If 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. . . ." MCL 710.45(2).

[7] "If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court may terminate the rights of the appropriate court, child placing agency, or department . . . ." MCL 710.45(6).

The Bondys argue that they are "interested parties" to the adoption of Christopher, and thus have standing to challenge the trial court's order returning Christopher to the Reids. We disagree. "Whether a party has standing to bring an action involves a question of law that is reviewed de novo." *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004). "In Michigan, adoption proceedings are governed entirely by statute." *In re Toth*, 227 Mich App 548, 554; 577 NW2d 111 (1998).

> The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999); *Frankenmuth Mut Ins Co v Marlette Homes*, 456 Mich 511, 515; 573 NW2d 611 (1998). Initially, we review the language of the statute itself. *House Speaker v State Admin Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993). If the statute is unambiguous on its face, the Legislature is presumed to have intended the meaning plainly expressed and further judicial interpretation is not permissible. *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992). [*Colucci v McMillin*, 256 Mich App 88, 94; 662 NW2d 87 (2003).]

Under Section 24a(1) of the Adoption Code, "[t]he petitioner" is an interested party in a petition for adoption. MCL 710.24a(1). Section 24a(6) of the Adoption Code also provides, "In the interest of justice, the court may require additional parties to be served." MCL 710.24a(6).

The Bondys argue that, because they filed a petition to adopt Christopher in January 2003, they are interested parties under MCL 710.24a(1), and thus have a right to appeal from the trial court's decision. However, the trial court's order did not concern the Bondys' petition for adoption. Rather, the trial court's order addressed the Reids' motion alleging that Johnson's decision to withhold their consent to adopt was arbitrary and capricious. MCL 710.24a(1) refers to "[t]he petitioner" in the singular, meaning that only the petitioner in that particular petition is an interested party. Therefore, under MCL 710.24a, the Bondys were not "petitioners" in regard to the Reids' petition to adopt Christopher, and thus are not interested parties to the Reids' petition and the trial court's order.[8] Because we affirm the trial court's conclusion that the Bondys lack standing to challenge its order determining that Johnson's decision to deny the Reids' petition for adoption was arbitrary and capricious, we decline to address the Bondys' other arguments on appeal.

B. The Trial Court's Decision

The trial court was required to uphold the MCI's decision to withhold consent to adoption unless the Reids established by clear and convincing evidence that the decision of the MCI

[8] Further, the Bondys did not participate in the trial court's evidentiary hearing regarding the Reids' petition for adoption, as intervenors or otherwise. Nor do they suggest that they lacked actual notice that proceedings that threatened the child's placement with them were pending. Rather than seek to advocate for themselves in the hearing regarding the Reids' § 45 motion, the Bondys evidently relied on the advocacy of the MCI.

decision was arbitrary and capricious. MCL 710.45(5). In *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994), this Court observed:

> [T]he focus is not whether the representative made the "correct" decision or whether the probate judge would have decided the issue differently than the representative, but whether the representative acted arbitrarily and capriciously in making the decision. Accordingly, the hearing under § 45 is not . . . an opportunity for a petitioner to make a case relative to why the consent should have been granted, but rather is an opportunity to show that the representative acted arbitrarily and capriciously in withholding that consent. It is only after the petitioner has sustained the burden of showing by clear and convincing evidence that the representative acted arbitrarily and capriciously that the proceedings may then proceed to convincing the probate court that it should go ahead and enter a final order of adoption.
>
> Because the initial focus is whether the representative acted arbitrarily and capriciously, the focus of such a hearing is not what reasons existed to authorize the adoption, but the reasons given by the representative for withholding the consent to the adoption. That is, if there exist good reasons why consent should be granted and good reasons why consent should be withheld, it cannot be said that the representative acted arbitrarily and capriciously in withholding that consent even though another individual, such as the probate judge, might have decided the matter in favor of the petitioner. *Rather, it is the absence of any good reason to withhold consent, not the presence of good reasons to grant it, that indicates that the representative was acting in an arbitrary and capricious manner*. [*In re Cotton, supra* at 184-185 (emphasis added).]

On appeal, we must determine whether the family court applied the correct legal principles and whether its factual findings were clearly erroneous. *Hinky Dinky Supermarkets, Inc v Dep't of Community Health*, 261 Mich App 604, 605; 683 NW2d 759 (2004), citing *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). "[A] finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made." *Boyd v Civil Service Comm*, 220 Mich App 226, 235; 559 NW2d 342 (1996).

Here, Johnson gave the following reasons for denying the Reids' consent to adopt Christopher:

> In this case, the discipline and care provided to the adopted children provides an indication of the ability of Mr. and Mrs. Reid to provide an [sic] safe emotional environment for children who have been victims of abuse/neglect. It should be noted that these children suffered serious physical abuse and neglect prior to placement in foster care. Because of this abuse, the children (particularly Ashley and Josh) have significant emotional needs. The Reid's [sic] have been provided with training on several occasions as licensed foster parents into the type of care and discipline which will benefit their children. In spite of this, they admittedly have used harsh and threatening physical discipline on the children on more than one occasion. This has been justified as being necessary or

> understandable as a result or reaction to the behavior problems demonstrated. This is a very troubling stance for adoptive parents to take and it is one which will lead to continuing problems in the future. They have not demonstrated an ability or a willingness to address problems which arise through caring for these children in a sensitive, supportive manner. Instead, their actions appear to often have been reactionary and impulsive.
>
> Based upon a careful review of this information it appears to be in the best interests of the child to deny the request of the Reid family to be granted consent to adoption. The agency will be directed to proceed with the necessary arrangements to remove Christopher from this home.

Johnson's decision is premised upon his concerns over the Reids' history of resorting to corporal punishment.

While the evidence confirms that the Reids used corporal punishment to discipline their older adopted children, the use of reasonable corporal punishment on their older children is insufficient reason, as a matter of law, to deny the Reids' adoption petition. The July 23, 2002, Antrim County petition requested that Ashley, Joshua, and Spencer be removed from the Reid house and that the court take jurisdiction of the children. The petition cites several instances of corporal punishment: (1) In December 2001, Debra Reid slapped Ashley in the face for having a "bad attitude" and to teach her to show respect; (2) On April 16, 2002, Debra Reid hit Joshua on the bare back with a stick five times for getting in trouble in school; (3) On April 29, 2002, Debra Reid hit Joshua on the back with a stick five times for getting in trouble at the dinner table, leaving two lines on Joshua's back; (4) On April 30, 2002, William Reid hit Joshua on the buttocks with a belt at least five times, and both William and Debra hit Joshua on the buttocks with their hands because Joshua was being "defiant"; and (5) On May 1, 2002, Debra Reid and Ashley got in a shoving match and Debra Reid grabbed Ashley by the hair and pushed her into a door. The Reids denied most of these allegations, but Debra Reid admitted at the § 45 hearing that she had slapped Ashley in the face once after she swore at her, and had spanked Ashley on the buttocks once in 2000 for the same reason. She admitted to hitting Joshua on the buttocks with a stick one time, but testified that the marks on Joshua's back were not caused by her, but instead resulted from his playing football in the woods. William Reid admitted that he had hit Joshua on the buttocks with a belt twice for being defiant, but testified that he never physically disciplined Joshua outside of that one incident.

Significantly, the Reids denied the intent to injure their children and also denied that any injury resulted to their children as a result of their use of corporal punishment. The Reids maintained that their use of corporal punishment was reasonable. At the Antrim County adjudication hearing, the Family Independence Agency (FIA) had to establish the allegations contained in the petition by a preponderance of the evidence. MCR 3.972(C)(1). A jury concluded that the FIA failed to meet its burden of establishing unreasonable use of corporal punishment by a preponderance of the evidence.

Moreover, in regard to physical discipline, the FIA "Foster Care Administrative Rules" provides as follows:

> Supervising agencies are to work with foster parents/kinship caregivers and provide training to them which will encourage consistent and non-physical discipline practices for both foster and birth children. However, any local discipline policy developed to satisfy child placing agency administrative rules, is to address discipline practices for foster children only. *Local policy is not to be implemented which prohibits the foster parents*[']*/kinship caregivers*['] *use of reasonable physical discipline for either birth or adopted children*. [Emphasis added.]

Under these rules, it is acceptable for parents to use reasonable physical discipline for their children. All of the corporal punishment the petition alleged against the Reids or that the Reids admitted occurred against the Reids' adopted children. There is no indication that any physical discipline was used against Christopher. Thus, there is no evidence to substantiate that, even if use of physical punishment by the Reids was reasonable, it nonetheless violated the FIA foster care rules.

In sum, although there is undisputed evidence that the Reids used corporal punishment on their older adopted children, there was never any evidence presented to substantiate the finding that this corporal punishment was unreasonable or abusive. Moreover, there is nothing in the record to support the conclusion that the Reids violated the FIA foster care rules. Thus, there is nothing on the record to support Johnson's conclusion that the Reids' petition should be denied based on the use of "harsh and threatening physical discipline on the [adopted] children." The trial court applied the correct legal principles and did not clearly err in determining that Johnson's reasons for denying the petition were unfounded and that Johnson lacked a good reason to deny the petition. We cannot disturb the trial court's determination that Johnson's decision to deny the Reids' petition to adopt Christopher was arbitrary and capricious.

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra