

STATE OF MICHIGAN
COURT OF APPEALS

In re MAHQUAN DESHAWN PENDLETON,
Minor.

RUPERT K. MANN and GERALDINE M.
MANN,

UNPUBLISHED
February 14, 2008

Petitioners-Appellants,

v

No. 278964
Wayne Circuit Court
Family Division
LC No. 06-000634-AO

DEPARTMENT OF HUMAN SERVICES and
CHERYL COCHRAN,

Respondents-Appellees.

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

PER CURIAM.

Petitioners appeal as of right from the trial court's opinion and order dismissing their petition to adopt their great-nephew, MahQuan Deshawn Pendleton, whose parents' parental rights were terminated.¹ Petitioners challenge the trial court's determination that the superintendent of the Michigan Children's Institute (MCI), an agency within the Department of Human Services (DHS), did not act arbitrarily and capriciously in denying consent to petitioners to adopt MahQuan.² We affirm.

This Court reviews the trial court's decision to uphold the MCI's decision to withhold consent to adopt to determine whether the court "applied correct legal principles." This Court reviews for clear error the trial court's determination that MCI's decision was not arbitrary and capricious. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996).

¹ MahQuan's date of birth is April 25, 2002.

² The superintendent granted consent to adopt to MahQuan's foster mother, Cheryl Cochran. The superintendent granted consent to petitioners to adopt MahQuan's two biological sisters who had been placed with petitioners after they were removed from their parents' care.

Because the parental rights of MahQuan's parents were terminated, the MCI must consent to an adoption. MCL 710.43(1)(b). The trial court may not grant a petition for adoption absent the required consent. MCL 710.45(1). A petitioner who is denied consent may file a motion in the trial court "alleging that the decision to withhold consent was arbitrary and capricious." MCL 710.45(2). The court must uphold the denial of consent to adopt unless the "court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious" MCL 710.45(7).

The "clear and convincing evidence" standard is the "most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995).

Evidence is clear and convincing when it "produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." . . . Evidence may be uncontroverted, and yet not be 'clear and convincing.' . . . Conversely, evidence may be 'clear and convincing' despite the fact that it has been contradicted." [*Martin*, *supra* at 227, quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).]

The "arbitrary and capricious" test is also well defined.

"Arbitrary is: '[Without] adequate determining principle . . . Fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances, or significance, . . . decisive but unreasoned.'

Capricious is: '[Apt] to change suddenly; freakish; whimsical; humorsome.'" [*Goolsby v Detroit*, 419 Mich 651, 678-679; 358 NW2d 856 (1984), quoting *United States v Carmack*, 329 US 230, 243; 67 S Ct 252; 91 L Ed 209 (1946), and *Bundo v Walled Lake*, 395 Mich 679, 703, n 17; 238 NW2d 154 (1976).]

This Court has described the appropriate standard for judicial review in adoption proceedings as follows:

The fact that the Legislature in drafting the statute limited judicial review to a determination whether consent was withheld arbitrarily and capriciously, and further required that such a finding be based upon clear and convincing evidence, clearly indicates that it did not intend to allow the probate court to decide the adoption issue de novo and substitute its judgment for that of the representative of the agency that must consent to the adoption. Rather, *the clear and unambiguous language terms of the statute indicate that the decision of the representative of the agency to withhold consent to an adoption must be upheld unless there is clear and convincing evidence that the representative acted arbitrarily and capriciously. Thus, the 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*, 208 Mich App 180, 184-185; 526 NW2d 601 (1994) (emphasis added).]

The trial court properly applied the statutory standard of review. At the close of the hearing, the trial court correctly noted that the legal question was whether “there was good reason to withhold consent,” not a de novo review of whether the decision was in the best interests of the child. The court “focused on whether there was the absence of any good reason to withhold consent.” In its written opinion, the court reiterated that it did not have the authority to conduct a de novo review and determine what placement would be in the child’s best interests. Rather, it was bound to uphold MCI’s decision unless petitioners established by clear and convincing evidence that the superintendent acted arbitrarily and capriciously in withholding consent to adopt. Ultimately, the trial court determined that the superintendent provided good reason to grant consent to the foster mother and, therefore, withhold consent from petitioners.

The trial court’s application of the standard of review is consistent with *Cotton, supra* at 184-185. The trial court may not substitute its judgment for that of the superintendent of MCI. It must uphold the agency’s decision unless the agency acted arbitrarily and capriciously. Consistent with *Cotton*, the trial court considered whether there was good reason to withhold consent, not whether there was good reason to grant consent, to determine if the superintendent of MCI acted properly.

The trial court properly determined that the superintendent’s decision was not arbitrary and capricious. Petitioners contend that the superintendent’s decision was arbitrary or without reason because he failed to conduct an independent investigation into Catholic Social Services of Wayne County’s (CSS) mismanagement of MahQuan’s case or to contact the competing families to make an independent decision regarding MahQuan’s best interests. Contrary to petitioners’ assertion, the superintendent did conduct an independent review into CSS’s management of the case. He met with or spoke to all the CSS workers involved in this case. During these meetings, the superintendent questioned the CSS employees about the conflicting recommendations, the

factors supporting each recommendation, and the reason the case had been handled in this manner.

Further, the superintendent was entitled to rely on the investigative reports prepared by CSS officials rather than conducting an independent investigation into MahQuan's best interests. In *Cotton, supra* at 186, the superintendent did not conduct an independent investigation into the child's best interests before deciding whether to grant consent to adopt. However, an investigation was conducted and the superintendent's decision "was based upon the results of that investigation and the recommendation of the staff members involved." *Id.* This Court found that the superintendent did not act arbitrarily and capriciously because the decision was based on the evidence gathered in the investigation. *Id.*

Moreover, the superintendent followed the mandates of the DHS adoption services manual in making his decision. The manual provides that both foster parents and relatives "must be given special consideration" in making an adoption determination.³ The manual provides that "[r]elatives who express an interest in adopting the child shall be given consideration ahead of recruited families who have no relationship with the child." However, the manual also recognizes that when a child has been in a foster care placement for over a year the child is entitled to the continuation of that relationship:

Special emphasis must be placed on maintaining the relationship between the child and the foster parents, which has existed for 12 months or longer. Unless there are exceptional circumstances (such as reunification of siblings in an adoptive home or placement with a relative with whom the child has a relationship), the continuity of this relationship must be given special consideration. When exceptional circumstances exist, these circumstances must be evaluated, along with the continuity of the child's relationship with the foster parents and in light of the child's needs identified in the child's adoption assessment.

* * *

When relatives and foster parents are interested in adopting the same child, both must be assessed. If both are approved based on policies that apply to adoptive applicants, the reasons for selection of prospective parents for the child must be documented and based on which family meets the best interests criteria developed for the child as reflected in the child's adoption assessment. [Adoption Services Manual, pp 2-3.]

MahQuan had been in his foster mother's care for over 12 months and, therefore, the superintendent was required to give "special emphasis" to continuing that relationship. He recognized that there existed exceptional circumstances given that relatives with whom MahQuan's siblings had been placed also wanted to adopt the child. Both families were assessed

³ Family Independence Agency Adoption Services Manual, available at <<http://www.mfia.state.mi.us/olmweb/ex/cfa/732-30.pdf>>, pp 1-2.

by CSS. In the end, the superintendent determined that it was in MahQuan's best interests to be adopted by his foster mother. This decision was supported by evidence gathered in the investigation. MahQuan was placed with the foster mother when he was only 19 months old and he is now almost six years old. MahQuan has formed a mother-child bond with his foster mother. He has been raised with his foster mother's two daughters, not his biological sisters. He has formed a close sibling bond with his adoptive sisters. The reasons that could support granting consent to petitioners are irrelevant. There exists good reason to withhold consent from petitioners and grant consent in the foster mother's favor. Accordingly, the trial court was constrained to find that the superintendent's decision was not arbitrary and capricious.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ William B. Murphy
/s/ Stephen L. Borrello