STATE OF MICHIGAN

COURT OF APPEALS

In re ANGEL MARIE FENNER-BAILEY, Minor.

ANGEL MARIE FENNER-BAILEY, Minor,

Appellee,

and

KENNETH KELLY and CAROL KELLY,

Petitioners-Appellants,

v

MICHIGAN CHILDREN'S INSTITUTE,

Respondent-Appellee.

UNPUBLISHED
March 13, 2008

No. 279990
Eaton Circuit Court
Family Division
LC No. 2006-002662-AF

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Petitioners petitioned respondent Michigan Children's Institute to adopt the minor child, their great-grandchild, after the child's parents' parental rights were terminated. Respondent denied their petition. Petitioners challenged this decision in the trial court, which held a hearing pursuant to MCL 710.45 ("§ 45 hearing), and affirmed respondent's decision to deny their petition to adopt. Petitioners appeal, and we affirm.

Petitioners argue that the denial of their petition to adopt the minor child was arbitrary and capricious. We disagree. "[T]he decision of the representative of the agency to withhold consent to an adoption must be upheld [by the trial court] unless there is clear and convincing evidence that the representative acted arbitrarily and capriciously." *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994); see also MCL 710.45(7). The trial court's conclusions regarding the agency's decision are reviewed for clear error. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1997). 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. *Id*.

In reviewing the agency action at issue, the focus is not what reasons existed to authorize the adoption, but is instead on the reasons given by the agency representative for withholding the consent to the adoption. *Cotton*, *supra* at 185. If there are good reasons to grant consent and good reasons to withhold it, it cannot be said that the decision to withhold consent was arbitrary and capricious. *Id*. "[I]t 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." *Id*.

Under this very deferential standard, we cannot conclude that the decision to deny petitioners' request was arbitrary and capricious. As the trial court noted, the child was living with the foster family for over half of her four years of life. The evidence supports the conclusion that during this time the child formed a strong psychological attachment to the foster parents, whom she refers to as mom and dad. Petitioners challenge the conclusion that a similar bond did not exist between them and the child. Assuming without concluding that there was an attachment with petitioners, that does not undermine the existence of an attachment with the foster parents. Psychological attachment to and with others is not a zero-sum game.

Petitioners argue that an opinion provided by the child's long-term therapist regarding the existence and nature of the bond with the foster parents is invalid because the therapist allegedly never saw the child and her foster parents interact. On the contrary, the therapist was seeing the child on a regular basis for a significant portion of her life. The Michigan Children's Institute superintendent did not err in relying on an expert who interacted with the child professionally at the time when the relevant proceedings and placements were occurring.[1]

Petitioners also maintain that the decision was arbitrary and capricious because the superintendent did not follow the Department of Human Services policy manual. However, petitioners have cited no case law, binding or persuasive, to support this argument. Moreover, even if the manual did require giving preferential treatment or first choice to petitioners as blood relatives, such a policy was not violated because petitioners did, in fact, receive such treatment. They were originally given custody of the child. Custody only went to the foster parents in March 2005 when petitioners voluntarily gave the child up and requested that she be placed with the foster parents in order to "promote the transition to a permanent home for" her.

In sum, the superintendent's decision to deny petitioners' adoption petition was not arbitrary and capricious because he articulated good reasons for his decision. *Cotton*, *supra* at 185. Therefore, the trial court did not err in affirming his decision.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Pat M. Donofrio

[1] Petitioners also argue that the superintendent did not properly consider the real harm to the child from not being with her sister. But petitioners do not have custody of the child's sister and, moreover, the decision not to let the child see her sister was made by the children's birth mother.