STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JOSHUA CARLOS GARCIA, Minor

JOSE GARCIA and MARGARET GARCIA,

Petitioners-Appellants,

v

MICHIGAN CHILDREN'S INSTITUTE,

Respondent-Appellee.

UNPUBLISHED
September 16, 2008

No. 284876
Kent Circuit Court
LC No. 08-022813-AM

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Petitioners Jose and Margaret Garcia petitioned respondent Michigan Children's Institute (the Institute) to adopt Joshua Carlos Garcia, their grandchild, after the parental rights of Joshua's parents were terminated. The Institute denied their petition. The Garcias challenged this decision in the trial court, which held a hearing pursuant to MCL 710.45 ("Section 45 hearing"), and affirmed the Institute's decision to deny their petition to adopt. The Garcias appeal that decision as of right. We affirm. We decide this case without oral argument.[1]

I. Basic Facts And Procedural History

The Garcias are the paternal grandparents of Joshua, who was seven years old at the time of the Section 45 hearing. Joshua was born in 2000 and had been in foster care since 2004. Joshua's parents' parental rights were terminated in 2006 after it was determined that they had physically abused their six-year-old niece, who they were in the process of adopting. Once Joshua's parents' parental rights were terminated, he became a state ward under the Institute's care. This Court subsequently upheld the termination of Joshua's parents' parental rights,[2] and

[1] MCR 7.214(E).

[2] *In re Garcia*, unpublished opinion per curiam of the Court of Appeals, issued June 19, 2007 (Docket No. 273626).

the Michigan Supreme Court denied their application for leave to appeal.[3] The Garcias filed the present petition to adopt Joshua in February 2008.

Petitioner Jose Garcia testified that he had not seen Joshua for three–and-a-half years pursuant to court order. Jose Garcia further indicated that he regretted not having seen Joshua during that time.

In support of her argument that the termination of Joshua's parents' parental rights was based on inaccurate information, Margaret Garcia presented a total body scan of the niece, suggesting that the niece did not sustain a broken bone, which was alleged in the previous proceedings for the termination of Joshua's parents' parental rights. Margaret Garcia also presented a burn report with reference to the niece, as well as another physician's report stating that the niece displayed no "battle signs."

William Johnson, the superintendent of the Institute, testified that his denial of the adoption petition was based on his analysis of several items: (1) the court order terminating the parental rights to Joshua, (2) a Child Adoption Assessment completed by Joshua's adoption agency case worker, (3) correspondence between the Garcias and the adoption agency, and (4) a conference with the Garcias and the adoption agency. Johnson noted that the adoption agency involved in this case also recommended that the Garcias' petition for adoption be denied.

Johnson reminded the trial court that Joshua was now seven years old. He also emphasized that Joshua was removed from his parents when he was three years old and has resided in his current foster care home since that time. During that time, Joshua had no contact with the Garcias. Johnson noted that Joshua is "thriving" in a "stable environment" and is forming "a strong psychological attachment." Johnson also opined that "at the age that this child is at, for him to have lived in this particular stable, satisfactory environment for this extended period of time, it would be in his best interest to remain in that home."

Johnson further explained that Joshua's lack of psychological attachment to the Garcias was a significant factor in his decision:

> Our agency does attempt to give strong consideration to placing children with relatives, especially at the beginning of the case, unless there are valid reasons not to do so. But the fact that the child has been outside of the family's care for three and a half years to me is—is a very important factor to consider at the point that I'm making a decision about consenting to an adoption.

Johnson expressed concern over the likelihood that Joshua would have contact with his birth parents if he approved this adoption and also stated:

> It's clear to me, based on the information that was provided to the agency, as well as based on statements made by Mr. and Mrs. Garcia here today, that they

[3] *In re Garcia*, 479 Mich 869; 736 NW2d 269 (2007).

> deny any culpability of their son in injuring [the niece]. And to me that would certainly raise serious questions about their ability as caretakers for a child like Joshua should he be returned to their home.

Finally, Johnson emphasized that whereas Joshua was developmentally delayed upon entering foster care, "he has made great progress since that time responding to various therapies that he's been provided with. The ability of Mr. and Mrs. Garcia to be able to continue that remedial care, remedial progress with Joshua, is uncertain to me." He further stated that he considered it a "risk" as to whether the Garcias would be able to continue Joshua's progress.

Ms. Garcia complained that Johnson's decision had been based primarily on prior cases involving the niece and the termination of Joshua's parents' parental rights. The trial court responded:

> I think Mr. Johnson has indicated quite clearly that his focus was not why [the niece] was removed or whether the injuries initially alleged or alleged at any time during the proceeding regarding [the niece] were proven or not proven, but his focus was on Joshua and that fact that Joshua has been outside of any contact with the biological family for a sustained period of time and what transpired with Joshua during that period of time. . . . His focus, he stated, was on Joshua at the time that the competing petitions for adoption came to him.
>
> So I think it's not relevant what did or didn't happen or did or didn't get proven during the trial regarding [the niece] and the termination trial regarding Joshua.

The trial court also reminded the Garcias that "Mr. Johnson has testified that what happened at the beginning of the case is not something that he looked at. His responsibility and what he did was to consider Joshua's current status and what would be in his best interest today."

The trial court, having reviewed the testimony along with other documentation, affirmed the Institute's denial of the Garcias' petition to adopt Joshua. The trial court stated, "[T]he rationale given by Mr. Johnson in the document as well as in his testimony appears to be—have a sound basis in fact and in reason. And, therefore, I find that I must uphold the decision." The trial court further detailed, while acknowledging the Garcias' concern for Joshua:

> However, the reality of Joshua's circumstances must be taken into consideration. . . . Joshua has continued to develop emotionally, psychologically, and has formed a strong bond with those people who have been meeting his needs and providing for his education, his need for medical attention. Whatever his needs have been over the past three years, other people have met those needs; and Joshua, quite naturally, has developed a bond with those people.
>
> In his Consent to Adoption Decision, Superintendent Johnson sets forth quite clearly his concern that to disrupt that bond that Joshua has formed would be traumatic to Joshua at this point in time. . . .

> And, so, I have to at this time find that the motion must be denied and the petition for adoption by Mr. and Mrs. Garcia is dismissed.

In an order dated March 26, 2008, the trial court ruled that, "[b]ased upon the ruling from the bench, the Michigan Children's Institute's denial is upheld and the above-captioned matter is hereby dismissed."

II. Adoption Petition

A. Standard Of Review

On appeal, the Garcias argue that the Institute's denial of their adoption petition was arbitrary and capricious. The trial court must uphold "the decision of the representative of the agency to withhold consent to an adoption . . . unless there is clear and convincing evidence that the representative acted arbitrarily and capriciously."[4] The generally accepted meaning of "arbitrary" is "determined by whim or caprice," or "arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance, ... decisive but unreasoned."[5] The generally accepted meaning of "capricious" is "apt to change suddenly; freakish; whimsical; humorsome."[6]

This Court reviews for clear error a trial court's conclusions regarding an agency's decision.[7] "[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."[8]

B. Analysis

The Institute's superintendent represents the state of Michigan as guardian of all children committed to the state by a family court after termination of parental rights.[9] The superintendent is authorized to consent to the adoption of any child committed to the Institute as a state ward.[10] Consent by the superintendent to the adoption of a state ward is required before the trial court can approve a prospective adoption.[11]

---

[4] *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994); see also MCL 710.45(7).

[5] *Goolsby v Detroit*, 419 Mich 651, 678; 358 NW2d 856 (1984) (citations and internal quotes omitted).

[6] *Id*. (citations and internal quotes omitted).

[7] *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996).

[8] *Id*.

[9] MCL 400.203.

[10] MCL 400.209.

[11] MCL 710.43(1)(b).

If consent is not given, a party can challenge the denial of consent under MCL 710.45(2), which provides: "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." Under MCL 710.45, the burden is on the Garcias at the Section 45 hearing to establish by clear and convincing evidence that the superintendent's decision to withhold consent was arbitrary and capricious.[12] In this case, a Section 45 hearing was held, and the trial court determined that the superintendent's denial of consent was not arbitrary and capricious.

In reviewing the 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."[13] 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.[14] "[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."[15]

Under this very deferential standard, the trial court's decision to deny the Garcias' request in this case was not arbitrary and capricious. As the trial court noted, Joshua had been living with his foster family for approximately half of his of life. The evidence supported the conclusion that Joshua has formed a strong psychological attachment to his foster parents. Moreover, Joshua had no contact with the Garcias in over three years. The evidence also indicated that since moving in with his foster family, Joshua has made notable progress in overcoming the developmental delays he exhibited upon entering foster care. The conclusion by the Institute's superintendent, based on the foregoing, was that it was in Joshua's best interest to allow him to remain in an environment to which he had adjusted. As there was no evidence presented showing that it was is in Joshua's best interests to be moved, the Garcias failed to show that the supervisor's decision was arbitrary and capricious.

The Garcias also argue that the superintendent's decision was in reliance on erroneous and unrelated information in connection with allegations of abuse inflicted upon another child. On the contrary, the superintendent made clear that his focus was on Joshua. Specifically, the superintendent recognized that Joshua had no contact with his biological family for a sustained period of time, that Joshua has progressed in response to various therapies that has been provided by his foster family, and that he (the superintendent) had doubts as to whether the Garcias would continue that remedial care. Finally, the superintendent expressed reasonable concern over the likelihood that the Garcias would enable contact with Joshua's birth parents if the adoption were approved. Testimony reflects that the Garcias adamantly denied the culpability of their son (Joshua's father) for the abuse of the other child despite expert and judicial conclusions to the contrary. As such, the superintendent's doubt regarding the Garcias' ability to secure Joshua's

---

[12] *In re Cotton*, *supra* at 184.

[13] *Id*. at 185.

[14] *Id*.

[15] *Id*.

well being is supported by the record. Thus, the Institute's denial of the petition for adoption was not arbitrary and capricious, and was correctly upheld by the trial court.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio