STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CASANDRA RENEE BAAS, a/k/a CASANDRA RENEE HAMPTON, a/k/a DENISE RENEE HAMPTON, Minor.

DONALD HAMPTON and DIANE HAMPTON,

Petitioners-Appellants,

v

MICHIGAN CHILDREN'S INSTITUTE SUPERINTENDENT,

Respondent-Appellee.

UNPUBLISHED
October 28, 2008

No. 285670
Oakland Circuit Court
Family Division
LC No. 2007-740241-AM

Before: Wilder, P.J., and Jansen and Owens, JJ.

PER CURIAM.

Petitioners appeal as of right an order that dismissed their request for review, pursuant to MCL 710.45(2), of the decision of respondent Michigan Children's Institute (MCI) to deny petitioners consent to adopt their granddaughter. We affirm.

I. Facts

Petitioners' granddaughter, Casandra, came to live with them when she was two years old. Casandra's mother's parental rights had been previously terminated and Casandra's mother was incarcerated. However, on two separate occasions, Casandra was removed from her grandparents' home and placed in foster care. The second time she was removed was following allegations of sexual abuse. Petitioners were provided an adoption application in April 2006, yet they did not immediately petition for adoption because of medical and financial issues. Ultimately, petitioners did seek to adopt Casandra.

In September 2007, the MCI Superintendent denied consent to the adoption of Casandra. This decision was based on findings that: (1) it was not in the best interests of Casandra to have contact with her birthmother which would likely occur if she were placed with petitioners; (2) Casandra was previously removed from petitioners' home due to allegations of sexual abuse; (3) petitioners did not fully recognize Casandra's emotional and behavioral issues; and (4) petitioners' commitment to adopting Casandra was questionable due to their failure to timely complete the petition for adoption.

On October 7, 2007, petitioners filed a petition for review under MCL 710.45(2) of the adoption code. The trial court held a hearing and at the close of petitioners' proofs, MCI moved to dismiss the petition based on the fact that petitioners had not demonstrated that the Superintendent's decision was arbitrary or capricious. The trial court agreed with MCI and granted the motion to dismiss the petition. Petitioners now appeal as of right.

II. Analysis

MCL 710.45(2) provides that, "[i]f 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(7) further provides that, "[u]nless the petitioner establishes by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall deny the motion described in subsection (2) and dismiss the petition to adopt."

Petitioners contend that the MCI Superintendent's decision to deny their petition to adopt their granddaughter was "arbitrary and capricious" and that the trial court committed clear error in upholding the Superintendent's decision. We disagree.

This Court reviews for clear error a trial court's determination that no clear and convincing evidence was presented that a decision by the MCI Superintendent to withhold consent to adoption was "arbitrary and capricious." *In re Keast*, 278 Mich App 415, 423; 750 NW2d 643 (2008).

At the heart of the case are the parties' divergent interpretations of what "arbitrary and capricious" means. In *Keast, supra*, this Court affirmed the principles set forth in *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994), and reiterated that, "the focus of the § 45 hearing was not whether Superintendent Johnson made the 'correct' decision, or whether the family court would have decided the issue differently, nor was it an opportunity for the [petitioners] to make a case relative to why the consent should have been granted." *Keast, supra* at 435, n 10.

We agree with respondent MCI's argument that, in testifying and attempting to refute the various references in the consent denial, petitioners tacitly acknowledged that each allegation had some basis in fact. In attempting to refute each allegation, petitioners essentially sought a de novo review of the Superintendent's decision. The trial court correctly pointed out that it was not at liberty to retry the case. Its sole function was to determine whether there was good reason to withhold consent. Rather than call the Superintendent as a witness to determine what his decision-making process entailed, petitioners sought to retry the merits of each allegation. This was not permitted. The decision to deny consent for adoption was not arbitrary and capricious. There was genuine concern that: (1) petitioners would allow contact with Casandra's mother; (2) petitioners did not realize the extent to which Casandra was struggling with mental health and emotional issues; and (3) the delay in petitioning for adoption demonstrated a failure to commit to Casandra.

Petitioners cite three unpublished cases in support of their argument.[1] This Court's unpublished opinions are not binding for purposes of stare decisis. MCR 7.215(C)(1). Additionally, these cases are distinguishable from the matter at hand. In each of those cases, the Superintendent's reasons for denying the adoption petitions were based on policy considerations. In this case, the Superintendent's decision was not based on illusory policy considerations, but on specific incidents relating directly to Casandra. Additionally, the Superintendent was never called as a witness in order to investigate and scrutinize his motives.

Affirmed.

/s/ Kurt T. Wilder
/s/ Kathleen Jansen
/s/ Donald S. Owens

1 *In re Eckles*, unpublished opinion per curiam of the Michigan Court of Appeals, issued September 28, 2004 (Docket Nos. 252709, 252893); *In re CLH v Michigan Children's Institute*, unpublished opinion per curiam of the Michigan Court of Appeals, issued June 3, 2003 (Docket No. 244877); *In re Carpenter*, unpublished opinion per curiam of the Michigan Court of Appeals, issued December 3, 1999 (Docket No. 217634).