



Michigan Supreme Court

State Court Administrative Office

Child Welfare Services

Michigan Hall of Justice

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Kelly Howard
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MEMORANDUM

DATE: August 22, 2013

TO: Chief Circuit Court Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Kelly Howard

RE: Child's Best Interests in Termination of Parental Rights Proceedings

A recent Michigan Supreme Court termination of parental rights case held that the trial court's failure to explicitly consider a child's placement with relatives rendered the record inadequate to make a best interests determination. In light of this ruling, the Court of Appeals has reversed numerous termination of parental rights cases in which the child resided with a relative. The COA opinions hold that, where a child is placed with a relative, the court must explicitly consider the child's placement with the relative in its best interests determination before ordering the termination of parental rights.

This memorandum summarizes recent case law regarding the child's best interests analysis in termination proceedings, and provides examples of best interests considerations in child protective cases.

If you have any questions, please contact me at HowardK@courts.mi.gov, (517) 373-8671, or Jodi Latuszek at LatuszekJ@courts.mi.gov, (517) 373-4987.

I. Termination of Parental Rights – Best Interests Reversals

To terminate parental rights, the court must conduct a two pronged analysis. First, the court must find by clear and convincing evidence that at least one statutory ground for termination exists.¹ Once established, the court must find by a preponderance of the evidence that termination is in the child's best interests.² The Juvenile Code does not define "best interests" in the context of child protection cases and does not list specific factors for the court to consider in its best interests analysis at a termination proceeding.

Michigan's appellate courts have unambiguously identified one factor for the court to consider in a best interests analysis: the child's placement with a relative. In *In re Mason*³, the Michigan Supreme Court (MSC) held that a child's placement with relatives weighs against termination of parental rights under MCL 712A.19a(6)(a), which states that initiation of termination proceedings is not required when the child is being cared for by a relative. The MSC reaffirmed this in *In re Mays*, holding that the trial court's failure to explicitly consider a child's placement with relatives during the best interests hearing renders the record "inadequate to make a best interests determination."

Following *Mason* and *Mays*, numerous court orders terminating parental rights have been reversed on appeal and remanded back to the trial court for further consideration of the child's placement with relatives as it relates to whether termination of parental rights is in the child's best interests. Cases remanded to the trial court for best interests analysis specific to the child living with a relative include:⁴

*In re Mays*⁵

In re Baker (Docket No. 304519)

In re Mullins (Docket No. 308119)

In re McQueen (Docket No. 309554)

In re Pope (Docket No. 306610)

In re Paez (Docket No. 309875)

In re Lebeau (Docket No. 310237)

In re Vogts (Docket No. 314253)

In re Heurer/Franzel (Docket No. 312594)

In re Rodriguez (313346)

In re Olive/Metts (297 Mich App 35, 2012)

In re Dobson (Docket No. 307478)

In re Coote (Docket No. 310579)

In re Town (Docket No. 310658)

In re COH minors (Docket No. 309161)

In re Freeman (Docket No. 312800)

In re Luckett (Docket No. 313038)

The appellate courts have not stated a prohibition against termination of parental rights when a child is placed with a relative; but rather, require that the lower court's consideration of the relative placement be clearly reflected in the record. While the number of recent reversals with regard to termination of parental rights cases appears high, only a small percentage of termination of parental rights cases are appealed and even fewer are reversed.⁶

¹ MCL 712a.19b.

² *In re Moss Minors*, ___ Mich App___; ___NW2d___ (Docket No. 311610).

³ 486 Mich 142, 164; 782 NW2d 747 (2010).

⁴ The majority of these cases are unpublished opinions by the Michigan Court of Appeals.

⁵ 490 Mich 997; 807 NW2d 304 (2012)

⁶ According to the Michigan Court of Appeals official reporting data for 2012, only 6.5 percent of all child protective trial court dispositions resulted in COA filings. Of those, more than 90 percent were affirmed.

II. Considerations for Best Interests Analysis

The court's best interests analysis in a termination of parental rights case should include comprehensive consideration of the various factors present in each case. The child's placement with a relative is one factor the court must consider, but should not be the only factor relevant to the best interests determination. In considering whether termination of parental rights is in a child's best interests the court may also wish to consider the following:

- The opinion of experts including psychologists and therapists, the caseworker, and the lawyer guardian ad litem.
- The likelihood of the child being adopted.
- The child's age.
- The child's wishes, if of a sufficient age to express an opinion.
- The child's relationships with extended relatives.
- Whether the child has special needs.
- Ethnic or cultural considerations.
- The length of time the child has been in foster care.
- The bond that exists between siblings.

This is not an exhaustive list of considerations, as each child protective proceeding includes facts and circumstances that may trigger other considerations in the best interests analysis. These considerations are only intended to highlight examples that are, in many cases, relevant to a best interests examination. The key is that the record regarding the best interests analysis should be supported by case-specific facts to illustrate that termination of parental rights is in the child's best interests, even if that child is placed with a relative.

2008-2012 TPR Dispositions

	2008		2009		2010		2011		2012	
	#	%	#	%	#	%	#	%	#	%
COA Opinions										
Affirmed in Full	531	93.5%	495	92.9%	385	90.6%	360	90.5%	358	86.5%
Relief Granted in Full: Reversed, Vacated, Remanded, or Other Relief	19	3.3%	17	3.2%	15	3.5%	18	4.5%	17	4.1%
Affirmed in Part; Reversed, Vacated, Remanded in Part	7	1.2%	13	2.4%	8	1.9%	9	2.3%	22	5.3%
Application Dismissed	0	0.0%	0	0.0%	1	0.2%	0	0.0%	0	0.0%
COA Orders										
Application for Leave Denied	5	0.9%	2	0.4%	10	2.4%	8	2.0%	11	2.7%
Application for Leave Granted	2	0.4%	2	0.4%	1	0.2%	2	0.5%	3	0.7%
Application for Leave Dismissed	4	0.7%	4	0.8%	3	0.7%	1	0.3%	2	0.5%
Summary Relief in Lieu of Granting Application	0	0.0%		0.0%	2	0.5%		0.0%	1	0.2%
All TPR Dispositions	568	100.0%	533	100.0%	425	100.0%	398	100.0%	414	100.0%

