STATE OF MICHIGAN

COURT OF APPEALS

In re CHELSEA FIGHTMASTER, a Minor.

FAMILY INDEPENDENCE AGENCY,

Appellee,

v

CHARLOTTE VIRGINIA MITCHELL,

Appellant.

UNPUBLISHED
October 3, 1997

No. 200437
Lapeer Probate Court
LC No. 96-002443

Before: Kelly, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Charlotte Mitchell appeals as of right from an order of the probate court denying her motion for a determination that William Johnson, the superintendent of the Michigan Children's Institute (MCI), acted arbitrarily and capriciously in withholding his consent to Mitchell's adoption of her granddaughter, Chelsea Fightmaster. We affirm.

Because Chelsea was permanently committed to MCI when her mother's parental rights were terminated, consent from an authorized representative of MCI was required before Chelsea could be adopted. MCL 710.43(1)(b); MSA 27.3178(555.43)(1)(b). On September 11, 1996, Johnson consented to Chelsea's adoption by Michael McDonald and Barbara McDonald, Mitchell's grandniece. MCI's parental rights were subsequently terminated on October 1, 1996. Mitchell argues that Johnson's grant of consent to the McDonalds had the effect of withholding such consent from Mitchell. She further argues that the probate court clearly erred when it failed to find that Johnson acted arbitrarily and capriciously in granting consent for the McDonald's adoption of Chelsea. We disagree. This Court reviews findings of fact made by a probate court for clear error. MCR 2.613(C); *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Estes Estate*, *supra* at 208.

The decision of an authorized representative to withhold consent to an adoption must be upheld unless the petitioner challenging the decision establishes by clear and convincing evidence that it was arbitrary and capricious. MCL 710.45(5); MSA 27.3178(555.45)(5); *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994). Thus, the focus of the probate court's inquiry is not whether the representative made the "correct" decision in withholding consent, but rather whether the representative acted arbitrarily and capriciously in doing so. *Cotton*, *supra* at 184. "[I]f there exist good reasons why consent should be granted and good reasons why it should be withheld, it cannot be said that the representative acted arbitrarily and capriciously in withholding consent." *Id.* at 185. Therefore, "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." *Id.*

Johnson testified at the motion hearing that, in consenting to Chelsea's adoption by the McDonalds, he relied on information supplied by Catholic Social Services of Oakland County (CSS), the placement agency that coordinated Chelsea's adoption. Initially, CSS adoption workers recommended that Chelsea be adopted by Mitchell. However, they later changed their recommendation, concluding in two reports prepared in August of 1996 that, for a variety of reasons, Chelsea's interests would be better served if she was adopted by the McDonalds. In particular, the updated reports stressed the fact that Mitchell was indecisive regarding her commitment to adopt Chelsea. One of the updated CSS reports also indicated that the McDonalds presented as "strong, experienced parents" who desired to adopt Chelsea. Johnson noted that the CSS reports upon which he relied had been approved by the Oakland County Family Independence Agency. Finally, Johnson testified that he did not recall ever being contacted by Mitchell prior to consenting to Chelsea's adoption by the McDonalds.

Accordingly, because (1) the updated CSS reports indicated that an adoption by the McDonalds would best serve Chelsea's interests, (2) the updated CSS reports indicated that Mitchell was not committed to adopting Chelsea, and (3) Johnson did not recall receiving any contrary indication from Mitchell herself, the record evidenced "good reasons" for Johnson to consent to Chelsea's adoption by the McDonalds.[1] *Cotton*, *supra* at 185. Therefore, we hold that the probate court's finding that Johnson did not act arbitrarily and capriciously was not clearly erroneous. *Estes Estate*, *supra* at 208.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

[1] Moreover, once Johnson granted his consent to the McDonalds (and MCI's parental rights were terminated), Johnson was without authority to consent to an adoption by Mitchell. See MCL 710.43; MSA 27.3178(555.43).