

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS CRAIG and FREIDA CRAIG,

Plaintiffs-Appellees,

v

WINDY HUDSON,

Defendant-Appellant.

UNPUBLISHED

December 30, 1997

No. 200193

Oakland Circuit Court

LC No. 95-498551-DC

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right an August, 1996, order granting joint legal custody of defendant's minor child to plaintiffs and defendant for a period not to exceed four years with physical custody of the child to plaintiffs and visitation to defendant. We affirm.

The minor child was born to defendant and Rodney Hudson in April, 1990. Defendant and Hudson were married approximately six months later. Plaintiffs are the child's paternal grandparents.¹ In March, 1992, Hudson, who was in the Marine Corps, was killed in a helicopter crash while on duty in Somalia. Shortly thereafter, plaintiffs began caring for the child on a continuous basis.

In December, 1994, plaintiffs were appointed the child's temporary guardians by the probate court. In June, 1995, and shortly before the guardianship expired, plaintiffs filed in circuit court a third-party complaint for custody of the child. Later that same month, the circuit court entered an order awarding legal and physical custody of the child to plaintiffs pending further order of the court and staying the guardianship proceedings in the probate court pending the outcome of the child custody dispute. Defendant subsequently moved in circuit court for summary disposition to terminate both the third-party custody case and the temporary guardianship. In May, 1996, the circuit court appointed a guardian ad litem for the child. In June, 1996, the guardian ad litem filed with the court a proposed plan recommending, in relevant part, that plaintiffs have physical custody of and defendant visitation with the child. A custody hearing was set for August, 1996.

In July, 1996, a pretrial hearing was held. During this hearing, the parties agreed to meet with the circuit court off the record in the court's chambers without their attorneys for the purpose of settling

the custody dispute. After this meeting, the court indicated on the record that the parties had basically agreed to the guardian ad litem's plan and that the court was going to treat the matter as a temporary custody situation with the goal being the eventual reunification of defendant and her child. The August order that is the subject of this appeal was purportedly entered in conformance with the court's ruling at the July hearing.

On appeal, defendant contends that the custody "settlement agreement" is not binding because "substantial questions exist with respect to whether there was truly consent to the substance of any agreement." It is true that parties must, in fact, consent to an agreement before the agreement will become effective. *Howard v Howard*, 134 Mich App 391, 397; 352 NW2d 280 (1984). However, we must also bear in mind that this is a custody case. The parties in a child custody case do not have the power to control the determination of custody by agreement. *Koron v Melendy*, 207 Mich App 188, 191; 523 NW2d 870 (1994). Rather, the determination of child custody rests in the discretion of the court. *Fletcher v Fletcher*, 447 Mich 871, 880; 526 NW2d 889 (1994); *Koron, supra*. The trial court is not bound by the parties' stipulation or agreements regarding child custody. *Sivorvey v Campbell*, 223 Mich App 59, 82; 565 NW2d 857 (1997); *Koron, supra* at 191. However, neither is the court precluded from accepting the parties' agreement and including it in the orders of the court. *Koron, supra*. In cases where the parties are in agreement regarding custody and visitation and present the court with such an agreement, the trial court need not expressly articulate each of the best interest factors. *Id.* at 192. Implicit in the court's acceptance of the parties' agreement is its determination that the arrangement is in the child's best interest. *Id.*

In this case, our review of the record indicates that parties did, in fact, agree to the guardian ad litem's written plan and the goal of reunifying defendant and her child as soon as possible with four years being an outer boundary for reunification. Our review further indicates that the August order as entered correctly reflects the agreement of the parties. Accordingly, we conclude that the trial court did not commit clear legal error on a major issue. *York v Morofsky*, ___ Mich App ___; ___ NW2d ___ (Docket No. 188845, issued 9/12/97), slip op p 1. Implicit in the court's acceptance of the plan, as agreed to by the parties, was its determination that the plan was in the child's best interest. *Koran, supra*. We therefore conclude that the court's ultimate dispositional custody ruling did not constitute a palpable abuse of discretion. *Id.*

Finally, there is no basis in the record for finding that plaintiffs' guardianship was a statutory limited guardianship. Thus, we reject defendant's argument that plaintiffs' temporary guardianship did not give plaintiffs standing to initiate a custody dispute. See *In re Ramon*, 208 Mich App 610, 614-615; 528 NW2d 831 (1995).

Affirmed.

/s/ Gary R. McDonald
/s/ Henry William Saad
/s/ Michael R. Smolenski

¹ Mr. Craig was Hudson's stepfather.