

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 20, 2011

In the Matter of SAH, Minor.

No. 302809
Muskegon Juvenile Division
LC No. 10-007638-AF

Before: O'CONNELL, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Petitioner appeals as of right the trial court's order under MCL 710.45, in which the trial court upheld the Michigan Children's Institute Superintendent's decision to deny consent for adoption. We affirm.

Petitioner is the biological grandmother of SAH, who was conceived in an act of incest between petitioner's son and petitioner's disabled daughter. SAH has been in foster care from the time she was one day old. Petitioner sought to adopt SAH; the Michigan Children's Institute (MCI) denied petitioner's request. The MCI Superintendent found, among other things, that petitioner had no bond with the child and that petitioner had not demonstrated an ability to provide a safe home environment for the child. In particular, the Superintendent found that petitioner had, on more than one occasion, failed to protect her children from sexual abuse. Petitioner objected to the decision and petitioned the trial court for adoption pursuant to MCL 710.45. After a hearing, the trial court found that the Superintendent's decision was not arbitrary or capricious, and accordingly upheld the decision.

We review the trial court's decision for clear legal error. *In re Keast*, 278 Mich App 415, 423; 750 NW2d 643 (2008); see also *Boyd v Civil Serv Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996). A trial court commits clear legal error when it "incorrectly chooses, interprets, or applies the law." *Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 336 (2008). A trial court reviewing the adoption decision of the MCI Superintendent may not decide the adoption issue de novo, nor may the court "substitute its judgment for that of the representative of the agency that must consent to the adoption." *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994).

In this case, we find no error in the trial court's decision. As the trial court noted, there was factual support for the Superintendent's decision to deny consent for adoption. During the hearing in the trial court, petitioner did not directly challenge the facts on which the Superintendent relied in making his decision. Petitioner admitted that she has never met SAH, and that she therefore has no bond with the child. Petitioner acknowledged that her disabled

daughter (SAH's mother) was twice the victim of sexual assault in petitioner's home. The reports admitted into evidence confirmed the testimony at the hearing. On the record before us, we find that there was factual support for the trial court's decision, and that petitioner failed to present clear and convincing evidence that the MCI Superintendent's decision was arbitrary and capricious. See MCL 710.45(7) ("Unless the petitioner establishes by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall deny the motion . . . and dismiss the petition to adopt.")

Petitioner argues that the MCI Superintendent and the trial court were biased against her. However, petitioner did not present facts to support her allegation, and we find no evidence of bias on the record. The MCI Superintendent's decision was well-reasoned and was supported by facts. The trial court properly found that the MCI Superintendent did not act arbitrarily or capriciously. Thus, there is nothing to indicate that either the Superintendent or the trial court was biased against petitioner.

Affirmed.

/s/ Peter D. O'Connell
/s/ Patrick M. Meter
/s/ Jane M. Beckering