

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GREEN, Minors.

UNPUBLISHED
February 25, 2014

No. 317228
Oakland Circuit Court
Family Division
LC Nos. 09-765645-NA
13-810301-JG
13-810302-JG

Before: MURPHY, C.J., and M.J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the family court's decision to place two of her children with the maternal grandparents in a juvenile guardianship after the children had previously been made temporary wards of the court. Respondent's parental rights were not terminated, although she claims that the guardianship resulted in a de facto termination. We affirm on the basis of the law of the case doctrine.

A petition seeking a temporary wardship over respondent's two children was filed in November 2009 based on allegations that respondent failed to protect the children from a boyfriend who was physically and sexually abusive to the children. Respondent entered a plea of admission to certain allegations, thereby providing the court jurisdiction over the children. A parent-agency treatment plan and service agreement was executed and dispositional review hearings were regularly conducted. During the first couple of years of the wardship, the permanency planning goal was reunification. But in October 2012, the Department of Human Services (DHS) recommended a permanency plan of a juvenile guardianship with the maternal grandparents; they had been caring for the children since the inception of the protective proceedings. Respondent was ultimately not in favor of a guardianship and vigorously argued against it.

In November 2012, the family court entered an order following a dispositional review/permanency planning hearing, which order provided that reasonable efforts had been made to preserve and reunify the family, that respondent had made some progress toward alleviating the conditions that had caused the children to be made wards of the state, that returning the children to respondent would, however, still cause a substantial risk of harm. The order further provided that although the children should not be returned to her care DHS should not initiate termination proceedings because a juvenile guardianship would be in the children's

best interests. For purposes of the prospective guardianship, the order directed DHS to conduct a criminal background check and central registry clearance of the maternal grandparents and to perform a home study of the grandparents' home.

On February 11, 2013, respondent filed a delayed application for leave to appeal with this Court in Docket No. 314748, challenging the family court's November 2012 ruling. In the application, respondent argued that the juvenile guardianship imposed under MCL 712A.19a violated her constitutional due process rights as a parent, where it resulted in a de facto termination of her parental rights absent proof by clear and convincing evidence that she was unfit, and where the guardianship statute improperly focuses solely on a child's best interests without contemplating a parent's fitness. Respondent further argued that the family court violated her rights under statute, the court rules, and the Due Process Clause by not allowing her to submit evidence at the hearing. Finally, in the application for leave, respondent maintained that the family court erred in its factual findings and that the court's ruling was not supported by the record. On May 24, 2013, this Court denied respondent's delayed application for leave to appeal "for *lack of merit* in the grounds presented." *In re Green Minors*, unpublished order of the Court of Appeals, entered May 24, 2013 (Docket No. 314748) (emphasis added). Respondent did not seek leave to appeal in the Michigan Supreme Court.

Subsequently, on July 11, 2013, the juvenile guardianship was formally established by the family court by order after the background checks and home study were completed without issue. At an earlier hearing on July 8, 2013, the family court stated that the guardianship office had accepted the goal of a juvenile guardianship, and the court acknowledged that respondent's "appeal ha[d] been denied."¹ On July 15, 2013, respondent filed the claim of appeal before us today. Importantly, respondent raises the very same arguments that she proffered in her application for leave, which were rejected on the merits by this Court.

"The law of the case doctrine provides that if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issue determined by the appellate court will not be differently decided on a subsequent appeal in the same case where the facts remain materially the same." *Grace v Grace*, 253 Mich App 357, 362-363; 655 NW2d 595 (2002), citing *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000). An order entered by this Court that resolves a particular issue on the "merits" implicates the law of the case doctrine and has preclusive effect. *People v Hayden*, 132 Mich App 273, 297; 348 NW2d 672 (1984) (earlier order of denial "for lack of merit in the ground presented". . . precluded [current panel] from reaching the merits of th[e] issue by the law of the case doctrine"); *People v Douglas*, 122 Mich App 526, 529-530; 332 NW2d 521 (1983) (previous panel's order of denial for "lack of merit in the grounds presented". . . is the law of the case, barring further review of the issue in this Court"); *People v Wiley*, 112 Mich App 344, 346; 315 NW2d 540 (1981). Here, the facts remain materially the same and there has been no intervening change in the law;

¹ Respondent's application for leave and this Court's order denying the application on the merits is contained in the lower court record.

therefore, the law of the case doctrine applies. *Grace*, 253 Mich App at 363. We decline to exercise any discretion that we may have to avoid application of the doctrine. *Id.*

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause