

Appendix A.

**Michigan Supreme Court
Lansing, Michigan**

Order

November 1, 2017

SC: 155835

COA: 333682

Wayne CC Family
Division: 16-000117-AO

155835 (69)

In re CAW and EDGW, Minors.

On order of the Court, the motion for reconsideration of this Court's September 12, 2017 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

WILDER, J., did not participate because he was on the Court of Appeals panel.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 1, 2017

/s/ *Larry S. Royster*
Clerk

Appendix B.

**Michigan Supreme Court
Lansing, Michigan**

Order

September 12, 2017

SC: 155835

COA: 333682

Wayne CC Family

Division: 16-000117-AO

155835

In re CAW and EDGW, Minors.

On order of the Court, the application for leave to appeal the February 14, 2017 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WILDER, J., did not participate because he was on the Court of Appeals panel.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 12, 2017

/s/ Larry S. Royster

Clerk

Appendix C.

Court of Appeals, State of Michigan

Order

In re CAW, EDGW, minors

Kurtis T. Wilder

Presiding Judge

Docket No. 333682

Mark J. Cavanagh

LC No. 16-000117-AO

Kirsten Frank Kelly

Judges

/

The Court orders that the motion for reconsideration
is DENIED.

/s/ *Kurtis T. Wilder*

Presiding Judge

A true copy entered and certified by Jerome W.
Zimmer Jr., Chief Clerk, on

April 20, 2017

Date

/s/ *Jerome W. Zimmer Jr.*

Chief Clerk

Appendix D.

**STATE OF MICHIGAN
COURT OF APPEALS**

In re CAW and EDGW, Minors.

UNPUBLISHED

February 14, 2017

No. 333682
Wayne Circuit Court
Family Division
LC No. 16-000117-AO

Before: WILDER, P.J., and CAVANAGH and K. F. KELLY,
JJ.

PER CURIAM.

Petitioners, proceeding *in propria persona*, appeal as of right a circuit court order denying their § 45 challenge, MCL 710.45, to the decision of the Michigan Children Institute's superintendent withholding consent to adopt, and dismissing petitioners' petition to adopt the two minor children. We affirm.

I. FACTS AND PROCEEDINGS

Petitioners are the maternal grandmother and step-grandfather of the two minor children. The children were removed from their mother's custody in a prior child protection proceeding because of ongoing physical abuse inflicted by their mother's boyfriend. Petitioners offered their home as a placement setting for the children in the prior proceeding. Their request was denied, in part, because petitioner GP had been placed on Child Protective Services

(CPS) Central Registry for an incident of abuse against the minor children's mother, AW, in 2003, when AW was a teenager, which resulted in GP's conviction of fourth-degree child abuse. In addition, there were concerns that petitioners did not fully acknowledge AW's responsibility for the children's abuse, and the children's therapist recommended against contact with relatives due to the trauma the children had suffered from their exposure to abuse. Therefore, the children were placed in non-relative foster care.

The parental rights of AW were eventually terminated in June 2015.¹ Petitioners subsequently filed a petition with respondent, the Michigan Children's Institute (MCI), requesting the MCI superintendent's consent to their adoption of the minor children. Following an investigation, the superintendent denied petitioners consent to adopt.² Petitioners requested a § 45 hearing in circuit court, MCL 710.45, to challenge the superintendent's decision. Following a hearing, the circuit court found that the superintendent's decision to withhold consent to adopt was not arbitrary or capricious, and therefore, denied petitioners' motion and dismissed their petition to adopt. Petitioners appeal that decision.

II. REVIEW OF THE MCI SUPERINTENDENT'S DECISION

Petitioners argue that the circuit court's decision denying their § 45 challenge was the product of judicial bias and misconduct, as well as the court's misunderstanding and misapplication of the applicable law. We disagree.

¹ This Court affirmed that decision in *In re Wilson*, unpublished opinion per curiam of the Court of Appeals, issued May 26, 2016 (Docket No. 328388).

² The superintendent later granted a competing application for consent to adopt filed by the children's foster parents.

MCL 710.45(2) provides that if an adoption petitioner is denied consent to adopt, “the petitioner may file a motion with the court alleging that the decision to withhold consent was arbitrary and capricious.” “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.” MCL 710.45(7). Thus, “[p]ursuant to MCL 710.45, a family court’s review of the superintendent’s decision to withhold consent to adopt a state ward is limited to determining whether the adoption petitioner has established clear and convincing evidence that the MCI superintendent’s withholding of consent was arbitrary and capricious.” *In re Keast*, 278 Mich App 415, 423; 750 NW2d 643 (2008). Whether the circuit court properly applied this standard is a question of law, which this Court reviews for clear legal error. *Id.*

Because petitioners did not move for the circuit court judge’s disqualification or otherwise raise the issue of judicial bias or misconduct before the circuit court, these claims are not preserved. See MCR 2.003(D); *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011). Accordingly, we review the unpreserved claims for plain error affecting petitioners’ substantial rights. *Id.*

When reviewing the MCI superintendent’s decision, “if there exist good reasons why consent should be granted and good reasons why consent should be withheld, it cannot be said that the representative acted arbitrarily and capriciously in withholding that consent even though another individual . . . might have decided the matter in favor of the petitioner.” *In re ASF*, 311 Mich App 420, 436; 876 NW2d 253 (2015), quoting *In re Cotton*, 208 Mich App 180, 185; 526 NW2d 601 (1994). The generally accepted meaning of “arbitrary” is “determined by whim or caprice,” or “arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to

principles, circumstances, or significance, . . . decisive but unreasoned." *Goolsby v Detroit*, 419 Mich 651, 678; 358 NW2d 856 (1984) (quotation marks and citations omitted). The generally accepted meaning of "capricious" is "[a]pt to change suddenly; freakish; whimsical; humorsome." *Id.* (quotation marks and citations).

Petitioners argue that the circuit court "abused [its] discretion" and improperly believed that it "didn't have any discretion in making a decision based on [its] faulty interpretation of the legislature's intentions of the law." The record discloses that the circuit court accurately recited the governing standard. Indeed, its recitation of the law is a nearly verbatim statement of the applicable legal standard set forth in this Court's decision in *In re ASF*, 311 Mich App at 436. The court properly acted within the narrow confines of MCL 710.45. It did not have discretion to revisit the superintendent's decision based on its own evaluation of the evidence, or based on a finding that the superintendent should have subjected the foster parents to greater scrutiny. The circuit court also did not have discretion or authority to require the superintendent to compare the foster family and petitioners on an equal basis. The superintendent was not required to start with a presumption of equality between petitioners and the foster family; rather, she was prohibited from deciding the matter arbitrarily (by whim or caprice) or capriciously (freakish or apt to change suddenly). See MCL 710.45(7); *Goolsby*, 419 Mich at 678; *In re ASF*, 311 Mich App at 436. The record discloses that the circuit court properly confined its review to whether the MCI superintendent withheld consent for reasons that were arbitrary and capricious.

The superintendent explained that she denied petitioners' request for consent to adopt because moving the children out of a stable home, where they had begun to recover from the trauma of their abusive home, and where they had formed attachments with the foster parents, would

be traumatic and disruptive for the very young children. This decision was not whimsical; it was based on reports by social workers and therapists who had been in contact with the children and the foster family. Moreover, the superintendent testified that she also gave weight to petitioner LP's equivocations regarding her daughter AW's failure to protect the children, and to petitioner GP's past incident of abuse against AW. These facts raised reasonable concerns about the children's possible contact with their mother, and the concern that GP might lose control of his temper as he did with his AW. The superintendent's testimony established that good reasons for denying consent to adopt existed. See *In re ASF*, 311 Mich App at 436.

Petitioners assert that the circuit court judge was unprofessional, that he repeatedly expressed his dislike of adoption cases, and that he was biased in respondent's favor. A party "claiming judicial bias must overcome a heavy presumption of judicial impartiality." *Jackson*, 292 Mich App at 598 (internal quotation marks and citation omitted). "[A] trial judge's remarks made during trial, which are critical of or hostile to counsel, the parties, or their cases, ordinarily do not establish disqualifying bias." *In re MKK*, 286 Mich App 546, 567; 781 NW2d 132 (2009). Bias is not established "merely by repeated rulings against a litigant, even if the rulings are erroneous." *Id.* at 566.

We have reviewed the challenged conduct and comments by the circuit court judge and find no indication that he was biased or partial against petitioners or in favor of respondent. Although the judge candidly admitted his discomfort with competing adoption cases, there is no indication that he was partial to one side or the other, or inattentive to this case. On the contrary, the judge was fully engaged in the hearing. He actively addressed the attorneys' arguments, even when they became redundant. Viewed in context, the judge's comments about his displeasure with adoption cases pertained to the emotionally charged nature

of the proceedings and the recognition that his decisions in such cases are difficult because children's futures are at stake. The judge's comments reflect conscientiousness, not indifference.

The circuit court judge's conduct and remarks do not evince bias against petitioners or in favor of respondent. The judge gave petitioners substantial leeway in allowing their counsel to question the MCI superintendent outside the narrow scope of the arbitrary and capricious inquiry. The judge demonstrated patience with petitioners' counsel's repeated arguments that the arbitrary and capricious standard allowed him to delve into the details of the superintendent's investigation. The instance in which the judge invited an objection on respondent's behalf, but respondent's counsel replied that she had no objection, involved petitioners' questions to the superintendent regarding information obtained from the guardian ad litem, which implicated the attorney-client privilege. The judge did not overrule petitioners' objections to respondent's opening remarks based on "professional courtesy." Rather, he rejected petitioners' characterization of the argument as "eliciting testimony," and replied that the attorneys have substantial freedom in opening statements. Regardless, the trial was not a jury trial, so there was no danger of a jury confusing arguments with evidence.

In sum, the record does not support petitioners' claims that the circuit court improperly applied the law, or that its decision was the product of judicial bias or misconduct.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioners argue that the attorney who represented them at the outset of this case, and the attorney who assumed their representation, committed numerous errors that amounted to ineffective assistance of counsel. Petitioners seek a new trial on that basis. The question

whether ineffective assistance of counsel is grounds for relief in an adoption case is a question of law, which is reviewed de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

In the criminal context, a defendant may obtain relief from a conviction if the performance of defense counsel "was so objectively deficient that counsel was not performing as the attorney guaranteed by the constitution." *People v Orlewicz*, 293 Mich App 96, 107-108; 809 NW2d 194 (2011). The relationship between a criminal defendant's constitutional right to liberty, and the concept of ineffective assistance as grounds for relief in a criminal case, is reflected in our Supreme Court's decision in *People v Trakhtenberg*, 493 Mich 38; 826 NW2d 136 (2012). In *Trakhtenberg*, the Supreme Court held that the doctrine of collateral estoppel did not preclude a criminal defendant from raising a claim of ineffective assistance of counsel in a criminal matter although that defendant had failed to prevail in a legal malpractice action against the attorney in a related civil case. *Id.* at 50-51. The Supreme Court held that a "defendant's interest when pursuing his civil malpractice claim differed from his interest in asserting his constitutional right to effective counsel in the criminal proceeding." *Id.* at 51. The Court explained that the defendant "sought monetary gain in the malpractice case, whereas in his criminal case he seeks protection of a constitutional right and his liberty." *Id.*

The criminal law concept of ineffective assistance of counsel applies by analogy to child protection proceedings. *In re J R Martin*, Mich App ; NW2d (2016) (Docket Nos. 330231; 330232); slip op at 5. The basis for applying the concept of ineffective assistance of counsel to child protection proceedings is the recognition that "[p]arents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re Sanders*, 495 Mich

394, 409; 852 NW2d 524 (2014), quoting *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

The constitutional interests arising from criminal prosecutions and child protection proceedings do not apply to this case. Unlike parents, grandparents do not have a fundamental right to a relationship with their grandchildren. *Brinkley v Brinkley*, 277 Mich App 23, 31; 742 NW2d 629 (2007). In *Brinkley*, a case involving grandparents' right to visitation with their grandchildren, this Court noted that MCL 722.27b, which limits the circumstances in which grandparents can petition for visitation, was amended to correct constitutional deficiencies in the prior version of the statute. *Id.* at 32. The prior version was constitutionally defective because it infringed upon "the parents' fundamental right to manage the upbringing of their children." *Id.* When parental rights have been terminated, as occurred in this case, there is no longer a conflict between the rights of parents and the interests of grandparents. Because petitioners do not have a constitutionally protected interest in their right to a relationship with the minor children, there is no basis for applying the concept of ineffective assistance of counsel to their legal representation in this adoption case. Accordingly, we reject petitioners' request for relief on this ground.

IV. ACCUSATIONS OF UNETHICAL CONDUCT

Petitioners accuse the MCI superintendent, the children's guardian ad litem, and the foster parents of improper and unethical misconduct. These claims are without merit.

Petitioners contend that the MCI superintendent fabricated evidence and presented false testimony. Although petitioners questioned the foundation for some of the superintendent's conclusions, there is no indication that the superintendent fabricated evidence or presented false

evidence. The superintendent explained what documents and evidence she consulted, and which items she considered important. The superintendent candidly admitted that she did not conduct an in-depth investigation of all of petitioners' circumstances. She explained that maintaining the continuity of the children's placement with their foster parents weighed against placing them with petitioners. The superintendent was not inconsistent in her testimony regarding petitioner LP's health problems or petitioner GP's CPS history and expunged conviction. The superintendent testified that petitioner LP's cancer was not a significant consideration in her decision to withhold consent to adopt because it was in remission. The superintendent did not contradict herself on this matter. The superintendent stated that she did not place a lot of emphasis on petitioner GP's prior conviction for child abuse, but explained that the incident was of some concern because it was reflective of his ability to control his temper.

Petitioners' accusations against the children's GAL primarily involve an unrelated case in which the attorney was involved as a party. Petitioners have not shown that these accusations have any relevancy to this case. Likewise, petitioners' remaining accusations against the GAL and against the foster parents have no relevance to the determination whether the MCI superintendent's decision denying petitioners' request for consent to adopt was arbitrary and capricious.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly

Appendix E.

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT – FAMILY
DIVISION

Case Nos. 16-000117-AO

IN THE MATTER OF:

16-000118-AO

Cody Anthony Wilson and Hon. Christopher D. Dingell
Emmett D. Grant Wilson, Minors.

LISA DAWN PARTIN and
GREG D. PARTIN,

Petitioners,

v

MICHIGAN CHILDREN'S INSTITUTE,

Respondent.

ORDER DENYING PETITIONERS' SECTION 45
MOTION AND DISMISSING PETITIONS TO ADOPT

This matter came before the Court on Petitioners' Section 45 motion. A hearing was held on May 26, 2016 and June 10, 2016, and for the reasons stated on the record, the Court orders as follows:

IT IS ORDERED that Petitioners' Section 45 motion is denied.

14a

IT IS FURTHER ORDERED that Petitioners' petitions to adopt the minors are dismissed.

Petitioners' attorney is released unless retained in post-adoption proceedings.

This resolves the last pending claim and closes this case.

Dated: 06/10/2016

/s/ Christopher D. Dingell
CIRCUIT COURT JUDGE

Appendix F.

U.S.C. Const. Amend. XIV provides:

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND
IMMUNITIES; DUE PROCESS; EQUAL PROTECTION;
APPOINTMENT OF REPRESENTATION;
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT;
ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or

under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

MCLS § 710.21a. General purposes of chapter.

The general purposes of this chapter are:

(a) To provide that each adoptee in this state who needs adoption services receives those services.

(b) To provide procedures and services that will safeguard and promote the best interests of each adoptee in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.

(c) To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.

(d) To achieve permanency and stability for adoptees as quickly as possible.

(e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.

MCLS § 710.22. Definitions.

As used in this chapter:

(a) "Adoptee" means the individual who is to be adopted, regardless of whether the individual is a child or an adult.

(b) "Adoption attorney" means an attorney acting as counsel in an adoption proceeding or case.

(c) "Adult former sibling" means an individual who is 18 years of age or older and is related to an adult adoptee either biologically or through adoption by at least 1 common parent, regardless of whether the adult former sibling ever lived in the same household as the adult adoptee.

(d) "Agency placement" means a placement in which a child placing agency, the department, or a court selects the adoptive parent for the child and transfers physical custody of the child to the prospective adoptive parent.

(e) "Applicant" means an individual or individuals who desire to adopt a child and who have submitted an adoption application to a child placing agency.

(f) "Attending practitioner" means a licensed physician or a registered professional nurse certified as a nurse midwife by the Michigan board of nursing.

(g) "Best interests of the adoptee" or "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date:

(i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or, in the case of a hearing under section 39 of this chapter, the putative father and the adoptee.

(ii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee.

(iii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father, to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(v) The permanence as a family unit of the proposed adoptive home, or, in the case of a hearing under section 39 of this chapter, the home of the putative father.

(vi) The moral fitness of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father.

(vii) The mental and physical health of the adopting individual or individuals or, in the case of a

hearing under section 39 of this chapter, of the putative father, and of the adoptee.

(viii) The home, school, and community record of the adoptee.

(ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference.

(x) The ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings.

(xi) Any other factor considered by the court to be relevant to a particular adoption proceeding, or to a putative father's request for child custody.

(h) "Born out of wedlock" means a child conceived and born to a woman who was not married from the conception to the date of birth of the child, or a child whom the court has determined to be a child born during a marriage but not the issue of that marriage.

(i) "Central adoption registry" means the registry established by the department under section 27b of this chapter to control the release of identifying adoption information.

(j) "Child" means an individual less than 18 years of age.

(k) "Child placing agency" means a private organization licensed under 1973 PA 116, MCL 722.111 to 722.128, to place children for adoption.

(l) "Consent" means a document in which all parental rights over a specific child are voluntarily relinquished to the court for placement with a specific adoptive parent.

(m) "Court" means the family division of circuit court of this state, or if the context requires, the court having jurisdiction over adoption in another state or country.

(n) "Department" means the family independence agency.

(o) "Direct placement" means a placement in which a parent or guardian selects an adoptive parent for a child, other than a stepparent or an individual related to the child within the fifth degree by marriage, blood, or adoption, and transfers physical custody of the child to the prospective adoptive parent.

(p) "Formal placement" means a placement that is approved by the court under section 51 of this chapter.

(q) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(r) "Petitioner", except as used in section 68b of this chapter, means the individual or individuals who file an adoption petition with the court.

(s) "Placement" or "to place" means selection of an adoptive parent for a child and transfer of physical custody of the child to a prospective adoptive parent according to this chapter.

(t) "Relative" means an individual who is related to the child within the fifth degree by marriage, blood, or adoption.

(u) "Release" means a document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency.

(v) "Rescission petition" means a petition filed by an adult adoptee and his or her parent whose rights have been terminated to rescind the adoption in which a stepparent acquired parental rights and to restore parental rights of that parent according to section 66 of this chapter.

(w) "Suitable to be a parent of an adoptee" means a conclusion that there is no specific concern with respect to an individual that would suggest that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well-being of the child.

(x) "Temporary placement" means a placement that occurs before court approval under section 51 of this chapter and that meets the requirements of section 23d of this chapter.

(y) "Within the fifth degree by marriage, blood, or adoption" means any of the following relationships: parent, step-parent, grandparent, step-grandparent, brother, step-brother, sister, step-sister, uncle, step-uncle, aunt, step-aunt, first cousin, step-first cousin, great aunt, step-great aunt, great uncle, step-great uncle, great grandparent, step-great grandparent, first cousin once removed, step-first cousin once removed, great great grandparent, step-great great grandparent, great great uncle, step-great great uncle, great great aunt, step-great great aunt, great great great grandparent, or step-great great great grandparent.

MCL § 710.43. Consent to adoption; persons authorized to execute.

(1) Subject to this section and sections 44 and 51 of this chapter, consent to adoption of a child shall be executed:

(a) By each parent of a child to be adopted or the surviving parent, except under the following circumstances:

(i) The rights of the parent have been terminated by a court of competent jurisdiction.

(ii) The child has been released for the purpose of adoption to a child placing agency or to the department.

(iii) A guardian of the child has been appointed.

(iv) A guardian of a parent has been appointed.

(v) A parent having legal custody of the child is married to the petitioner.

(b) By the authorized representative of the department or his or her designee or of a child placing agency to whom the child has been permanently committed by an order of the court.

(c) By the court or by a tribal court having permanent custody of the child.

(d) By the authorized representative of the department or his or her designee or of a child placing agency to whom the child has been released.

(e) By the guardian of the child, subject to subsection (5), if a guardian has been appointed.

(f) By the guardian of a parent, subject to subsection (6), if a guardian has been appointed.

(g) By the authorized representative of a court or child placing agency of another state or country that has authority to consent to adoption.

(2) If the child to be adopted is over 14 years of age, that child's consent is necessary before the court may enter an order of adoption.

(3) If the individual to be adopted is an adult, the individual's consent is necessary before the court may enter an order of adoption, but consent by any other individual is not required.

(4) If the parent of the child to be adopted is an unemancipated minor, that parent's consent is not valid unless a parent, guardian, or guardian ad litem of that minor parent has also executed the consent.

(5) The guardian of the child to be adopted shall not execute a consent to that child's adoption according to subsection (1) unless the guardian has first obtained authority to execute the consent from the court that appointed the guardian.

(6) The guardian of a parent shall not execute a consent to the adoption of the parent's child according to subsection (1) unless the guardian has first obtained authority to execute the consent from the court that appointed the guardian. The consent shall have the same effect as if the consent were executed by the parent.

(7) If the petitioner for adoption is married to the parent having legal custody of the child and that parent has joined the petitioner in filing the petition for adoption, that parent

shall not execute a consent to the adoption. The consent of the parent who does not have legal custody of the child and whose parental rights have not been terminated shall be executed before the court may enter an order of adoption under section 56 of this chapter.

Chapter X Michigan Adoption Code (§§ 710.1 — 710.70)

MCL § 710.45. Withholding of consent by representative or court; motion by petitioner; decision by court; termination of rights; entering orders; appeal.

(1) A court shall not allow the filing of a petition to adopt a child if the consent of a representative or court is required by section 43(1)(b), (c), or (d) of this chapter unless the petition is accompanied by the required consent or a motion as provided in subsection (2).

(2) If an adoption petitioner has been unable to obtain the consent required by section 43(1)(b), (c), or (d) of this chapter, the petitioner may file a motion with the court alleging that the decision to withhold consent was arbitrary and capricious. A motion under this subsection shall contain information regarding both of the following:

(a) The specific steps taken by the petitioner to obtain the consent required and the results, if any.

(b) The specific reasons why the petitioner believes the decision to withhold consent was arbitrary and capricious.

(3) If consent has been given to another petitioner and if the child has been placed with that other petitioner according to an order under section 51 of this chapter, a motion under this section shall not be brought after either of the following:

(a) Fifty-six days following the entry of the order placing the child.

(b) Entry of an order of adoption.

(4) In an adoption proceeding in which there is more than 1 applicant, the petition for adoption shall be filed with the

court of the county where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated.

(5) The court shall provide notice of a motion brought under this section to all interested parties as described in section 24a(1) of this chapter, the guardian ad litem of the prospective adoptee if one has been appointed during a child protection proceeding, and the applicant who received consent to adopt.

(6) Upon the filing of a petition to adopt a child and the motion described in subsection (2), the court may waive or modify the full investigation of the petition provided in section 46 of this chapter. The court shall decide the motion within 91 days after the filing of the motion unless good cause is shown.

(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 described in subsection (2) and dismiss the petition to adopt.

(8) If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall issue a written decision and may terminate the rights of the appropriate court, child placing agency, or department and may enter further orders in accordance with this chapter or section 18 of chapter XIII A as the court considers appropriate. In addition, the court may grant to the petitioner reimbursement for petitioner's costs of preparing, filing, and arguing the motion alleging the withholding of consent was arbitrary and capricious, including a reasonable allowance for attorney fees.

- (9) If the consent at issue is that required of the court under section 43(1)(c) of this chapter, the motion shall be heard by a visiting judge assigned according to section 8212 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8212.
- (10) The court's decision on a motion brought under this section is appealable by right to the court of appeals.

Chapter XIIA Jurisdiction, Procedure, And Dispositions Involving Minors (§§ 712A.1 — 712A.32)

MCL § 712A.1. Definitions; proceedings not considered criminal proceedings; construction of chapter.

(1) As used in this chapter:

(a) "Civil infraction" means that term as defined in section 113 of the revised judicature act of 1961, 1961 PA 236, MCL 600.113.

(b) "Competency evaluation" means a court-ordered examination of a juvenile directed to developing information relevant to a determination of his or her competency to proceed at a particular stage of a court proceeding involving a juvenile who is the subject of a delinquency petition.

(c) "Competency hearing" means a hearing to determine whether a juvenile is competent to proceed.

(d) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(e) "Court" means the family division of circuit court.

(f) "Department" means the department of health and human services. A reference in this chapter to the "department of social welfare" or the "family independence agency" means the department of health and human services.

(g) "Foreign protection order" means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(h) "Incompetent to proceed" means that a juvenile, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceeding or is unable to do 1 or more of the following:

(i) Consult with and assist his or her attorney in preparing his or her defense in a meaningful manner.

(ii) Sufficiently understand the charges against him or her.

(i) "Juvenile" means a person who is less than 17 years of age who is the subject of a delinquency petition.

(j) "Least restrictive environment" means a supervised community placement, preferably a placement with the juvenile's parent, guardian, relative, or a facility or conditions of treatment that is a residential or institutional placement only utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

(k) "Licensed child caring institution" means a child caring institution as defined and licensed under 1973 PA 116, MCL 722.111 to 722.128.

(l) "MCI" means the Michigan children's institute created and established by 1935 PA 220, MCL 400.201 to 400.214.

(m) "Mental health code" means the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(n) "Personal protection order" means a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes a valid foreign protection order.

(o) "Qualified juvenile forensic mental health examiner" means 1 of the following who performs forensic mental health examinations for the purposes of sections 1062 to 1074 of the mental health code but does not exceed the scope of his or her practice as authorized by state law:

(i) A psychiatrist or psychologist who possesses experience or training in the following:

(A) Forensic evaluation procedures for juveniles.

(B) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(C) Clinical understanding of child and adolescent development.

(D) Familiarity with competency standards in this state.

(ii) A mental health professional other than a psychiatrist or psychologist who has completed a juvenile competency training program for forensic mental health examiners that is endorsed by the department under section 1072 of the mental health code and who possesses experience or training in all of the following:

(A) Forensic evaluation procedures for juveniles.

(B) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(C) Clinical understanding of child and adolescent development.

(D) Familiarity with competency standards in this state.

(p) "Qualified restoration provider" means an individual who the court determines, as a result of the opinion provided by the qualified forensic mental health examiner, has the skills and training necessary to provide restoration services. The court shall take measures to avoid any conflict of interest among agencies or individuals who may provide evaluation and restoration.

(q) "Reasonable and prudent parenting standard" means decisions characterized by careful and sensible parental decisions that maintain a child's health, safety, and best interest while encouraging the emotional and developmental growth of the child when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

(r) "Restoration" means the process by which education or treatment of a juvenile results in that juvenile becoming competent to proceed.

(s) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(t) "Valid foreign protection order" means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

(2) Except as otherwise provided, proceedings under this chapter are not criminal proceedings.

(3) This chapter shall be liberally construed so that each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile's welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.

Act 203 of 1994 Foster Care And Adoption Services Act (§§ 722.951 — 722.960)

MCL § 722.954a. Placement of child in supervising agency's care; determination of placement with relative; notification; special consideration and preference to child's relative; placement of siblings; documentation of decision; review hearing.

(1) If a child has been placed in a supervising agency's care under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, the supervising agency shall comply with this section and sections 4b and 4c.

(2) Upon removal, as part of a child's initial case service plan as required by rules promulgated under 1973 PA 116, MCL 722.111 to 722.128, and by section 18f of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18f, the supervising agency shall, within 30 days, identify, locate, notify, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs.

(3) The notification of relatives required in subsection (2) shall do all of the following:

(a) Specify that the child has been removed from the custody of the child's parent.

(b) Explain the options the relative has to participate in the care and placement of the child, including any option that may be lost by failing to respond to the notification.

(c) Describe the requirements and benefits, including the amount of monetary benefits, of becoming a licensed foster family home.

(d) Describe how the relative may subsequently enter into an agreement with the department for guardianship assistance.

(4) Not more than 90 days after the child's removal from his or her home, the supervising agency shall do all of the following:

(a) Make a placement decision and document in writing the reason for the decision.

(b) Provide written notice of the decision and the reasons for the placement decision to the child's attorney, guardian, guardian ad litem, mother, and father; the attorneys for the child's mother and father; each relative who expresses an interest in caring for the child; the child if the child is old enough to be able to express an opinion regarding placement; and the prosecutor.

(5) Before determining placement of a child in its care, a supervising agency shall give special consideration and preference to a child's relative or relatives who are willing to care for the child, are fit to do so, and would meet the child's developmental, emotional, and physical needs. The supervising agency's placement decision shall be made in the best interests of the child.

(6) Reasonable efforts shall be made to do the following:

(a) Place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the supervising agency documents that a joint placement would be contrary to the safety or well-being of any of the siblings.

(b) In the case of siblings removed from their home who are not jointly placed, provide for at least monthly visitation or other ongoing contact between the siblings,

unless the supervising agency documents that at least monthly visitation or other ongoing contact would be contrary to the safety or well-being of any of the siblings.

(7) If siblings cannot be placed together or not all the siblings are being placed in foster care, the supervising agency shall make reasonable efforts to facilitate at least monthly visitation or other ongoing contact with siblings unless a court has determined that at least monthly visitation or other ongoing contact with siblings would not be beneficial under section 13a(16) of chapter XIII of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(8) If the supervising agency discontinues visitation or other ongoing contact with siblings because the supervising agency determines that visitation or other ongoing contact is contrary to the safety or well-being of any of the siblings, the supervising agency shall report its determination to the court for consideration at the next review hearing.

(9) A person who receives a written decision described in subsection (4) may request in writing, within 5 days, documentation of the reasons for the decision, and if the person does not agree with the placement decision, he or she may request that the child's attorney review the decision to determine if the decision is in the child's best interest. If the child's attorney determines the decision is not in the child's best interest, within 14 days after the date of the written decision the attorney shall petition the court that placed the child out of the child's home for a review hearing. The court shall commence the review hearing not more than 7 days after the date of the attorney's petition and shall hold the hearing on the record.

Chapter LXII Perjury (§§ 750.422 — 750.427)

MCL § 750.422. Perjury committed in courts.

Perjury committed in courts—Any person who, being lawfully required to depose the truth in any proceeding in a court of justice, shall commit perjury shall be guilty of a felony, punishable, if such perjury was committed on the trial of an indictment for a capital crime, by imprisonment in the state prison for life, or any term of years, and if committed in any other case, by imprisonment in the state prison for not more than 15 years.