

IN THE CIRCUIT COURT FOR THE COUNTY OF NEWAYGO
STATE OF MICHIGAN

IN THE MATTER OF:

ALYSSA KEAST
AMBER KEAST

FILE NO. 06-505-AS
06-506-AS

HON. TERRENCE R. THOMAS

Shon A. Cook, P51452
Attorney for Petitioners,
Timothy and Barbara Atwood
Williams, Hughes & Cook, PLLC
120 W. Apple Ave., P.O. Box 599
Muskegon, MI 49443-0599
(231) 728-1111

H. Daniel Beaton, Jr., P43336
Maribeth A. Dickerson, P68975
Michigan Dept. of
Education & Social Services
Attorney for Dept. of Human Services
P. O. Box 30758
Lansing, MI 48909
(517) 373-7700

LEGAL MEMORANDUM

BACKGROUND:

On February 7, 2007, a post-termination review hearing was held in the above-referenced matter; Court Case Number 05-6388-NA. The Court took testimony of the Department of Human Services worker in the matter, and entered into evidence the adoption report and the latest report from Department of Human Services. The guardian ad litem appeared, as well as the Newaygo County Prosecutor's office on behalf of Department of Human Services.

At the conclusion of the review hearing, the Court took the issue of the commitment/de-commitment (placement) of the minor children with Michigan Children's Institute under advisement. The Court then proceeded with the motion filed by Barbara and Tim Atwood, regarding the adoption of Alyssa and Amber, the minor children that were the subject-matter of the above-referenced file. The motion pending before the Court asked the Court to find that the

Michigan Children's Institute had arbitrarily and capriciously denied the Atwoods the necessary consent to adopt their granddaughters. The Court heard from Dr. Griffeon, Suzanne Adams and William Johnson before the matter was adjourned at 5:45 p.m. The Court invited the parties and their attorneys present for the motion hearing, to prepare a legal memorandum regarding the issue of de-commitment of the children with the Michigan Children's Institute.

LAW:

Post-termination review and permanency placement hearings are governed by MCL 712A.19c (see attached). The statute provides that at the time of the hearing, the Court **shall** review all of the following:

- (a) The appropriateness of the permanency planning goal for the child.
- (b) The appropriateness of the child's placement.
- (c) The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.
(Emphasis added).

The Legislature enacted this statute on December 28, 2004. Respondent relies on case law from 1979 to argue that this Court lacks jurisdiction after a child is committed to a public institution or agency. The Legislature specifically stated, however, that, "This section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children's institute or other agency." MCL 712A.19c(2). The statutory language supercedes 28 year old case law and is a legislative directive of this Court's duty. Therefore, this Court clearly has jurisdiction over such a hearing, as these children are currently under the control and supervision of the Michigan Children's Institute.

The documentation supplied by the prosecutor's office at the time of the review hearing indicates that the permanency planning goal is adoption of the minor children. However, no efforts have been made in that regard. The parental rights of the parents were terminated in May

of 2006. Nearly a year later, only one request to adopt the children has come before the Michigan Children's Institute, the Atwoods. At the time of the Consent Hearing, the director of the Michigan Children's Institute testified that the agency first looks to appropriate family relationships or foster families and then begins to recruit other suitable adoptive placements. In this case, the only persons "recruited" to adopt the minor children was/were the foster care parents. As of December of 2006, the foster care mother did not want to adopt the minor children. The minor children had been in her placement nearly nine months at that time. None of the children's immediate family was recruited for adoption of the children. (See attached affidavits). Since the placement of the children in care outside of their grandparent's home (March of 2006), there has been no effort to contact family other than Tim and Barbara Atwood and no adoptive family has stepped forward. Bethany gave its notice to Tim and Barbara Atwood in October of 2007, that they were denying their consent to the adoption placement. However, no further efforts have been made to place the children for adoption or a permanent placement.

Of concern to the Court should be the fact that we are dealing with two children and not just one. The Michigan Children's Institute Director indicated that these children would need to be adopted together if at all possible. One of the children is a special needs child and will be much harder to adopt. It is also much harder to find adoptive parents for two children than one.

The Court can also look to MCR 3.978 (effective January 1, 2007) – see attached. MCR 3.978 provides again for post-termination review hearings. This court rule first grants the pre-adoptive parents the right to be heard (contrary to the position taken by the Michigan Children's Institute's counsel). Further, it provides that:

“The Court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interests of the child.” (MCR 3.978(C) (emphasis added)).

This recent enactment of the Court rule clearly establishes that the Court’s priority is toward permanency of the child. If the Court finds that such permanency is not being advanced by reasonable efforts, the Court has the power to enter orders in the best interests of the child.

MCR 3.975(g) (see attached) indicates what orders the Court may enter at a dispositional hearing.

- (1) Order the return of the child home;
- (2) Change the placement of the child;
- (3) Modify the dispositional order;
- (4) Modify any part of the case plan;
- (5) Enter a new dispositional order; or
- (6) Continue the prior dispositional order.

Contrary to the legal standard imposed by MCL 710.45, when reviewing the denial of consent by the Michigan Children’s Institute, (the court must find by clear and convincing evidence that the decision of the Michigan Children’s Institute was arbitrary and capricious), no such standard exists pursuant to MCR 3.978, MCR 3.975 or pursuant to MCL 712A.19c. Rather, the Court is obligated to use its discretion to determine if the goals of permanency have been met for the child and enter orders that advance that goal and are in the best interests of the child. These orders can clearly include the change of the child’s placement.

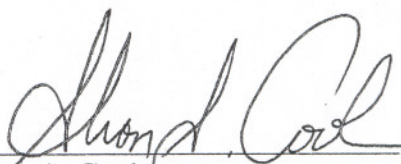
CONCLUSION:

The Attorney Generals’ office tells this Court that the Atwoods have no standing to address the Court on the issue of de-committing their grand daughters from the Michigan Children’s Institute. That is an incorrect statement of law. The Atwoods have the legal

authority to argue the best interest of the minor children at a post-termination hearing pursuant to MCR 3.978. The Attorney General's Office goes on to state that this court can not de-commit a child from MCI because it is a permanent placement and the Court loses jurisdiction. They have provided a 1979 case in support of that position. However, legislation passed in 2004, has superseded case law from 28 years ago, and clearly states that this court not only can, but shall review the permanency planning goal of the child, the appropriateness of the child's placement' and the reasonable efforts made to place the child for adoption or in other permanent placement in a timely manner. The Court does not have discretion to look the other way. Further, the 2004 statutory language provides that this review process applies when a child is under the jurisdiction, control or supervision of the court or of the Michigan Children's Institute or other agency. MCL 712A 19(c).

If the Court were to adopt the argument of the Attorney General's Office, the Court would have to wonder why it is statutorily required to hold review hearings on children committed to the Michigan Child's Institute. If the Court has no control over placement or has lost jurisdiction to operate in the best interests of the children, then why is the Court wasting time to listen to these matters, review useless reports and hearing from social workers? Clearly, the legislature intended that this Court control the process, have oversight and enter orders that are in the best interests of children, when it enacted MCL 712A 19(c) in 2004.

Dated: February 14 2007.


Shon A. Cook,
Attorney for
TIM & BARBARA ATWOOD

Michigan Compiled Laws Complete Through PA 461, 463-469, 471-513, 515-517, 519-526, 528-540, 542-571, 573, 575-583, 585-588, 590-593, 595-597, 599-601, 603-629, 632-634 of 2006

[Home](#)

[Register](#)

[Why Register?](#)

[Login](#)

[New!](#)

[Help](#)

Navigation		
←	Documents	→
MCL Chapter Index		
	Chapters 701 - 713	
	Act 288 of 1939	
	288-1939-XIIA	
	Section 712A.19c	
Search Results		
←	List Results	→

Section 712A.19c

PROBATE CODE OF 1939 (EXCERPT) Act 288 of 1939

712A.19c Review hearing of child's placement after termination of parental rights; applicability of section.

Sec. 19c.

Legislature

Bills
Calendars
Committee Bill Records
Committee Meetings
Concurrent Resolutions
Joint Resolutions
Journals
Legislators
Public Acts (Signed Bills)
Resolutions
Session Schedules
Basic Legislative Search
Adv Legislative Search

Laws

Freq Requests (alpha)
Freq Requests (by topic)
Basic MCL Search
Advanced MCL Search
Public Act MCL Search
Constitution Search
Chapter Index
Executive Orders
Historical Documents
MCL Tables

Initiatives

Initiatives

Publications

Publications

Related Sites

Related Sites
Legislative PDA Pages

(1) Except as provided in section 19(4) and subject to subsection (2), if a child remains in placement following the termination of parental rights to the child, the court shall conduct a review hearing not more than 91 days after the termination of parental rights and no later than every 91 days after that hearing for the first year following termination of parental rights to the child. If a child remains in a placement for more than 1 year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether any other matters are pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case. The court shall conduct the first permanency planning hearing within 12 months from the date that the child was originally removed from the home. Subsequent permanency planning hearings shall be held within 12 months of the preceding permanency planning hearing. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter. A permanency planning hearing under this section shall not be canceled or delayed beyond the number of months required in this subsection, regardless of whether any other matters are pending. At a hearing under this section, the court shall review all of the following:

(a) The appropriateness of the permanency planning goal for the child.

(b) The appropriateness of the child's placement.

(c) The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.

(2) This section applies only to a child's case in which parental rights to the child were either terminated as the result of a proceeding under section 2(b) of this chapter or a similar law of another state or terminated voluntarily following the initiation of a proceeding under section 2(b) of this chapter or a similar law of another state. This section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children's institute or other agency.

History: Add. 1988, Act 224, Eff. Apr. 1, 1989 ;-- Am. 1998, Act 479, Eff. Mar. 1, 1999 ;-- Am. 2000, Act 46, Imd. Eff. Mar. 27, 2000 ;-- Am. 2004, Act 476, Imd. Eff. Dec. 28, 2004

Popular Name: Probate Code

Popular Name: Juvenile Code

© 2007 Legislative Council, State of Michigan

[Acceptable Use Policy](#) [Privacy Policy](#) [Copyright Infringement](#) [Comment Form](#)
The Michigan Legislature Website is a free service of the Legislative Internet Technology Team in cooperation with the Michigan Legislative Council, the Michigan House of Representatives, and the Michigan Senate. The information obtained from this site is not intended to replace official versions of that information and is subject to revision. The Legislature presents this information, without warranties, express or implied, regarding the accuracy of the information, timeliness, or completeness. If you believe the information is inaccurate, out-of-date, or incomplete or if you have problems accessing or reading the information, please send your concerns to the appropriate agency using the online Comment Form in the bar above this text.

Please call the State Law Library at (517) 373-0630 for legal reference questions.

➔ **RULE 3.978 POST-TERMINATION REVIEW HEARINGS**

<Text of rule effective January 1, 2007>

(A) Review Hearing Requirement. If a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 91 days after the termination of parental rights and not later than every 91 days after that hearing for the first year following the termination of parental rights to the child. At the post-termination review hearing, the court shall review the child's placement in foster care and the progress toward the child's adoption or other permanent placement, as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan Children's Institute or other agency. If the child is residing in another permanent planned living arrangement or is placed with a fit and willing relative and the child's placement is intended to be permanent, the court must conduct a hearing not more than 182 days from the preceding review hearing.

(B) Notice; Right to be Heard. The foster parents (if any) of a child and any preadoptive parents or relative providing care to the child must be provided with notice of and an opportunity to be heard at each hearing.

(C) Findings. The court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interests of the child.

(D) Termination of Jurisdiction. The jurisdiction of the court in the child protective proceeding may terminate when a court of competent jurisdiction enters an order terminating the rights of the entity with legal custody and enters an order placing the child for adoption.

CREDIT(S)

[Adopted February 4, 2003, effective May 1, 2003, 467 Mich; amended October 24, 2006, effective January 1, 2007, 477 Mich.]

<For text of rule effective until January 1, 2007, see Rule 3.978, ante>

COMMENTS

2003 Main Volume

Note

MCR 3.978 corresponds to former Rule 5.974(J), governing review hearings after termination of parental rights. The provision is modified to conform to the shortened time limit provided by statute. See **MCL 712A.19c**. It also excludes from review hearings cases in which a child has been placed under permanent foster family agreement, or placed with a relative and the placement is intended to be permanent. See **MCL 712A.19(4)** details are added regarding the conduct of the hearing.

Staff Comment to 2006 Amendment

The amendment of MCR 3.978(A) clarifies a misconception created by the existing language of the subrule. Because the current language appears to create an exception for relative placements and permanent foster care arrangements, courts often failed to hold the requisite post-termination review hearings in such situations. The amendment makes it clear to Family Division courts that they are required to hold post-termination review hearings even in cases in which the child is placed with a relative or in a long-term foster care setting. The phrase "permanent planned living arrangement" replaces the reference to "permanent foster family agreement." The substituted phrase comports with the Children's Bureau's interpretation of ASFA regarding qualifying permanent placements for receipt of federal foster care funds.

MCR 3.978, MI R SPEC P MCR 3.978

Current with orders received through December 15, 2006.

Copr. © 2006 Thomson/West.

END OF DOCUMENT

(6) continue the prior dispositional order.

(H) Returning Child Home Without Dispositional Review Hearing. Unless notice is waived, if not less than 7 days written notice is given to all parties before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.

CREDIT(S)

[Adopted February 4, 2003, effective May 1, 2003, 467 Mich; amended February 25, 2004, 469 Mich; October 24, 2006, effective January 1, 2007, 477 Mich.]

<For text of rule effective until January 1, 2007, see Rule 3.975, ante>

COMMENTS

2003 Main Volume

Note

New MCR 3.975 corresponds to subrule (B) of former Rule 5.973.

Subrule (C) adjusts the times for dispositional review hearings to coordinate with the modified provisions on permanency planning hearings in new MCR 5.976 and recent amendments of MCL 712A.19a, **712A.19c**.

In subrule (G), two new options for orders following a dispositional review hearing are added.

Staff Comment to 2004 Amendment

The February 25, 2004, amendments of MCR 3.915, 3.965, 3.975, 3.976 and 3.977, effective immediately, are based on recommendations from the Family Independence Agency and Supreme Court Adoption Work Group.

The amendment of MCR 3.915(B)(2)(a) is designed to enforce the statutory requirement in MCL 712A.17d that lawyers-guardians ad litem for children meet with their clients before each hearing.

The amendment of MCR 3.915(D)(2) addresses the substitution of lawyers-guardians ad litem.

The amendments of MCR 3.965 (B)(13) and (E) require the court to ask parents, guardians, or legal custodians to identify relatives who might be available to care for the child. The amendment to subsection (E) also requires the court to ask parents, guardians, or legal custodians to identify the child's treating physician in certain circumstances. See MCL 712A.18f(6).

The amendments of MCR 3.975(B) and MCR 3.976(C) require the court to notify interested parties that they may provide input at dispositional review and permanency planning hearings.

The amendments of MCR 3.976(B)(3) and (E)(2) encourage early holding of permanency planning hearings and early filing of petitions for termination of parental rights, where appropriate.

MCR 3.977(C)(2) is a new provision that requires courts to give child welfare cases priority in scheduling.

Staff Comment to 2006 Amendment

(2) the reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing.

(E) Procedure. Dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.

(F) Criteria.

(1) *Review of Case Service Plan.* The court, in reviewing the progress toward compliance with the case service plan, must consider:

- (a) the services provided or offered to the child and parent, guardian, or legal custodian of the child;
- (b) whether the parent, guardian, or legal custodian has benefited from the services provided or offered;
- (c) the extent of parenting time or visitation, including a determination regarding the reasons either was not frequent or never occurred;
- (d) the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency;
- (e) any likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian; and
- (f) any likely harm to the child if the child is returned to the parent, guardian, or legal custodian.

(2) *Progress Toward Returning Child Home.* The court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care.

(G) Dispositional Review Orders. The court, following a dispositional review hearing, may:

- (1) order the return of the child home,
- (2) change the placement of the child,
- (3) modify the dispositional order,
- (4) modify any part of the case service plan,
- (5) enter a new dispositional order, or

➔ **RULE 3.975 POST-DISPOSITIONAL PROCEDURES: CHILD IN FOSTER CARE**

<Text of rule effective January 1, 2007>

(A) Dispositional Review Hearings. A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f and court evaluation of the continued need and appropriateness for the child to be in foster care.

(B) Notice. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(C) Time. The court must conduct dispositional review hearings at intervals as follows, as long as the child remains in foster care:

(1) not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home and is subject to the jurisdiction of the court, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed; or

(2) if a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, not more than 182 days after the child has been removed from his or her home and no later than 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency as provided in MCR 3.976(E)(3).

A review hearing under this subrule shall not be canceled or delayed beyond the number of days required in this subrule, regardless of whether a petition to terminate parental rights or another matter is pending.

(D) Early Review Option. At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next dispositional review hearing before what would otherwise be the next regularly scheduled dispositional review hearing as provided in subrule (C). In deciding whether to shorten the interval between review hearings, the court shall, among other factors, consider:

(1) the ability and motivation of the parent, guardian, or legal custodian to make changes needed to provide the child a suitable home environment;

The amendment of MCR 3.975 conforms the review hearing time lines to statutory amendments of MCL 712A.19 as implemented by 2004 PA 477.

CROSS REFERENCES

Dispositional hearing, see MCR 3.973.

Post dispositional procedures: child at home, see MCR 3.974.

Termination of parental rights, see MCR 3.977.

MCR 3.975, MI R SPEC P MCR 3.975

Current with orders received through December 15, 2006.

Copr. © 2006 Thomson/West.

END OF DOCUMENT