

provide for those needs on a full time basis and Nadia's need for a permanent plan, it is in Nadia's best interest for parental rights to be terminated. (12/12/14 at page 46, line 18 – page 47, line 24).

ARGUMENT

I. Was the Respondent-Appellant wrongfully denied the opportunity to release his parental rights under the Adoption Code MCL 710.21 et. seq.?

Standard of Review: Decisions of a lower court to terminate parental rights are reviewed for clear error. *In re Trejo Minors*, 462 Mich. 341, 356; 612 NW2d 407 (2000). A finding of clear error is when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich. 331, 337; 455 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich. 624, 633; 593 NW2d 520 (1999). See also MCR 3.977(K).

Analysis: Under Michigan Law, there are two ways that a parent can voluntarily consent to the termination of their parental rights. They include a release under the Adoption Code or an admission to a ground for termination of parental rights under the Juvenile Code and a finding by the Court that such termination is in the child's best interests. See Adoption Proceedings Benchbook, Chapter 2, and Child Protective Proceedings Benchbook, Chapter 17. If a petition for involuntary termination of parental rights has been filed, the Court can still allow a parent to release parental rights under the Adoption Code. See In Re Hernandez/Vera, unpublished Court of Appeals Docket No. 312136, decided April 16, 2013. See also In Re Buckingham, 141 Mich. App. 828, at 834-836 (1985) and In Re Jones, 286 Mich. App. 126, at 127 (2009).

In this matter, Respondent-Appellant, Joseph Taylor, has believed that the release of rights and adoption of Nadia were in her best interest even before the petition was filed, based on

Jaron was two years old at the time of trial. Mr. Nathan's earliest out date is October 2015. This is certainly a reasonable time and there was no evidence or testimony presented by the prosecutor that Mr. Nathan would not be able to provide proper care custody when he was released. The Court cited the numerous attempts by Mr. Nathan and the inadequacy of every possible placement as a rationale under this factor for supporting termination. But there were still relative placements that the Petitioner could have pursued and may have approved if the court had not erred in proceeding to termination at the initial dispositional hearing²².

III. The prosecutor failed to prove that termination was proper by clear and convincing evidence under MCL 712A.19b(3)(j).

The prosecutor must prove by clear and convincing evidence that there is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the parent's home²³. Termination is proper when there is a reasonable likelihood based on the capacity of the child's parent that the child would be harmed if he or she is returned to the home of the parent²⁴. Termination of parental rights due to a likelihood of harm cannot be justified based solely on a parent's past violence or crime²⁵. Further, the past violence and crimes of a parent may be utilized when there is evidence that the parent caused harm to their child²⁶. The failure of a petitioner to properly assess and evaluate the strengths and needs of a parent deprives the court of necessary objective information that may determine a parent's likelihood to continue in criminal behavior²⁷.

In the present case, there was no evidence presented by the prosecutor showing that Mr. Nathan had any conduct or capacity to harm his own child. The prosecutor rested solely on Mr. Nathan's past criminal history, which did include a conviction for CSC 2nd. However, neither the CSC or any of Mr. Nathan's other past crimes involved any kind of abuse towards Jaron or

²² See 8/5/14 USP p. 12-13.

²³ MCL 712a 19b(3)(j).

²⁴ See *in the matter of Cassidy Minor*, 3000894 Unpublished Opinion, May 26 2011.

²⁵ See *Mason* at 165 and *Cassidy* page 2 of opinion.

²⁶ *Mason* at 165 also see *In re AMX minor* #299622 (2011).

²⁷ *In re Rood*, 483 Mich 73, 117, 118; 763 NW2d 587 (2009)

the Trust named for the Child, even to the extent of exhausting principal, as the Child may from time to time request by written instrument delivered to the Trustee during the life of the Child.” **Exhibits A & B**, p. VII-1.¹

Where there is no patent or latent ambiguity, the intention to be ascribed to the grantor is the intention demonstrated in the trust’s plain language. *In re Willey's Estate*, 9 Mich App 245, 249; 156 NW2d 631 (1967). Patent ambiguity only exists if an uncertainty concerning the meaning appears on the face of the instrument and arises from the use of defective, obscure, or insensible language while latent ambiguity only exists where the language and its meaning is clear, but some extrinsic fact creates the possibility of more than one meaning. *In re Woodworth Trust*, 196 Mich App 326, 327-328; 492 NW2d 818 (1992). The court may not construe a clear and unambiguous trust in such a way as to rewrite it and, where possible, each word should be given meaning. *In re Estate of Reisman*, 266 Mich App 522, 527; 702 NW2d 658, 661 (2005).

There exists no patent or latent ambiguity in the Powers of Withdrawal – Distribution to Child provision. There is no defective, obscure, or insensible language in the provision that would create a patent ambiguity. Further, there are no extrinsic facts that would create the possibility of more than one meaning of the Powers of Withdrawal provision. In fact, neither party argues that the provision is ambiguous. Rather, both parties, as well as the trial court, agree that the provision in question is clear and the intent of the settlors can be determined from its language, thus confirming that the provisions’ language is unambiguous. **Exhibit E** p. 34, 39-40. *See In re Hayes*, at p.3, unpublished opinion per curiam of the Court of Appeals, issued November 2, 2010, 2010 WL 4320416, (No. 288746), attached as **Exhibit G**. The parties merely differ on their respective interpretation of the language; however, competing litigants

¹ Article VII references certain identified terms, the meanings of which are necessary to determine the requirements and mandates of Article VII. A “Child” is defined under Article I as the children of Ernest and Sona, being Charles, Bruce, Carol, and Cynthia. “Division Date” is defined under Article VI(C) as the date of the last to die of Ernest and Sona, being March 25, 2010.

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