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STATE OF MICHIGAN

COURT OF APPEALS

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In re L-S MOREHEAD, Minor.

No. 375278
Muskegon Circuit Court
Family Division
LC No. 23-005301-NA

AFTER REMAND

Before: SWARTZLE, P.J., and MALDONADO and ACKERMAN, JJ.

MALDONADO, J. (*dissenting*).

Although the trial court acknowledged that the child was in a relative placement on remand, the trial court's best-interests analysis demonstrates that it did not weigh that placement against termination. Therefore, I respectfully dissent.

The fact that a child is in the care of a relative at the time of the termination hearing "is an explicit factor to consider in determining whether termination was in the [child's] best interests." *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012), (quotation marks and citation omitted). Moreover, placement with a relative weighs against termination. *In re Atchley*, 341 Mich App 332, 346-347; 990 NW2d 685 (2022). A relative caretaker may allow the parent to maintain a relationship with the child, which may be in the child's best interests. See *In re Mason*, 486 Mich 142, 168-169; 782 NW2d 747 (2010). When a trial court fails to "explicitly address" whether termination is appropriate in light of the children's placement with relatives, the record is inadequate to make a best-interest determination, and the matter requires reversal. *In re Olive/Metts*, 297 Mich App at 43.

I agree with my colleagues in the majority that a trial court's findings need not be extensive, and that a short and plain explanation that acknowledges relative placement and weighs that placement against termination is sufficient. See MCR 3.977(I)(1) ("Brief, definite, and pertinent findings and conclusions on contested matters are sufficient."). However, I disagree that the trial

court's findings in this case were sufficient to show that the trial court acknowledged relative placement *and* weighed that placement against termination as required. See *In re Olive/Metts Minors*, 297 Mich App at 43; *In re Atchley*, 341 Mich App at 347.

The majority concludes that the trial court implicitly recognized that relative placement weighed against termination by beginning its best-interests analysis with the following statement, "Even though the child was in a relative placement, that relative placement actually is also serving as the prospective adoptive family." While this statement certainly acknowledges relative placement, it does not show that the trial court weighed that factor *against* termination. In my opinion, this statement reflects that the trial court acknowledged relative placement and then found that the placement weighed in *favor* of termination because of the relative placement's intent to adopt LSM.

Moreover, the rest of the trial court's analysis also does not reflect that the trial court weighed the relative placement against termination. In its best-interests analysis, the trial court noted that it intended to compare the current placement to respondent-father's home, relying on *In re Foster*, 285 Mich App 630; 776 NW2d 415 (2009); however, it in fact did very little comparison. Largely the only factor discussed by the trial court was the significant period of time that LSM had been with the relative placement, which it found spoke "to the permanence, stability, and essentially now the finality of the placement." The trial court then provided a very brief summary of the proceedings, noting only that, with regard to respondent-father, the matter was delayed due to pending criminal charges. Finally, the trial court acknowledged that the relative placement expressed interest in adopting LSM and that LSM expressed a preference for staying in his current placement with his paternal aunt. Nothing in the trial court's analysis demonstrated that it understood that relative placement must be weighed against termination.

Even when a child is placed with a relative, a trial court may nevertheless terminate parental rights if the court finds that termination is in the child's best interests. *In re Atchley*, 341 Mich App at 346-347. But in such cases, relative placement still weighs against termination but ultimately is outweighed by other factors that lead to a conclusion that termination is in the child's best interests. In this case, the trial court's analysis does not indicate that it weighed LSM's placement with a relative against termination and nevertheless concluded based on all the evidence available to it that it was in LSM's best interests to terminate respondent-father's parental rights. Though this is likely the case here, the trial court is still required to articulate those findings on the record.

Therefore, I would vacate the trial court's best-interest determination and once again remand for further consideration of LSM's best interests instructing the trial court to weigh the relative placement against termination as required. *Id*.

/s/ Allie Greenleaf Maldonado