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STATE OF MICHIGAN

COURT OF APPEALS

In re Guardianship of LNW, Minor.

TARA LYNN MATHEWSON, formerly known as TARA LYNN WILLIAMS,

Petitioner-Appellant,

v

DAVID CHARLES BINGAMAN and TIFFANY BINGAMAN, Guardians,

Respondents-Appellees.

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No. 375611
Montcalm Circuit Court,
Family Division
LC No. 2021-000027-JG

Before: ACKERMAN, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

Petitioner, Tara Lynn Mathewson, appeals by leave granted an order denying her petition to modify the terms of guardianship or, in the alternative, to allow parenting time with her minor daughter, LNW. We affirm.

I. BACKGROUND

Petitioner is the mother of a minor child, LNW, who became the subject of a juvenile guardianship after the Department of Health and Human Services (DHHS) initiated child protection proceedings in 2018. There were allegations and evidence at the time that petitioner improperly supervised LNW while under the influence of illegal substances including methamphetamine. LNW was voluntarily placed with respondents, Tiffany Bingaman (petitioner's mother) and Tiffany's husband, David. Petitioner's parental rights to LNW were terminated in 2019; however, this Court reversed the termination order in an unpublished opinion because at that time, we were "left with the definite and firm conviction that the trial court made a mistake by not fully considering [petitioner's] post-incarceration circumstances leading up to the

termination hearing." *In re L N Winters,* unpublished per curiam opinion of the Court of Appeals, issued October 15, 2019 (Docket No. 348031).

Upon remand, a juvenile guardianship was established with the Bingamans on March 1, 2021, and on June 3, 2021, the trial court sua sponte issued a *nunc pro tunc* order of clarification, stating that: "The parental rights of the mother, Tara Williams, to [LNW] have been suspended pursuant to the Order Appointing Juvenile Guardian dated 03/01/2021, and the mother, Tara Williams, has no parenting time with the minor child." The child protection proceedings were closed, see MCL 712A.19a(12), and the underlying case was initiated to monitor the guardianship with annual review hearings held in 2022 and 2023.

On August 4, 2023, petitioner filed a petition requesting the trial court enter an order granting "appropriate contact" between her and LNW as well as "parenting time according to a schedule . . . and according to conditions to be determined by the Court." The hearing on this petition, which was originally scheduled for September 28, 2023, was adjourned until March 20, 2024, to allow for discovery and then continued on March 17 and 18, 2025, the dates of the regularly scheduled annual review. The trial court heard the testimony of petitioner; Christopher Thompson, petitioner's former circuit court probation officer; Dr. Randall Haugen, a psychologist retained to conduct a psychological evaluation of petitioner and to make recommendations for counseling; Kimberly Lavender, a counselor who worked with petitioner; Megan Ledin, a counselor who worked with LNW from 2018 until November 2020, and then periodically after that; and respondent, Tiffany Bingaman.

Following the March 2024 evidentiary hearing, the trial court denied the August 4, 2023 petition. While recognizing that MCL 712A.19a authorizes an order for parenting time in this juvenile guardianship, the trial court cited what he described as "eye opening testimony . . . from three separate psychologists" who laid out a "pathway for parenting time" that included a family therapist working with respondents, petitioner, and eventually LNW, to facilitate a gradual increase in parenting time. While agreeing "wholeheartedly" that "eventually [LNW's] going to want access to her mother," the trial court cited what he described as a "strong opinion" from Ledin, the only mental health professional who had worked with LNW, that LNW was not ready for this contact and that it would be detrimental to her. The trial court also referenced Ledin's description of the relationship between petitioner and Tiffany Bingaman as "strained" and that "this relationship needs to be worked on to help the child."

While the trial court stated that petitioner's counsel made a "compelling" argument that the trial court should appoint a family therapist and "get the parties moving toward" the point in which LNW would be ready to meet petitioner, he did not agree that it should happen in 2025 or 2026. In the words of the court, "[t]here's compelling testimony that this would be detrimental to [LNW] that hasn't been rebutted" and "I'm not, as the Judge in this case, going to take the position that I should force this child into contact with her mother at this point." To do so was not in LNW's best interests. While he was convinced that LNW would request such contact at some point, she had not requested contact and the issue "will come back for an annual review next year" at which time he may have a "different viewpoint on when family counseling should occur or begin."

On appeal, petitioner claims that the trial court erred in denying parenting time. Petitioner cites Michigan law recognizing a parent's right to petition for parenting time in a juvenile

guardianship such as this and disputes that the factual record supports the trial court's basis for denying her petition, which she describes as the conclusion that "the process of moving forward needs to be child led, coupled with a finding that the child is not ready for parenting time" rooted largely in Ledin's testimony.

Because the trial court cited Dr. Haugen and Ledin specifically in support of his decision, it is appropriate to include a summary of each witness's testimony.

Ledin is a licensed social worker with a master's degree from Grand Valley State University. She has worked with LNW since September 4, 2018, with regular meetings until November 2020, and then periodically after that date because she determined that regular counseling was no longer clinically necessary. The last in-person visit occurred on December 6, 2024. Ledin met with petitioner on several occasions, during which time she expressed her opinion that "it would be a very loving sacrifice" for petitioner to give LNW "a chance at permanency" by voluntarily relinquishing her parental rights, and petitioner disagreed.

Ledin testified that LNW "seems very stable right now and has for some time." With respect to contact with petitioner, Ledin testified that she "definitely stand[s] firm that it should be more [LNW's] lead on when that happens." While she maintained that "eventually children should absolutely see their birth parents," she testified that LNW had not requested this and she did not think that LNW was "emotionally there yet." She did not know when LNW would be ready, testifying that "[i]t could be six months" or "another two, three years." Until that time, even minimal contact with petitioner would be "detrimental" because it may ignite questions that will "spark anxiety" that LNW is not going to know "how to handle," and this contact would "change everything in her world." She also testified that while the Bingamans were supportive, the relationship between petitioner and Tiffany Bingaman is "obviously strained" and would negatively impact LNW in its current state.

During cross-examination, Ledin testified that she introduced the topic of petitioner in her counseling sessions with LNW approximately three times, most recently on November 30, 2023. During this counseling session, LNW commented that "a stressful part of her life is she didn't think she would see her birth parents again." When asked if she thinks about her birth parents often or about the fact that she is unable to see them, LNW said no.

Dr. Haugen was admitted as an expert witness in the field of psychology. He administered psychological testing to petitioner to evaluate her current level of functioning and to identify any diagnostic issue that would impede her ability to provide a "clear and stable environment for her child."

Dr. Haugen testified that to re-establish visitation, both petitioner and the guardians would have to agree on a therapist, "somebody trained in the area of reunification and visitation" who could work with the guardians and petitioner "to see where they're at" in terms of authorizing contact with LNW. "Once there's a readiness determined by the therapist, there needs to be contact that's slow." Without contact allowed, he anticipated that problems would occur when LNW reaches the ages of 14 to 17, which he characterized as rebellious years. In his experience, "it's better if some sort of contact can be worked out so as to prevent problems later."

Dr. Haugen agreed that the child needs to be ready for contact; however, he did not know whether the child needed to express an interest in meeting the biological parent. The important question was why the child was not expressing an interest, which is a "complex question" that he would not know without seeing the child or the guardians. He also testified that it was preferable for the reunification therapist to be "neutral," not a therapist whom the child has worked with in the past. Dr. Haugen had experience working as a reunification therapist throughout his career. He explained the process for this person as slow and gradual, inquiring into the child's feelings toward seeing a birth parent, and discerning the reasons or origin of those feelings. In his experience, it is common for guardians to have some opposition to contact with the parent, and there are strategies to work through this.

Following the close of all proofs and the issuance of its decision from the bench, the trial court entered an order on March 31, 2025, denying the petition and then an order denying an ex parte motion for reconsideration on April 22, 2025.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews de novo "whether the trial court properly selected, interpreted, and applied a statute." *IME v DBS*, 306 Mich App 426, 433-434; 857 NW2d 667 (2014). We previously determined that the applicable standard of review for orders concerning parenting time or visitation in juvenile guardianship proceedings is akin to that applied to similar orders in other contexts. See *In re Prepodnik*, 337 Mich App 238, 242-243; 975 NW2d 66 (2021). This review begins with the premise that "[o]rders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005). We defer to the trial court's credibility determinations. *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006). Findings of fact are affirmed, "unless the evidence clearly preponderates in the opposite direction," *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994) (quotation marks and citation omitted), and an abuse of discretion exists only if the trial court's "decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). "A trial court commits legal error . . . when it incorrectly chooses, interprets, or applies the law." *McIntosh v McIntosh*, 282 Mich App 471, 475; 768 NW2d 325 (2009).

B. MICHIGAN LAW AUTHORIZES, BUT DOES NOT REQUIRE, ORDERS OF PARENTING TIME IN A JUVENILE GUARDIANSHIP

Neither party disputes the trial court's authority to enter an order authorizing parenting time. The juvenile guardianship is governed by MCL 712A.19a, "which pertains to permanency-planning hearings [and] governs juvenile guardianships created after child protective proceedings have been initiated and in place for a certain period of time but termination of parental rights has not occurred." *In re Ballard*, 323 Mich App 233, 236; 916 NW2d 841 (2018). The guardianship was established upon a finding that a guardianship without termination of petitioner's rights was in LNW's best interests. *In re Prepodnik*, 337 Mich App at 245-246. Accordingly, while the

guardians have "the powers and responsibilities of a parent" under MCL 712A.19a(10) and MCL 700.5215, parenting time was one factor to be contemplated by the trial court when the guardianship was established.

This is founded in MCL 712A.19a(14), which reads in full as follows:

> In making the determinations under this section, the court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or guardian ad litem in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing . . . .

We have construed this provision as "providing a court with authority to order parenting time for a parent after a juvenile guardianship has been established even if the court did not order parenting time when the guardianship commenced or at the time of the permanency-planning hearing." *In re Ballard*, 323 Mich App at 237. The statutory language "plainly reflects legislative intent" to permit this, authorizing petitioner to seek parenting time even in the context of the guardianship and, also, the trial court to "increase, decrease, or terminate" parenting time during the course of the guardianship. *Id.*

C. THE TRIAL COURT'S DECISION TO DENY THE AUGUST 4, 2023 PETITION DOES NOT EXHIBIT ERROR WARRANTING REVERSAL

Neither petitioner's right to seek parenting time, nor the trial court's authority to grant it, leads to a conclusion that the trial court was required to enter an order authorizing parenting time in this matter. As explained earlier, the trial court's order is granted significant deference on appeal. The decision must be affirmed unless the trial court's factual findings "were against the great weight of the evidence," or either a clear legal error or a "palpable abuse of discretion" occurred. *Pickering*, 268 Mich App at 5.

None of these factors are present on the record before us. The trial court declined to order parenting time at this annual review because he found that LNW was not ready at this time and that it would be detrimental to her. This factual finding must be affirmed "unless the evidence clearly preponderates in the opposite direction." *Berger*, 277 Mich App at 705. It does not. Both Ledin and Dr. Haugen testified as to the importance of not abruptly introducing petitioner into LNW's life but, instead, ensuring that LNW was ready for this. Ledin testified that LNW was not ready and that contact as of the date of the trial court's hearing would be detrimental to LNW.

While petitioner questions the trial court's reliance on Ledin and, in particular, her opinion that contact with petitioner would be detrimental at the time of the circuit court hearing, this reliance reflects the trial court's determination as to a witness's credibility, to which we defer to the trial court. *Sinicropi*, 273 Mich App at 155. Indeed, Ledin was the only mental health professional who testified who had actually met with and counseled LNW. While Ledin testified that in the past she and petitioner disagreed about petitioner's desire to maintain her parental rights, her testimony at this hearing did not evidence an opinion that petitioner should never have contact with LNW or undue bias against her request for parenting time. In fact, she testified that she believed children should meet their biological parents when they are ready, that LNW may be

ready in as short of a time as six months, and that she had been willing to engage with LNW on the topic of the child's biological parents when this arose during past counseling sessions. Ledin also testified that LNW had not mentioned a desire to meet with petitioner and, in her professional opinion, this should occur before contact with petitioner is required. Premature contact could be detrimental to LNW. Neither Dr. Haugen nor any other witness directly refuted this.

To the extent petitioner suggests the trial court erred because he did not adequately consider petitioner's progress or the record evidence supporting a finding that reunification efforts should begin now, we do not find a clear legal error. While the decision to establish a juvenile guardianship over LNW required a finding that this was in LNW's best interests, MCL 712A.19a(14) does not mirror this language for purposes of deciding whether to include an order of parenting time. Instead, the court is required to consider the "appropriateness of parenting time," as well as other information concerning the child and "any other evidence." MCL 712A.19a(14). Once the juvenile guardianship is established, the child protection proceeding is terminated and the court is required to conduct reviews of the guardianship on at least an annual basis. MCL 712A.19a(13). Annual reviews of a guardianship over a minor do not require consideration of the parent's progress, as petitioner suggests, but rather focus on the appropriateness of the guardianship, the ability and willingness of the guardian to continue it, and its effect upon LNW's welfare. MCL 700.5207. Testimony at the evidentiary hearing demonstrated that the guardianship has been to LNW's benefit, providing her with a sense of stability within a family unit with siblings and caretakers, and that she is doing well. The trial court did not commit clear legal error in its decision to focus on LNW's interests while still considering petitioner's significant progress as a parent.

In sum, the trial court denied the August 4, 2023 petition because it concluded that LNW was not ready for contact with petitioner and, therefore, an order of parenting time at this annual review was not appropriate. This finding is factual in nature and is not against the great weight of the evidence and will not be overturned on appeal.

Had the trial court denied petitioner's request outright and not left open the likelihood that it would be considered again at the next annual review hearing, such a finding may likely have been reversed. However, petitioner's parental rights to LNW have not been terminated and, therefore, her right to seek parenting time is vested in statute and this Court's prior interpretation of MCL 712A.19a. *In re Prepodnik*, 337 Mich App at 245-246. We note, neither the trial court nor any mental health professional who testified in this matter definitively stated that continuing the current prohibition against parenting time indefinitely or even beyond the next annual review hearing was a foregone conclusion or that this was the decision being made in April 2025. To the contrary, all of them, including Ledin, testified as to the benefit of a child having the opportunity for contact with her biological parent whose parental rights have not been terminated. Dr. Haugen testified that prohibiting contact would pose a threat to LNW's well-being in a few short years if the gradual, slow process of reunification does not begin soon. The trial court indicated that he expected this issue to arise at the next annual review hearing.

D. ISSUES RAISED IN THE DISSENT

In reaching this conclusion, we respectfully disagree with the dissent's characterization of the trial court's decision. The trial court did not place a burden on LNW to request parenting time

or prohibit petitioner from parenting time until LNW requests it. Rather, in an analysis rendered orally from the bench that spanned more than ten pages of transcript, the trial court summarized testimony from three mental health professionals who agreed that it would be inappropriate, if not detrimental, to suddenly order parenting time given LNW's age, maturity, and the status of the relationship between the adults in her life. While all agreed that contact between LNW and petitioner will take place at some juncture, all mental health experts also agreed that it should begin following a gradual process facilitated by therapists and with LNW's needs in mind. Also, the only mental health expert who had personally counseled LNW—Ledin—testified that she did not believe LNW was emotionally mature enough for such contact to begin now. Ledin testified that perhaps LNW would be ready in six months or a year, but she testified that it would be detrimental to begin such contact now. This testimony was unrefuted. Accordingly, the trial court denied petitioner's request for parenting time and alerted all parties that he anticipated the issue arising at the next annual review hearing.

This decision must be evaluated utilizing the highly deferential standard of review that this Court has previously applied to requests for parenting time with children subject to a juvenile guardianship under MCL 712A.19a. See *In re Prepodnik*, 337 Mich App at 242. Respectfully, this is not the standard of review that the dissent utilizes, with citation to *In re COH*, 495 Mich 184, 187; 848 NW2d 107 (2014) (*COH*). *COH* considered a trial court's order denying a grandparent's petition for guardianship posttermination. In the context of orders concerning parenting time, this Court has held that they "***must*** be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering*, 268 Mich App at 5 (emphasis added). Under this standard, finding an abuse of discretion requires that the decision "evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias," rather than merely falling outside of the range of principled outcomes as the dissent suggests. *Berger*, 277 Mich App at 705. Neither the dissent nor the record presented supports a finding that the trial court abused its discretion under this standard in this case. Thus, under the applicable standard, the trial court's decision must be affirmed.

Likewise we observe, this standard of review is appropriate given the context presented here. The existence of the juvenile guardianship and the Bingamans' appointment is not at issue. When the guardianship was established, DHHS was required to demonstrate that both the guardianship and maintaining petitioner's parental rights were in LNW's best interests. MCL 712A.19a(9)(c). Given that decision, the Bingamans have all the "powers and responsibilities of a parent who is not deprived of custody" of the minor child. *In re Prepodnik*, 337 Mich App at 244, quoting MCL 700.5215. Because petitioner's parental rights have not been terminated, she may seek a court order authorizing parenting time. *Id.* at 245-46. The authority to grant or deny such a petition lies with the trial court. In this way, the context of this case is more analogous to a civil custody dispute where both parties have a potential, legal right to parenting time with the minor child, than to a situation where the child is a ward of the court or under the care of DHHS after termination of parental rights. And in this context, the trial court has the "authority to increase, decrease, or terminate that parenting time during the guardianship if circumstances warranted court intervention." *In re Ballard*, 323 Mich App at 237-238. There is no indication in statute or precedent requiring the trial court to employ the best-interest factors from the Child Custody Act, as the dissent suggests.

Relying on *COH* to read such a requirement into the statute or prior caselaw is problematic for several reasons. First, *COH* involves an entirely different context—i.e., a petition for guardianship by a maternal grandmother after both parents' parental rights had been terminated. Even in *COH*, the Supreme Court recognized that posttermination proceedings are distinct from pretermination proceedings and that the statute authorizing a guardianship posttermination "is only applicable at the posttermination stage of a child protective proceeding." *In re COH*, 495 Mich at 196-97.

Second, the Supreme Court in *COH* did not require the trial court to apply the best-interest factors from either the Child Custody Act or the Adoption Code. To the contrary, the Supreme Court concluded that "depending on the circumstances, a case may more reasonably lend itself to application of the Child Custody Act factors, some combination of the Adoption Code and the Child Custody Act factors, or a unique set of factors developed by the trial court for purposes of a particular case." *In re COH*, 495 Mich at 202-03. This recognition of the trial court's discretion to decide whether to utilize the best-interest factors in *COH* is significant because the statutory language at issue in *COH* required the trial court to determine if the guardianship was "in the child's best interests." See MCL 712A.19c(2). No such language is present in MCL 712A.19a(14), which authorized the parenting time in the present case and which requires the trial court to consider whether parenting time is appropriate based on evidence and information from several sources. See MCL 712A.19a(14). When this Court evaluated the statute, it held that a trial court "would certainly have the authority to increase, decrease, or terminate parenting time during the guardianship if circumstances warranted court intervention." *In re Ballard*, 323 Mich App at 237–238. This is consistent with the Legislature's intent that the guardianship "may continue until the child is emancipated," that the neglect proceeding be closed, and that review hearings be conducted. MCL 712A.19a(9)(c). The court's jurisdiction continued over the guardianship and the guardian "has all the powers and duties" of any guardian for a minor appointed under the estates and protected individuals code, MCL 700.1101 to 700.8206. MCL 712A.19a(10); MCL 712A.19a(13).

In this case, the trial court's decision not to apply the best-interest factors from the Child Custody Act or to evaluate the matter as if it were sitting in an abuse-and-neglect proceeding is consistent with the statutory authority governing this juvenile guardianship. To the extent the dissent suggests the trial court's order must be reversed because the court did not consider the best-interest factors or apply the standard applicable to the Child Custody Act, we respectfully find no basis for this in the relevant statutes or binding precedent from this Court and the Supreme Court interpreting the relevant statutes.

Finally, two other points cited by the dissent bear mentioning, although it does not appear either provides a basis for reversing the trial court's decision. First, petitioner did not claim error on appeal from the trial court's decision to consider the petition during an annual review hearing. Indeed, the record indicates the parties stipulated to more than one adjournment to allow discovery and other matters. Nonetheless, this Court previously indicated that while the annual review of the guardianship is mandatory, the trial court "may" hold additional reviews but is not required to do so. See *In re TK*, 306 Mich App 698, 705; 859 NW2d 208 (2014). Second, the petitioner did not raise any questions regarding the status of Ledin's licensure on appeal. It does not appear that this issue is relevant to this appeal. The trial court expressed on the record that he was familiar with the circumstances upon which the guardianship was entered and with Ledin's opinion at that

time, which was that the guardianship was not in LNW's best interests because LNW should have the opportunity to be adopted. The trial court entered an order for guardianship despite this, and he was not reconsidering that decision in the context of this case. His reliance on Ledin's testimony in the context of the petition for parenting time was, in large part, based on her agreement with other mental health professionals who testified and the fact that Ledin was the only professional who had met with LNW.

For the reasons set forth above, the decision of April 2025 being appealed at this time is affirmed.

/s/ Matthew S. Ackerman
/s/ James Robert Redford