STATE OF MICHIGAN

COURT OF APPEALS

In re CADP, Minor.

DAVID PREVO and DONNA PREVO,

Petitioners-Appellants,

v

MICHIGAN CHILDREN'S INSTITUTE,

Respondent-Appellee,

and

DAENA THIBODEAU and JASON THIBODEAU,

Interested Parties-Appellees,

and

BETHANY CHRISTIAN SERVICES and DEPARTMENT OF HEALTH & HUMAN SERVICES,

Appellees.

FOR PUBLICATION
April 21, 2022
9:10 a.m.

Nos. 358271; 358383
Kalkaska Probate Court
LC No. 21-001049-AM

Advance Sheets Version

Before: CAMERON, P.J., and CAVANAGH and GADOLA, JJ.

CAVANAGH, J.

In these interlocutory, consolidated appeals involving an adoption matter, petitioners, David and Donna Prevo, appeal by leave granted[1] orders that denied their motion for discovery and quashed subpoenas issued to the Department of Health and Human Services (DHHS) and Bethany Christian Services (BCS). We reverse and remand for further proceedings.

I. BACKGROUND FACTS

The parents of CADP, who was born in 2018, are deceased. Petitioners are the paternal grandparents who filed a petition seeking to adopt CADP. Petitioners' daughter and son-in-law, Daena and Jason Thibodeau, also wished to adopt CADP, as did CADP's maternal grandmother, Yvonne Robinson (Yvonne). The Michigan Children's Institute (MCI)[2] recommended Yvonne for the adoption. Petitioners then filed a motion under MCL 710.45, alleging that MCI's decision to withhold consent for petitioners to adopt CADP was arbitrary and capricious.

Under MCL 710.43(1)(b), a person seeking to adopt a child placed with a state agency must obtain consent from that agency. MCL 710.45 states, in part:

> (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 [MCL 710.43(1)(b), (c), or (d)] 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 [MCL 710.43(1)(b), (c), or (d)], 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.
>
> * * *
>
> (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,

[1] See *In re CADP*, unpublished order of the Court of Appeals, entered November 4, 2021 (Docket No. 358271), and *In re CADP*, unpublished order of the Court of Appeals, entered November 4, 2021 (Docket No. 358383).

[2] DHHS states the following on appeal: "The MCI falls under the umbrella of MDHHS and should therefore be treated as the same party in all the proceedings."

> or department and may enter further orders in accordance with this chapter or [MCL 712A.18] as the court considers appropriate.

Petitioners were proceeding under § 45.

The court scheduled a § 45 hearing. Petitioners moved for discovery, alleging that they had "requested discovery from [MCI] by issuing a Subpoena" seeking the following:

> The complete MCI file regarding [CADP]. This includes documents, reports, memorandums, case notes, interview notes or any other information that was gathered in the investigation relating to the minor child. It also includes all email communication, and case conference notes documenting communication with any person.

Petitioners stated that MCI had requested an extension to gather information. Petitioners alleged that they had also sent subpoenas to DHHS and BCS seeking:

> Any and all documents relating to [CADP]. This includes documents, reports, memorandums, case notes, interview notes or any other information that was gathered in the course of your assessment or case assignment relating to the minor child.

Petitioners noted that DHHS and BCS had denied the request for records, although BCS agreed to provide records pertaining specifically to petitioners. Petitioners alleged that they were entitled to the requested information pursuant to caselaw and the court rules.

BCS filed a response that stated, in part:

> [T]he subpoena should either be quashed or modified to avoid . . . statutory obligations to maintain "all records" as confidential. In the alternative, [BCS] respectfully requests that the [c]ourt enter a protective order under MCR 2.302(C) to limit the discovery pursuant to the relevant statutes and to maintain the requisite confidentiality.

DHHS argued that the discovery rules were not applicable to a § 45 proceeding because such a proceeding involves a motion, not a complaint or "civil action." It also argued that the records sought were confidential under statutory law. DHHS further argued that petitioners' request was overbroad and that the subpoena should be quashed. But, DHHS noted, if the court did allow for discovery, a protective order under MCR 2.302(C) should be entered and an *in camera* review should take place.

At the hearing on the motion for discovery, petitioners agreed that a protective order would be appropriate. However, the court concluded that petitioners were not entitled to discovery because the general discovery rules do not apply to § 45 proceedings; the information sought was confidential, in any event; and petitioners' subpoenas were overbroad. Specifically, the court held:

> It is not a civil action. They've only filed a motion. It's a motion pursuant to MCLA 710.45, which is—does not constitute a complaint, in my opinion, creating

> a civil action. And, therefore, they're not entitled to any kind of discovery on that. It's not a pleading as defined by the Court Rule. The general rules regarding discovery would not apply to this Section 45 motion. And, even if it were allowed, it would be, as the Department is arguing, limited to matters that are not privileged. And it's pretty clear, you know, when you look at the statutes, that all of these records that you're seeking, you know, that are being requested by Petitioners, are confidential records. And that is established by statute. . . . I mean, there's several different statutes that apply. I mean, primarily MCLA 400.211, all records pertaining to any child committed to the institute, to MCI, shall be filed as confidential and shall not be made public excepting as the said commission shall authorize when deemed necessary for the best interest of the child. And that has not been done or deemed necessary.
>
> In addition, there are additional statutes for which the Petitioners do not fall under any of the exceptions. I guess I'm in agreement with the Department on that argument, as well, under 722.627 and then 722.120.
>
> And then there's [the] additional statute, 710.67, that all records and proceedings in adoption cases are basically to . . . be kept confidential, shall not be open for inspection or copy, except upon the order of the [c]ourt of record for good cause shown.
>
> I'm in agreement that discovery does not apply to the underlying Section 45 motion.

The court then went on to address the scope of petitioners' subpoenas, holding that the subpoenas were unreasonable and overbroad because they requested all records. The court stated that a § 45 hearing served the limited purpose of providing petitioners an opportunity to show that the MCI representative acted arbitrarily and capriciously and discovery was not allowed. The court issued a pretrial conference summary that stated, in part, "Discovery is not ordered." It then issued an additional order, stating that the motion for discovery was denied and that the subpoenas issued to DHHS[3] and BCS were quashed. Proceedings have been stayed pending appeal.

II. ANALYSIS

Petitioners argue that they were entitled to the requested discovery because the discovery rules apply to a § 45 hearing initiated by motion, their subpoenas were not overbroad, and the confidential nature of the information would have been adequately protected by a protective order and *in camera* inspection while allowing for a meaningful § 45 review to occur. We agree.

A. STANDARD OF REVIEW

A trial court's decision to grant or deny discovery is reviewed for an abuse of discretion. *Mercy Mt Clemens Corp v Auto Club Ins Ass'n*, 219 Mich App 46, 50-51; 555 NW2d 871 (1996).

[3] The order did not mention MCI; presumably, MCI was encompassed by the reference to DHHS.

An abuse of discretion occurs when "the trial court's decision was outside the range of reasonable and principled outcomes." *People v Norfleet*, 317 Mich App 649; 897 NW2d 195 (2016). This Court reviews "de novo as a question of law the applicability of a privilege," *Oesterle v Wallace*, 272 Mich App 260, 263; 725 NW2d 470 (2006), and also reviews de novo issues of statutory construction, *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 831 NW2d 204 (2013).

B. PROCEEDINGS UNDER MCL 710.45

"A child under 17 years of age, provision for whose support and education has been made under regulations of the department, may be admitted to the Michigan children's institute by commitment to the department." MCL 400.203(1). The MCI superintendent represents "the state as guardian of each child committed beginning with the day the child is admitted and continuing until the child is 19, unless the superintendent or the department discharges the child sooner . . . ." *Id*. Consistently with that responsibility, the MCI superintendent is empowered to consent to an adoption request. MCL 400.209(1).

MCL 710.45(2) provides that when the MCI superintendent does not consent to an adoption, the petitioner seeking the adoption may challenge the denial by filing a motion setting forth specific reasons why the decision to withhold consent was arbitrary and capricious. Thus, the motion is a required, not a discretionary, part of the petition process. A court must deny the motion and dismiss the petition to adopt if the petitioner fails to establish "by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious[.]" MCL 710.45(7). A decision is arbitrary if, although decisive, it is reached by "whim or caprice" rather than being reasoned and driven by reference to "principles, circumstances, or significance[.]" *In re Keast*, 278 Mich App 415, 424; 750 NW2d 643 (2008) (some quotation marks and citation omitted). A decision is capricious if it is whimsical, freakish, or humorsome, or apt to being suddenly changed. *Id*. at 424-425. Regarding the withholding of consent to adopt, "[i]t is the absence of any good reason to withhold consent, rather than the presence of good reasons to grant it, that indicates that the decision maker has acted arbitrarily and capriciously." *Id.* at 425.

C. DISCOVERY

"Michigan has long supported a policy of far-reaching, open, and effective discovery practice." *Shinkle v Shinkle (On Rehearing)*, 255 Mich App 221, 225; 663 NW2d 481 (2003). "Discovery rules must be liberally construed to further the ends of justice." *Id.* As a general proposition,

> [p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable. [MCR 2.302(B)(1).]

MCR 3.800(A) states, "Except as modified by the rules in this chapter, adoption proceedings . . . are governed by [the] Michigan Court Rules." MCR 2.001 states, "The rules in this chapter [i.e., Chapter 2, governing civil procedure] govern procedure in all civil proceedings in all courts established by the constitution and laws of the State of Michigan, except where the limited jurisdiction of a court makes a rule inherently inapplicable or where a rule applicable to a specific court or a specific type of proceeding provides a different procedure." MCR 2.301(A)(1) provides, in part, that "a party may seek discovery after commencement of the action when authorized by these rules, by stipulation, or by court order." MCR 2.101(A) states that "[t]here is one form of action known as a 'civil action.' " And MCR 2.101(B) states that "[a] civil action is commenced by filing a complaint with a court."

DHHS and BCS contend that a motion, not a complaint, is at issue in this case, and therefore, the discovery rules do not apply.

Legislative and court-rule history is illuminative in considering this argument. 1996 PA 388, effective January 1, 1998, created the family division of the circuit court. See MCL 600.1001 and MCL 600.1003. The Legislature gave the family division exclusive jurisdiction over cases brought under the adoption code, which were previously under the jurisdiction of the probate court. MCL 600.1021(1)(b). Accordingly, the Supreme Court moved the rules governing adoptions from Subchapter 5.750 of Chapter 5 of the court rules (governing probate court proceedings) to Subchapter 3.800 of Chapter 3 (governing special proceedings and actions).[4] As stated in the 2002 staff comment to MCR 3.805:

> The amendment and renumbering of MCR 5.750-5.756 and 5.781-5.783 as MCR 3.800-3.806 and 3.613-3.615, effective May 1, 2002, were proposed by the Family Division Joint Rules Committee. The statute creating the family division of circuit court gave it jurisdiction of a number of types of proceedings formerly heard in the probate court. See MCL 600.1021. The amendments move the rules governing adoptions, change of name, Parental Rights Restoration Act proceedings, and proceedings regarding persons who pose health threats to others, from Chapter 5, which contains probate court provisions, to Chapter 3. In addition, there are several modifications of the rules. [MCR 3.805, 465 Mich cixviii-cixix (staff comment).]

Before this changeover, the court rules stated that adoption proceedings were (aside from specific provisions not pertaining to discovery) governed by the rules generally applicable to probate proceedings. See *In re Sanchez*, 422 Mich 758, 769-770; 375 NW2d 353 (1985). MCR 5.101(A) and (B) provide (and did so before the changeover, as well) that there are two forms of action, a "proceeding" and a "civil action," and that a proceeding can be commenced by way of petition. See, generally, *In re Gordon Estate*, 222 Mich App 148, 155 n 5; 564 NW2d 497 (1997), and *In re Brown*, 229 Mich App 496, 501; 582 NW2d 530 (1998). In addition, the court rules

[4] MCL 600.401(2)(c) states that, under a particular plan of concurrent jurisdiction, "[t]he probate court and 1 or more probate judges may exercise the power and jurisdiction of the circuit court." See also MCL 600.841(2) and MCL 600.1021(3). Presumably, the probate court in the present case is operating under one of the statutes allowing for a probate court to hear circuit court matters.

provide (and did so before the changeover, as well) that the general discovery rules apply to probate court proceedings. See MCR 5.131 and *In re Brown*, 229 Mich App at 502-503.

Accordingly, discovery was available in adoption proceedings before the Supreme Court moved the applicable court rules from Subchapter 5.750 to Subchapter 3.800. There is nothing in the statutory provisions governing the family division of the circuit court suggesting that when jurisdiction of adoption proceedings was moved from the probate court, the opportunity for discovery was to be eliminated. The creation of the family court and the movement of family-related matters, like adoption, to the jurisdiction of the circuit court was designed to make the courts more comprehensible to Michigan citizens, especially those who are involved in family litigation interweaving different legal issues previously heard in different court divisions. Reorganizing legislation should not be understood as intentionally eliminating an established right unless the language of the legislation makes such a change clear and unambiguous. And, again, as previously noted, MCR 3.800(A) states that adoption proceedings are governed by the Michigan Court Rules except as modified by rules in Chapter 3. No provision in Chapter 3 limits the right of discovery in adoption proceedings.

DHHS and BCS rely on *In re Cotton*, 208 Mich App 180; 526 NW2d 601 (1994), in arguing that the scope of a § 45 review is limited and that, therefore, discovery need not be required. In that case, the Court stated:

> The fact that the Legislature in drafting [§ 45] limited judicial review to a determination whether consent was withheld arbitrarily and capriciously, and further required that such a finding be based upon clear and convincing evidence, clearly indicates that it did not intend to allow the probate court to decide the adoption issue de novo and substitute its judgment for that of the representative of the agency that must consent to the adoption. Rather, the clear and unambiguous language terms of the statute indicate that the decision of the representative of the agency to withhold consent to an adoption must be upheld unless there is clear and convincing evidence that the representative acted arbitrarily and capriciously. Thus, the focus is not whether the representative made the "correct" decision or whether the probate judge would have decided the issue differently than the representative, but whether the representative acted arbitrarily and capriciously in making the decision. Accordingly, the hearing under § 45 is not, as petitioners seem to suggest, an opportunity for a petitioner to make a case relative to why the consent should have been granted, but rather is an opportunity to show that the representative acted arbitrarily and capriciously in withholding that consent. It is only after the petitioner has sustained the burden of showing by clear and convincing evidence that the representative acted arbitrarily and capriciously that the proceedings may then proceed to convincing the probate court that it should go ahead and enter a final order of adoption. [*Id.* at 184.]

But the mere fact that a deferential scope of review applies does not mean that discovery should be withheld. *In re Cotton* provides no basis to refute the discovery analysis in this opinion.

Petitioners in a § 45 hearing are entitled to set forth pertinent evidence, and the manner of obtaining such evidence will often be through the discovery process. That discovery is available

in adoption proceedings has been recognized in decisions of this court, albeit in unpublished decisions. For example, in the case of *In re COH, ERH, JRG, & KBH (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued December 4, 2014 (Docket Nos. 309161 and 312691), the appellant challenged the MCI superintendent's decision to deny her consent to adopt. *Id*. at 2. The decision was ultimately upheld, but this Court also addressed the appellant's argument "that the trial court erred in partially denying her motion to compel discovery, thereby rubber-stamping the superintendent's decision without having access to complete and accurate information about the children's individual circumstances." *Id*. at 9. This Court stated:

> Michigan is strongly committed to a far-reaching and open discovery practice. The rules of discovery should be liberally construed in order to further the ends of justice. As a general rule, a party may obtain discovery of any non-privileged matter that is relevant to the subject matter of the pending case. MCR 2.302(B)(1). MCR 3.800(A) provides that adoption proceedings are governed by the general court rules, except as modified by MCR 3.801 through MCR 3.807. *Logically, then, the court rules governing discovery typically apply to adoption proceedings.*
>
> We hold that [appellant] has not established that the trial court abused its discretion by ruling as it did. [Appellant] *acknowledges that the court ordered the MCI superintendent to make available to* [*her*] *counsel for inspection the MCI's entire file on the children*. She complains, however, that had she had access to all of the information sought, such as additional facts about the foster family and various policies, she might have been able to present more compelling arguments or impeach witnesses. We conclude that [appellant's] argument is ultimately based on speculation and seeks to engage in a fishing expedition. [*Id*. at 9 (some citations omitted; emphasis added.]

Similarly, in the case of *In re Greenwood*, unpublished per curiam opinion of the Court of Appeals, issued August 26, 2008 (Docket No. 277366), p 4, the appellants challenged the trial court's refusal to allow discovery to prepare for the hearing under MCL 710.45. This Court quoted MCR 2.302(B)(1) and noted that the "scope of discovery is broad." *Id*. at 4-5. Thus, this Court presumed that the general discovery rules applied to adoption proceedings, vacated the trial court's order denying discovery, and directed the trial court to provide an adequate explanation if it denied or limited discovery in the remand proceedings. While we acknowledge that unpublished decisions are not binding precedent, they can be viewed as instructive and persuasive. *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010). Again, MCR 3.800(A) provides that adoption proceedings are governed by Michigan Court Rules and no provision in Chapter 3 limits the right of discovery in adoption proceedings. Accordingly, we conclude that the discovery rules do, in fact, apply to a § 45 hearing.

And contrary to the trial court's conclusion, petitioners' subpoenas were not necessarily overbroad. Petitioners sought the case files relating to CADP, which is relevant evidence under MCR 2.302(B)(1) for the purpose of determining whether MCI's decision to withhold consent to adopt the minor child was arbitrary and capricious. In other words, the reasons supporting MCI's decision to withhold consent may be determined to be invalid if, for example, the information relied upon was inaccurate, the child's circumstances were not properly considered, or certain facts

were not considered. Any such evidence may only be obtained through appropriate discovery, and specific objections to requested discovery information may be addressed by the trial court, including through a motion for a protective order under MCR 2.302(C) or a request for an *in camera* review. Because it is petitioners' burden in a § 45 hearing to establish "by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious," MCL 710.45(7), petitioners must be afforded the means to attempt to carry that burden.

D. STATUTORY CONSIDERATIONS

DHHS and BCS also argue that various statutory confidentiality provisions applied, precluding the requested discovery.[5] They rely on MCL 400.211, MCL 710.67(1), MCL 722.120(3) and (4), and MCL 722.627(2).

First, we consider MCL 400.211, which states:

> The commission[6] shall preserve in said institute [i.e., MCI] all legal and other papers of importance including reports of investigation of parentage, of family conditions of the children committed to said institute, and also a brief history of each child, showing its name, age, county, former residence, occupations, habits and character, so far as can be ascertained, and the name and residence and occupation of the person who has taken the child by agreement, or for adoption. In any report of any officer of the institute, or any agent of the state department of social welfare or any state or county officer, no names of such children, wards of the state, shall be published. Act No. 142 of the Public Acts of 1909, as amended, and Act No. 115 of the Public Acts of 1925, being sections 6733 to 6736, inclusive, of the Compiled Laws of 1929 shall not apply to said institute. All records pertaining to any child committed to said institute shall be filed as confidential and shall not be made public thereafter, excepting as the said commission shall authorize, when deemed necessary for the best interest of the child.

MCL 400.211 plainly states that MCI records are to be "*filed* as confidential" (emphasis added) and are not to be made public except as authorized by DHHS. But petitioners are not arguing for any records to be made *public*. The records in this case can remain "filed as confidential," yet still be subject to inspection for discovery purposes. Significantly, petitioners freely acknowledge that a protective order is appropriate. It does not appear to us that MCL 400.211 mandates that no

---

[5] MCR 2.302(B)(1) states that "[p]arties may obtain discovery regarding any non-privileged matter . . . ." Privileges relate to confidential matters. See, generally, *McCartney v Attorney General*, 231 Mich App 722, 731; 587 NW2d 824 (1998) (discussing the attorney-client privilege). See also *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 620; 576 NW2d 709 (1998) (concluding that the non-confidential information at issue in that case was subject to discovery).

[6] This is a reference to an earlier iteration of DHHS. See MCL 16.553.

records of MCI be disclosed, particularly when a protective order would satisfy the confidentiality requirement as worded in the statute.

Second, we consider MCL 710.67(1), which states:

> Except as otherwise provided in subsection (4) or in [MCL 710.68], *records of proceedings in adoption cases*, including a notice filed under section [MCL 710.33(1)], and a petition filed under [MCL 710.34(1)], *and the papers and books relating to the proceedings shall be kept in separate locked files and shall not be open to inspection or copy except upon order of a court of record for good cause shown expressly permitting inspection or copy*. Except as otherwise provided in subsection (4) or in [MCL 710.68], the court, after 21 days following entry of the final order of adoption, shall not permit copy or inspection of the adoption proceedings, except upon a sworn petition setting forth the purpose of the inspection or copy. The court may order notice and a hearing on the petition. The court shall grant or deny the petition in writing within 63 days after the petition is filed, except that for good cause the court may grant or deny the petition after the 63-day period but not later than 182 days after the petition is filed. [Emphasis added.]

Petitioners seem to be suggesting that this statute applies only to records of completed adoptions. "The primary goal of statutory interpretation is to give effect to the Legislature's intent, focusing first on the statute's plain language." *Klooster v Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011). The words of a statute are the most reliable evidence of its intent, and statutes should be read as a whole. *Id*. And this statute speaks plainly to keeping from inspection "records of proceedings in adoption cases" and "the papers and books relating to the proceedings . . . ." MCL 710.67(1). The statute does not employ the phrase "completed adoption cases." The records sought by petitioners were "papers" related to an adoption proceeding. However, the statute also speaks to allowing "inspection or copy" "upon order of a court of record for good cause shown . . . ." MCL 710.67(1). Given petitioners' history of caring for CADP, it seems that petitioners' desire to present evidence in support of their § 45 motion should, indeed, be deemed "good cause shown" subject to the issuance of a protective order as already discussed.

Third, we consider MCL 722.120, which states, in part:

> (1) The department may investigate, inspect, and examine conditions of a child care organization and may investigate and examine the books and records of the licensee. . . .
>
> * * *
>
> (3) A licensee shall keep the records the department prescribes regarding each child in its control and care and shall report to the department, if requested, the facts the department requires with reference to the children upon forms furnished by the department. Except as otherwise provided in this subsection and subsection (4), records regarding children and facts compiled about children and their parents and relatives are confidential and disclosure of this information must

be properly safeguarded by the child care organization, the department, and any other entity in possession of the information. Records that are confidential under this section are available to 1 or more of the following:

(a) A standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children, according to section 7 of the child protection law, 1975 PA 238, MCL 722.627.

(b) The children's ombudsman established in section 3 of the children's ombudsman act, 1994 PA 204, MCL 722.923.

(c) An employee of an agency, bureau, division, or other entity within the department, or an employee of a child caring institution, or a child placing agency contracted with the department, but only to the extent necessary for the administration of child welfare services in each case. The director of the agency responsible for child welfare services, or his or her designee, is responsible for authorizing an employee to have access to the records according to this subdivision and for ensuring that access is given only to the extent necessary.

(d) A national accreditation program, only while on-site, for the purpose of review and accreditation of a child welfare program, agency, or organization.

(4) Notwithstanding subsection (3) and sections 5 and 7(2) of the child protection law, 1975 PA 238, MCL 722.625 and 722.627, information or records in the possession of the department or the department of licensing and regulatory affairs may be shared to the extent necessary for the proper functioning of the department or the department of licensing and regulatory affairs in administering child welfare or child care licensing under this act or in an investigation conducted under section 43b of the social welfare act, 1939 PA 280, MCL 400.43b. Information or records shared under this subsection shall not be released by the department or the department of licensing and regulatory affairs unless otherwise permitted under this act or other state or federal law. Neither the department nor the department of licensing and regulatory affairs shall release or open for inspection any document, report, or record authored by or obtained from another agency or organization unless 1 of the conditions of section 7(10) of the child protection law, 1975 PA 238, MCL 722.627, applies.

* * *

(6) The department may suspend, deny, revoke, or refuse to renew a license of the child care organization if the licensee does not cooperate with an investigation, inspection, or examination under this section.

"Child care organization"

means a governmental or nongovernmental organization having as its principal function receiving minor children for care, maintenance, training, and supervision,

> notwithstanding that educational instruction may be given. *Child care organization includes organizations commonly described as* child caring institutions, *child placing agencies,* children's camps, children's campsites, children's therapeutic group homes, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or child care homes. [MCL 722.111(b) (emphasis added).]

It appears that BCS, as a nonprofit adoption agency, is a child-placing agency as described under MCL 722.111(e), which states:

> "Child placing agency" means a governmental organization or an agency organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in this act.

Petitioners argue that MCL 722.120 is not applicable because it applies to investigations by DHHS of childcare organizations. We tend to agree with petitioners. DHHS, for its part, cites the portion of MCL 722.120(4) that refers to releasing records as "permitted under this act or other state or federal law" and claims that no such state or federal law applies. But the language cited by DHHS must be read in context. Petitioners were not seeking from DHHS information that *DHHS had previously shared* "to the extent necessary for the proper functioning of the department or the department of licensing and regulatory affairs in administering child welfare or child care licensing under this act or in an investigation conducted under section 43b of the social welfare act, 1939 PA 280, MCL 400.43b." MCL 722.120(4). Accordingly, DHHS's argument about "other state or federal law[s]" is without merit.

BCS cites and relies on MCL 722.120(3), which states that "records regarding children and facts compiled about children and their parents and relatives are confidential and disclosure of this information must be properly safeguarded by the child care organization, the department, and any other entity in possession of the information." But, again, MCL 722.120 applies to investigations by DHHS of childcare organizations and does not expressly create an evidentiary privilege in the circumstances at issue in this matter, particularly when a protective order can be entered to properly safeguard the information. Further, BCS has provided a cursory argument without significant rationale or supporting legal authority, and therefore, we need not further address this argument. See *Bank of America, NA v Fidelity Nat'l Title Ins Co*, 316 Mich App 480, 517; 892 NW2d 467 (2016).

Fourth and finally, MCL 722.627 states, in part:

> (1) The department shall maintain a statewide, electronic central registry to carry out the intent of this act.
>
> (2) Unless made public as specified information released under [MCL 722.627d], a written report, document, or photograph filed with the department as

provided in this act is a confidential record available only to 1 or more of the following:

* * *

(g) *A court for the purposes of determining the suitability of a person as a guardian of a minor or that otherwise determines that the information is necessary to decide an issue before the court*, or in the event of a child's death, a court that had jurisdiction over that child under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

* * *

(k) A child placing agency licensed under 1973 PA 116, MCL 722.111 to 722.128, for the purpose of investigating an applicant for adoption, a foster care applicant or licensee or an employee of a foster care applicant or licensee, an adult member of an applicant's or licensee's household, or other persons in a foster care or adoptive home who are directly responsible for the care and welfare of children, to determine suitability of a home for adoption or foster care. *The child placing agency shall disclose the information to* a foster care applicant or licensee under 1973 PA 116, MCL 722.111 to 722.128, or to *an applicant for adoption.*

* * *

(10) Documents, reports, or records authored by or obtained from another agency or organization shall not be released or open for inspection under subsection (2) unless required by other state or federal law, in response to an order issued by a judge, magistrate, or other authorized judicial officer, or unless the documents, reports, or records are requested for a child abuse or child neglect case or for a criminal investigation of a child abuse or child neglect case conducted by law enforcement. [Emphasis added.]

MCL 722.627(2)(g) states that filed information is available to "[a] court for the purposes of determining the suitability of a person as a guardian of a minor or that otherwise determines that the information is necessary to decide an issue before the court[.]" The lower court has, at least implicitly, determined that it needs no information under this statute. But one must delve into what information, precisely, this statute deals with. MCL 722.627(1) states, "The department shall maintain a statewide, electronic central registry to carry out the intent of *this act*." (Emphasis added.) MCL 722.627(2) states, "Unless made public as specified information released under [MCL722.627d], a written report, document, or photograph filed with the department [i.e., DHHS] as provided in *this act* is a confidential record available only to" the specified people or entities. (Emphasis added.) The referenced act is the Child Protection Law (CPL), MCL 722.621 *et seq*. The CPL deals with cases of neglect or abuse. See, e.g., *Becker-Witt v Bd of Examiners of Social Workers*, 256 Mich App 359, 364; 663 NW 2d 514 (2003); see also *Doe v Doe (On Remand)*, 289

Mich App 211, 217; 809 NW2d 163 (2010).[7] As stated in MCL 722.622(c), "central registry" means "the system maintained at the department that is used to keep a record of all reports filed with the department under this act in which relevant and accurate evidence of child abuse or child neglect is found to exist." But petitioners have explicitly stated the following:

> There was only a one month period of time from when the [c]ourt took jurisdiction over [CADP] and when his mother died, and to the extent any of the case file contained information relating to the abuse and neglect case against her, that information could have been excluded and still can be.

In other words, petitioners agree that information pertaining to abuse and neglect can be excluded from discovery. While petitioners did not explicitly state this in their motion for discovery, the court, in exercising its discretion, could have recognized this limitation on otherwise allowable discovery.[8]

III. CONCLUSION

In summary, we conclude that (1) the discovery rules apply to petitioners' § 45 motion; (2) petitioners' subpoenas were not necessarily overbroad; (3) the MCI records can be inspected only under a protective order, to comply with the confidentiality requirements of MCL 400.211; (4) petitioners' desire to present evidence in support of their § 45 motion was "good cause shown" under MCL 710.67(1); (5) the confidentiality requirement mentioned in MCL 722.120(3) does not preclude discovery from BCS; and (6) records that pertain to the CPL are not available to petitioners but can be used by the court under MCL 722.627(2)(g) if the court deems it necessary.[9]

---

[7] In *People v Beardsley*, 263 Mich App 408, 413-414; 688 NW2d 304 (2014), the Court stated, "This act [i.e., the CPL] is designed to protect children when the persons who normally do the reporting are actually the persons responsible for the abuse, and thus unlikely to report it."

[8] The parties also cite MCL 722.627(2)(k), which speaks to a child-placing agency's provision of information obtained from DHHS to "an applicant for adoption." BCS is a child-placing agency. For context, however, see *Romig Estate v Boulder Bluff Condos Units 73-123, 125-146, Inc*, 334 Mich App 188, 196; 964 NW2d 133 (2020) (noting that statutes are to be read in context), it seems that the information to be provided by the agency to the applicant for adoption is the information *pertaining to that applicant*. Petitioners noted below that BCS had, indeed, agreed to provide records pertaining specifically to petitioners.

[9] In their statement of questions presented for appeal, petitioners mention that the court quashed the subpoenas sua sponte and claim that the court should not have done so in the absence of a motion to quash. Petitioners, however, do not address this issue in the argument portion of their brief and have therefore abandoned it. See *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Note, too, that DHHS and BCS both argued that the subpoenas should be quashed.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Thomas C. Cameron
/s/ Michael F. Gadola