

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-592

ADOPTION OF GLORIA.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The father appeals from a decree of the Juvenile Court deeming him unfit to parent his minor child and terminating his parental rights. He does not contest his unfitness, but rather argues on appeal that the proposed adoption plan of the Department of Children and Families (department) is legally insufficient and that the termination of his parental rights must be vacated. We affirm.

Background. Gloria was born in 2010. For the first four years of her life she lived with her paternal grandmother in Michigan. She moved with her father to Georgia in 2014, and they later moved to Massachusetts.

In November 2017, following the father's arrest on charges of sexual abuse of his girlfriend's minor daughter, Diane,² the

¹ A pseudonym.

² A pseudonym.

department filed an emergency petition seeking care and protection of Gloria.³ Gloria was seven years old, and was placed in a local foster home where she remained at the time of trial.⁴ The father was incarcerated throughout the pendency of the petition and remained so at the time of trial.

After the father's arrest, Diane's mother fled Massachusetts with Diane. They eventually were found and returned to Massachusetts by the Michigan State Police. It was later discovered that the father and his family had assisted in hiding Diane's mother and Diane from the department and the Michigan police.⁵

Gloria was described as an "incredibly personable, friendly and bright young girl." While in foster care, she grew and developed normally and made consistent academic progress and

³ Prior to his arrest, several mandated reporters had filed G. L. c. 119, § 51A, reports against the father alleging physical abuse and neglect of Gloria, including one report that stemmed from a domestic violence incident involving a former girlfriend that occurred in the home while Gloria was present; the department, however, did not open a case on the family based on these reports.

⁴ The mother did not appear for or participate in the trial. She is not part of this appeal.

⁵ Diane's mother and Diane were found by police in Michigan in the town in which the father's family lived, staying with a friend of the father. Diane's mother was driving a car registered to the father, and had been in constant contact with the father throughout the period during which the department and the police were searching for her.

required no school-based support services. She had no special medical needs and required no medications. Gloria exhibited no behavioral issues except for lying. She was being treated for frequent bedwetting (with vitamins and a strict bathroom schedule), and regularly attended trauma therapy to address the physical abuse suffered at the hands of the father. Gloria reported to her foster parents and court investigator that she was happy to no longer be living with the father, and that the abuse the father inflicted was "not okay."

Gloria reported to the department and the court investigator that the father had given her a "whooping" when she made mistakes on her school work and had hit her once when she wet her bed. She also had witnessed the father hit a former girlfriend. The father admitted that he regularly left Gloria in the care of babysitters or a girlfriend for fourteen hours a day. Gloria also reported that the paternal grandmother and a paternal aunt had physically abused her while she was in their care and living in Michigan. She later stated that she wanted to live with her paternal relatives because they were her family and that they had hit her only once.

Gloria had sporadic telephone calls with the paternal grandmother after being removed from the father's care (monitored by the foster mother). The paternal grandmother questioned Gloria extensively about her school work and refused

to believe Gloria when she said that the father had physically abused her. For thirteen months after her placement in a foster home, until December 2018, neither the father's siblings nor the paternal grandmother requested to visit with Gloria.

In February 2018, the department initiated an Interstate Compact on the Placement of Children (ICPC) home study in Michigan to explore Gloria's placement with the paternal grandmother. In October 2018, Michigan authorities issued a preliminary report approving the paternal grandmother as a "provisional placement" for Gloria. During an interview with the Michigan social worker, the paternal grandmother admitted to one incident of physical punishment of Gloria while she was in her care and stated that she would not seek therapy for Gloria, attributing Gloria's trauma to her removal from the father's care and her separation from the paternal family. The paternal grandmother consistently denied knowing the details of the criminal charges against the father. She also maintained contact with the mother. The Michigan social worker reported that "on paper the family look[ed] good," but that after the interview she had concerns about placing Gloria in the paternal grandmother's home.

The department continued to have serious concerns about placing Gloria with the paternal grandmother and decided not to

provisionally place Gloria with her.⁶ The department had been contacted by a maternal relative living in Texas expressing interest in becoming a placement for Gloria; the maternal relative had custody of one of the mother's other children (Gloria's half-sibling). Prior to trial, an ICPC home study had been requested in Texas.

At trial, the department submitted an adoption plan dated January 7, 2019 (plan). The plan called for the consideration of the paternal grandmother after the Michigan ICPC home study was completed (although the department expressed its continued concerns about this placement), and addressed the placement request by the maternal relative. If no appropriate family member was identified as an adoptive resource, the department intended to pursue adoption by recruitment. The father proposed Gloria's placement with the paternal grandmother.

Because the father stipulated to his unfitness, the trial on the merits proceeded on February 25, 2019, only against the mother, who did not appear or participate. Decrees were entered

⁶ The department's concerns stemmed from, among other things, the paternal grandmother's minimization of the significant criminal charges against the father, her failure to acknowledge the father's physical abuse of Gloria, and her contact with the mother, as well as the paternal family's inability to prioritize Gloria's safety over the father's situation, their involvement in hiding Diane's mother and Diane, and their failure to inquire as to Gloria's well-being or request visits with her when they traveled to Massachusetts to support the father during his court hearings.

finding both the father and mother unfit and terminating their respective parental rights. On June 13, 2019, the judge issued findings determining, as relevant here, that the department's adoption plan served Gloria's best interests and that the department's concerns about placing her with the paternal grandmother were warranted.

The Michigan ICPC home study was finalized in May 2019 (Michigan report), approving the paternal grandmother as a permanent placement resource. The judge reopened the evidence to allow for the admission of the Michigan report, the department's amended adoption plan dated June 11, 2019 (amended plan),⁷ and to take additional testimony. After the hearing, at which the adoption social worker and the paternal grandmother

⁷ The amended plan was identical to the original plan with the exception of three additional paragraphs addressing the Michigan report. In the amended plan, the department reported that after holding an "Area Clinical Review," and despite Michigan's licensure approval of the paternal grandmother, it decided not to sponsor the paternal grandmother as an adoptive resource for Gloria; this was so because the Michigan report did not address the department's stated concerns about placement with the paternal grandmother, and the department determined that the paternal grandmother could not "provide Gloria with the emotional support that she require[d] due to the trauma that she experienced while in the care of [the] father," the paternal grandmother "demonstrated lack of insight to [the father's] criminal charges and the impact that his dangerous behaviors had on Gloria and her well-being," and the paternal grandmother could not address Gloria's current or future emotional needs. The amended plan also addressed a referral for an ICPC home study for Gloria's potential placement with the maternal relative, who had since moved from Texas to Tennessee.

testified, the judge issued further findings. The judge reaffirmed each of her findings issued on June 13, 2019; she also made findings about the Michigan report, the department's determination not to sponsor the paternal grandmother as an adoptive placement, and the assessment of a potential placement with the maternal relative.⁸

The judge ultimately found that the paternal grandmother, while testifying at the posttrial hearing, continued to refuse to answer questions about the father's pending criminal charges, "clearly display[ing] her allegiance to her son which although understandable, is contrary to Gloria's best interests." After consideration of the additional evidence, the judge found that placing Gloria with the paternal grandmother would be contrary to Gloria's best interests, and approved the department's amended plan.

⁸ The judge further found that although the department had discussed and explored on more than one occasion with the paternal grandmother its concerns for Gloria's placement with her, the paternal grandmother had dismissed those concerns stating that they were "the same concerns that were addressed at the first trial and there ha[d] been no abuse of Gloria while in her home." The paternal grandmother testified at the posttrial hearing that she understood that Gloria experienced trauma, "but attribute[d] the trauma . . . [to] the Department's removal of [Gloria] from her father's care and custody and being apart from her paternal family." The judge found that the paternal grandmother also had not "seriously or carefully considered how she would integrate the father in Gloria's life in the future."

Discussion. The father argues that the department's adoption plan is legally insufficient because it lacks detail as to the type of home that would meet Gloria's needs. He contends that because of the plan's inadequacies, the judge erred in approving and relying on it in terminating his parental rights. We disagree.

After finding by clear and convincing evidence that a parent is no longer fit to parent, a judge must determine whether the "best interests [of the child] will be served by terminating the legal relation between parent and child" (quotation omitted). Adoption of Luc, 484 Mass. 139, 144 (2020). In doing so, "a 'court shall consider the ability, capacity, fitness and readiness of the child's parents . . . and shall also consider the plan proposed by the department or other agency initiating the petition.'" Adoption of Nancy, 443 Mass. 512, 515 (2005), quoting G. L. c. 210, § 3 (c). "Judges also 'consider parental nominations of caretakers in an extended family, just as they do in other types of child custody cases.'" Adoption of Helga, 97 Mass. App. Ct. 521, 527 (2020), quoting Adoption of Hugo, 428 Mass. 219, 226 (1998), cert. denied sub nom. Hugo P. v. George P., 526 U.S. 1034 (1999).

"The judge's obligation to 'consider' a plan involves much more than simply examining it. The judge must perform a 'careful evaluation of the suitability' of the plan and must

'meaningfully . . . evaluate' what is proposed to be done for the child." Adoption of Helga, 97 Mass. App. Ct. at 528, quoting Adoption of Dora, 52 Mass. App. Ct. 472, 475 (2001). A judge's findings are entitled to substantial deference, and we will not disturb those findings unless they are clearly erroneous. See Adoption of Cadence, 81 Mass. App. Ct. 162, 166 (2012). "In addition, we defer to the judge's determinations regarding the best interests of the child, and reverse only where there is a clear error of law or abuse of discretion." Id.

Here, the judge made a careful and thorough evaluation of the amended plan proposed by the department, which was sufficiently detailed to enable the judge to evaluate the suitability of the prospective adoptive placement for Gloria with the maternal relative or, in the alternative, adoption by recruitment. It is well established that "[t]he law does not require that the adoption plan be 'fully developed' in order to support a termination order." Adoption of Varik, 95 Mass. App. Ct. 762, 770 (2019), quoting Adoption of Willow, 433 Mass. 636, 652 (2001). In determining the sufficiency of the department's adoption plan, the judge considered, as she may, the trial evidence, the documentation and testimony provided when the evidence was reopened, and the department's amended plan

submitted at the posttrial hearing. See Adoption of Willow, 433 Mass. at 653.

The department's plan sought to place Gloria with the paternal grandmother if the Michigan ICPC home study approved her as a permanent placement. After Michigan submitted its final report, which failed to specifically address the department's stated concerns, the department declined to sponsor the paternal grandmother as Gloria's adoptive resource. Instead, the department prepared the amended plan in which it proposed a maternal relative (who had on multiple occasions contacted the department) as a potential placement. The department had, prior to trial, requested an ICPC home study of the maternal relative's home in Tennessee. See note 7, supra. In the event that the maternal relative was not approved, the amended plan likewise provided for adoption by recruitment.

The father's reliance on Adoption of Varik is unavailing to support his argument that the department's plan was deficient, as the facts in that case are distinguishable. In Adoption of Varik, the department's proposed plan also described a pending ICPC home study request for a paternal step-grandmother, and an alternative of adoption by recruitment. See Adoption of Varik, 95 Mass. App. Ct. at 771. Unlike in this case, however, Varik had been placed in a comprehensive intensive foster care home in order to address his specialized behavioral needs; namely, his

daily hoarding of food, stealing items from school, lying, and his disruptive behavior in school and in the foster home. See id. at 764. The adoption plan in Adoption of Varik was determined to be inadequate because it did not "specify the type of adoptive parents and the characteristics of the home environment best suited to meet [Varik's] specific needs." Id. at 771. This court determined that based on the specific facts and circumstances of that case, the department's plan "did not convey enough information for the judge to assess the various options that the department was actively considering." Id.

Here, in contrast, neither Gloria's bed-wetting nor lying required specialized foster or adoption placement. She easily transitioned into life with her foster family, was described as personable and friendly, required no medications or specialized behavioral accommodations at home or in school, was progressing well academically and required no school-based support, and enjoyed attending her daily after school program. In these circumstances, the department's amended plan was sufficiently detailed to allow the judge to meaningfully evaluate its suitability and whether it was in Gloria's best interests. See Adoption of Helga, 97 Mass. App. Ct. at 528-529.

The father's reliance on Adoption of Dora, 52 Mass. App. Ct. 472, likewise fails. In Adoption of Dora, we vacated the judge's decision to leave to the discretion of the department

which of two equally appropriate but competing adoption plans would serve the child's best interests. See id. at 476. Here, however, the judge took care in evaluating both the department's and the father's proposed plans, and ultimately agreed with the department that placement with the paternal grandmother was "fraught with uncertainty about whether Gloria's best interests will be promoted, served and prioritized over those of her father." The judge also considered the suitability of the department's amended plan in exploring a kinship placement with the maternal relative before pursuing adoption by recruitment, and determined that the amended plan best served Gloria's best interests. See Adoption of Varik, 95 Mass. App. Ct. at 764. We discern no error.

Based on the foregoing, we conclude that the judge, after properly considering the enumerated factors set out in G. L. c. 210, § 3, did not abuse her discretion in finding the father unfit, in approving the department's proposed adoption plan, and

in concluding that Gloria's best interests would be served by terminating the father's parental rights.⁹

Decree affirmed.

By the Court (Henry, Sacks & Englander, JJ.¹⁰),



Clerk

Entered: January 8, 2021.

⁹ No action is necessary on the father's motion to strike the department's motion to file a supplemental appendix because we have not relied on anything contained therein.

¹⁰ The panelists are listed in order of seniority.