

STATE OF MICHIGAN  
WASHTENAW COUNTY TRIAL COURT  
FAMILY DIVISION

In the Matter of

Case No: 02-143-AO

[REDACTED]

02-0144-RB

[REDACTED]

a minor

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Held in  
Ann Arbor, Michigan  
June 21, 2002

Present: Hon. ARCHIE CAMERON BROWN  
Family Division Trial Court Judge

**OPINION AND ORDER**

This matter is before the Court on Petitioner's, [REDACTED] (DOB 11/14/2000) Motion to Vacate Chief Judge Brown's Order Reassigning Case to Himself, or Alternatively, for Disqualification of Judge.

Petitioner scheduled a hearing in this matter for July 27, 2002. Pursuant to MCR 3.800 and MCR 2.119(E)(3), the Court, in its discretion, relies on the Motion, Brief and Exhibits filed by Petitioner and denies Petitioner's request for oral argument on this Motion.

Judge Brown was appointed by the Michigan Supreme Court as Chief Judge of both the Washtenaw County Trial Court and the Circuit Court effective January 1, 2002, and has been the Presiding Judge of the Family Division since 2000.

## MOTION FOR DISQUALIFICATION OF JUDGE

In Michigan, a motion to disqualify a judge is governed by MCR 2.003. Further, MCR 2.003(C)(2) provides that the moving party must include all grounds for disqualification that are known at the time the motion is filed, and that an affidavit must accompany the motion. In this case, Petitioner has failed to provide an affidavit as required by the court rule, however, as this motion is primarily a matter of law and not fact, the court will proceed in the absence of such affidavit. Of the six grounds provided for in MCR 2.003 (B), Petitioner alleges only that this Court is personally biased or prejudiced for or against a party or attorney. MCR 2.003 (B)(1).

Petitioner asserts through a news article written by Brian Dickerson that Michigan Supreme Court Chief Justice Maura Corrigan directed this judge to end the practice of grating second parent adoptions in the Washtenaw County Trial Court.<sup>1</sup> Further, Petitioner asserts that this judge is personally biased and prejudiced against the granting of Unmarried Couple ("second parent") Adoptions as demonstrated by this Court's correspondence, interviews with news media, reassignment of unmarried couple adoption cases from Judge Shelton to himself, and that this all occurred outside an actual judicial proceeding or hearing on an unmarried couple adoption petition.

The Court in *Cain v Michigan Department of Corrections*, 4.H Mich 470 (1996) held that MCR 2.003 (3)(1) requires a showing of actual bias. Absent actual bias or prejudice, a judge will not be disqualified pursuant to this section. MCR 2.003(3)(1) also requires that the judge be personally biased or prejudiced in order to warrant disqualification pursuant to this section, and that the challenged bias have its origin in events or sources of information gleaned outside the judicial proceeding. A party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality. *Cain* at 497.

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<sup>1</sup> This judge has never spoken to Mr. Dickerson on this or any other topic.

Petitioner, as the moving party, has the burden of proving actual bias or prejudice. *Band v Livonia Associates*, 176 Mich App 95 (1989).

Once made aware of the unmarried couple adoptions occurring within the Washtenaw County Trial Court, this Court began its own investigation of the practice within the Juvenile Division of the Family Court, and conducted its own legal research. The Court was not ordered by the Chief Justice, or anyone else, to end the practice of unmarried couple adoptions in Washtenaw County. The Court, due to the expected notoriety of any decision that was made by this Court, also sought a legal opinion from an expert in the field of adoption practice. That opinion confirmed the research already conducted by this Court.

The Court acknowledges contacts by the Chief Justice and other judges that expressed concern about the legal authority of the Washtenaw County Trial Court to continue the practice of unmarried couple adoptions.

This Court's June 4, 2002 Memo to Juvenile Court Staff and its June 11, 2002 response to the June 11, 2002 letter of the ACLU speak for themselves. In those documents, the Court has determined that the Adoption Code, as currently written, does not allow an unmarried couple to adopt a child, for the reasons set forth below.<sup>2</sup>

Petitioner attempts to argue that the Court's bias or prejudice is based on factual determinations already made by the Court, when in fact, the issue is one solely of law and statutory construction. Specifically, there is no Michigan appellate decision determining

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<sup>2</sup> The exhibits attached to Petitioner's Motion, and by implication as adopted by Petitioner as the basis for this Motion, argue public policy issues instead of the specific language of the statute. The Court has concerns about the issues of jurisdiction and residency. If, as Petitioner contends, that the unmarried couple adoption practice is allowed under the Michigan Adoption Code, then why is this practice only an issue in Washtenaw County? Since the unmarried couple adoption program began in 1996 slightly over one-half of the Petitioners were non-residents of Washtenaw County. For the period 1999 through 2001 two-thirds of the Petitioners were non-residents. In 2002 through April 25<sup>th</sup>, 6 of 7 Petitioners were non-residents. Currently, Petitioners in 8 of the 9 pending petitions are non-residents. Why are these non-residents not filing their petitions in their county of residence? Are they filing petitions in their county of residence, and after being denied, then filing a petition in Washtenaw County?

the Adoption Code to be unconstitutional. Therefore the statute is enforceable as written giving the words in the statute their ordinary and general accepted meaning.<sup>3</sup>

None of Petitioner's arguments, therefore, demonstrate actual bias or prejudice. Nothing argued by Petitioner demonstrates that the Court is unable to be impartial. The Court has made no ruling in any case that is pending. While Petitioner contends that the Court has already made up its mind if it is permitted to hear the case, an adverse ruling, even if erroneous, is not a valid basis for disqualification. If a Petitioner does not agree with the Court's ruling, there are procedures available for further review of the Court's ruling.

Adoption in Michigan is wholly statutory. MCL 710.21 et seq. The Adoption Code in Michigan is in derogation of the common law and the provisions of the Adoption Code must be strictly construed. *In the Matter of Hill*, 221 Mich App 683 (1997). Further, the provisions of the Adoption Code must be construed as a whole. *In re Schnell*, 214 Mich App 304 (1995).

MCL 710.24(1) provides:

If a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a change of name, with the intent to make the adoptee his or her heir, that person, together with his wife or her husband, if married, shall file a petition with the court of the county in which the petitioner resides or where the adoptee is found. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in section 23d(2) of this chapter.

Our Supreme Court, in the case of *Helder v Sruba*, 462 Mich 92 (2000), held that the "cardinal role" of statutory construction is to identify and give effect to the intent of the Legislature. The first step in discerning intent is to examine the language of the statute. The language is to be read according to its ordinary and generally accepted meaning.

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<sup>3</sup> It is important to note that Petitioner has failed to cite in any of its pleadings, or the correspondence and news articles attached as exhibits, any Michigan appellate decision that authorizes the practice of unmarried couple adoption. Further, this Court is aware of at least one other court in Michigan that has specifically denied adoption by an unmarried couple on much the same basis that this Court discusses below. Of note is that the attorney representing the Petitioner in that Oakland County case, Monica Yarris Linkner, was a signatory to the June 11, 2002 letter of the ACLU addressed to this Court.

Judicial construction is authorized only where the statute lends itself to more than one interpretation. When statutory language is clear and unambiguous, the court must honor the legislative intent as clearly indicated in that language and no further construction is required or permitted. Therefore, where the statute is clear on its face, "the role of the judiciary is not to articulate its view of 'policy,' but to apply the statute in accord with its plain language."

The Legislature in electing to use the phrase, "If a person desires to adopt a child," in the Adoption Code refers to a singular individual. "Person" is defined as a "human individual" in Merriam Webster's Dictionary.<sup>4</sup> An "individual" is defined as "(A) a particular being or thing as distinguished from a class, species, or collection: as (1): a single human being as contrasted with a social group or institution, (2): a single organism as distinguished from a group, (B) a particular person." in Merriam Webster's Dictionary.<sup>5</sup> Had the Legislature intended more than one unmarried individual to be able to adopt, the statute would so provide.

Further evidence that the reference in the Adoption Code is to a singular individual is supported by the phrase included in the Adoption Code that states, "that person, together with his wife or her husband, if married." The language of the statute, under its ordinary and generally accepted meaning, cannot refer to two or more individuals, unless they are married to one another.

The Court finds that the plain language of the Adoption Code precludes the adoption of a child by two or more unmarried parties. Nothing in the Adoption Code indicates a legislative intent to permit the adoption of a child by two or more unmarried persons.

Because Petitioner has failed to demonstrate actual bias or prejudice, Petitioner's Motion for Disqualification is DENIED.

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<sup>4</sup> "Person" is defined as a "human being (i.e. natural person)" in Black's Law Dictionary, 6<sup>th</sup> Ed.

<sup>5</sup> An "individual" is defined as "a single person" as distinguished from a group or class in Black's Law Dictionary, 6<sup>th</sup> Ed.

Pursuant to Petitioner's prayer for relief, and consistent with MCR 2.003(C)(3)(b), the Court is referring the sole issue of Petitioner's Motion for Disqualification to the State Court Administrator's Office for assignment of another judge to decide the Motion for Disqualification de novo.

### **MOTION TO VACATE ORDER REASSIGNING CASE**

Petitioner argues that the powers given to the Chief Judge pursuant to MCR 8.110(C) merely grants authority to oversee administrative functions of the Court. Petitioner further argues that a judge may not render a substantive decision on a matter not properly before him or her.

The powers of the Chief Judge as set forth in MCR 8.110 are more than mere administrative oversight, as has been alleged by Petitioners and others. As set forth in MCR 8.110(C)(3) a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:

(h) effect compliance by the court with all applicable court rules and provisions of the law; and

(i) perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this rule.<sup>6</sup>

Clearly then, by analogy to the recent action of the State Court Administrator's Office, the Chief Judge can order that a practice clearly not contemplated by law be ceased

<sup>6</sup> By way of comparison, an issue recently arose regarding the district court's handling of traffic tickets, and whether the court was a willing participant in charge bargaining on traffic matters rather than an independent arbiter. State Court Administrator, John D. Ferry, Jr., directed a memorandum to MI chief judges of the district courts on May 10, 2002, directing chief judges to ensure that magistrates conduct their proceedings according to applicable court rules and statutes. Specifically, Mr. Ferry stated that no court rule or statute authorizes courts taking traffic cases under advisement or amending traffic cases on their own motion. Further, Mr. Ferry stated that the offending practices identified in the newspapers that had no authority under statute or court rule must be discontinued. The import of the action by the State Court Administrator in those traffic matters, is directly applicable to this pending case. It is clear that the Michigan Supreme Court, acting through the State Court Administrator in those traffic cases, could order that a practice clearly not contemplated by law be ceased through administrative scion as opposed to the Supreme Court making a substantive legal decision.

through administrative action as opposed to making a substantive legal decision. The Chief Judge, pursuant to MCR 8.110(C)(3)(h), is required to ensure that judges and magistrates are in compliance with all applicable court rules and provisions of the law. When the Chief Judge of a Court determines that a judge or magistrate is not in compliance with the law, then the Chief Judge is required by MCR 8.110(C)(3)(i) to perform any act or duty or enter any order necessarily incidental to carrying out the purposes of the chief judge rule. This includes reassignment of cases from the judge or magistrate that refuses or ignores such a directive from the chief judge.

Petitioner contends that this Court's reassignment of unmarried couple adoption cases from Judge Shelton, in effect, renders dispositive orders in the cases that had been assigned to Judge Shelton. As no ruling has been made in any case that has been reassigned to the Court, Petitioner's argument is premature.

Petitioner argues that the holding in *Schell v Baker Furniture*, 461 Mich 502 (2000), stands for the proposition that a judge may not render a substantive decision on a matter not properly before him or her. The factual basis for the Court's decision in *Schell*, supra, are significantly different in the case at bar. In *Schell*, the chief judge, hearing cases as part of a "settlement week," dismissed cases assigned to another judge due to the parties' failure to appear in court. The Court set aside the dismissals and remanded the cases to circuit court for further proceedings, ruling that the chief judge incorrectly entered dispositive orders in cases assigned to another judge.

This case, and all other cases before the Court involving unmarried couple adoptions, were reassigned to the chief judge prior to any dispositive orders being entered.

The Court in *Schell*, at p 512, discussed the broad powers of the chief judge, and determined that the chief judge has the specific authority and responsibility to act in accordance with each separate provision of MCR 8.110(C). Further, the *Schell* Court at p. 513 (rejecting the opinion of the Court of Appeals that reflected the assumption that a chief judge is unable to take measures not specifically authorized by the court rule),

determined that they have invested chief judges with the authority to take measures not prohibited by the letter or spirit of the court rules.

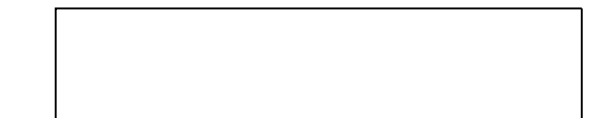
Petitioner does not argue, nor cite any caselaw, limiting a chief judge's authority to reassign cases within the court to other judges, including himself. In fact, MCR 8.111 specifically authorizes a chief judge to reassign cases for many reasons.

The Washtenaw County Trial Court, pursuant to its Local Administrative Order ("LAO"), currently has assigned three judges, Judge Shelton, Judge Connors and Judge Brown, to hear matters in the Juvenile Division of the Family Court. This Court's reassignment of Unmarried Couple (Second Parent) Adoption cases to Judge Brown is consistent with both the LAO and the responsibilities of the chief judge outlined above.

Acting within the scope of one's perceived powers as chief judge, requires a chief judge to make decisions on behalf of all judges, magistrates, court personnel, and the court, as well as address requests by the media. Petitioner is attempting to use the chief judge's comments made in an administrative capacity, as the basis for an assertion that decisions have been made that are substantive and dispositive. It cannot and should not be a limitation on the chief judge to cant out his or her mandated duties in this way, and then be used by a party to argue that the judge is biased or prejudiced against that party in a particular case.

Petitioner's Motion to Vacate Chief Judge Brown's Order Reassigning Case to Himself is DENIED. As to this Motion, Petitioner is left to pursue any other remedy it deems appropriate.

Dated: June 21, 2002



Hon. Archie Cameron Brown