IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals

In re Bates, Minors

Supreme Court No. 165815
Court of Appeals No. 361566
LC No. 18-004645

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AMICI CURIAE BRIEF OF THE LEGAL SERVICES ASSOCIATION OF MICHIGAN AND MICHIGAN STATE PLANNING BODY FOR LEGAL SERVICES

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(1) When a child is in the care of a relative, is the trial court required to consider and eliminate available alternative remedies short of termination as a matter of constitutional due process?

The trial court would answer: No
The Court of Appeals would answer: No
Appellant-Mother answers: Yes
Appellee would answer: No
Amici answer: Yes

(2) When a child is in the care of a relative, is the trial court required to consider and eliminate available alternative remedies short of termination as a matter of statute, specifically MCL 712A.19b(5)?

The trial court would answer: No
The Court of Appeals would answer: No
Appellant-Mother answers: Yes
Appellee would answer: No
Amici answer: Yes

STATEMENT OF INTEREST OF *AMICI CURIAE*

The Legal Services Association of Michigan ("LSAM") and the Michigan State Planning Body for Legal Services ("MSPB") (collectively, "*Amici*") respectfully submit this *amici curiae* brief to the Michigan Supreme Court in *In re Bates*. With this brief, *Amici* seek to advance their interests in and commitment to providing fair and equal access to the Michigan justice system for low-income individuals, and in particular in this case, low-income parents.[1]

LSAM is a Michigan nonprofit organization incorporated in 1982. LSAM's members are eleven of the largest civil legal services organizations in Michigan and collectively provide legal services to low-income individuals and families in more than 50,000 cases per year.[2] LSAM members have broad experience with a variety of family law cases where a low-income parent's rights to custody of his or her child are at stake—these involve custody and parenting time cases, third-party custody actions, minor guardianship cases, child abuse and neglect cases, paternity proceedings, and adoption proceedings. LSAM members share a deep institutional commitment to ensuring that the rights of low-income families, parents, and children are respected in these proceedings. Almost all LSAM members work daily—*e.g.*, in public benefits, family law, and housing cases—with low-income families involved in and impacted by adoption, paternity, or

[1] Pursuant to MCR 7.312(H)(5), *Amici* state that no counsel for a party authored this brief in whole or in part, no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *Amici*, their members, or their counsel made any such monetary contribution.

[2] LSAM's members are: Lakeshore Legal Aid, Legal Aid and Defender, Legal Aid of Western Michigan, Legal Services of Eastern Michigan, Legal Services of Northern Michigan, Michigan Advocacy Program, Michigan Indian Legal Services, Michigan Migrant Legal Assistance Program, Michigan Legal Services, Michigan Poverty Law Program, and the University of Michigan Clinical Law Program.

similar family law proceedings. LSAM members are institutionally interested in and committed to providing fair and equal access to the justice system for low-income individuals.

MSPB is an unincorporated association of forty-three individuals—leaders in the judiciary, the State Bar, state and regional advocacy programs, and community organizations who are interested in Michigan's indigent civil legal aid and indigent defense systems. MSPB acts as a forum for planning and coordinating the state's efforts to deliver civil and criminal legal services to the poor. MSPB was initially created through a mandate of the Legal Services Corporation ("LSC"). Although LSC no longer requires that states have a formally designated State Planning Body, MSPB has continued to function at the request of the programs and their state funder. The stated mission of MSPB is to plan, organize, and coordinate an effective civil legal services delivery system in the State of Michigan. In addition to coordinating *pro bono* services, MSPB advocates on behalf of the state's indigent population to the State Supreme Court, the State Bar, and the State Court Administrative Office. MSPB is committed to assuring equal access for the poor to the legal system, including the family court system.

On January 31, 2024, this Court granted Appellant-Mother's Application for Leave to Appeal and invited LSAM and MSPB, as well as the State Bar of Michigan Family Law and Children's Law Sections, the Prosecuting Attorneys Association of Michigan, and the University of Detroit Mercy Law Juvenile Appellate Practice Clinic, to file briefs amicus curiae. (January 31, 2024 Order at 1.)

With this brief, *Amici* seek to advance MSPB's and LSAM's interests in ensuring that Michigan parents and their children receive the legal protections to which they are entitled under the United States Constitution and Michigan law. This case affords the Court an opportunity to clarify the standards trial courts employ when deciding whether to terminate a parent's

fundamental and constitutionally protected liberty interest in the care, custody, and management of their child and rein in subjective and inconsistent termination decisions. *Amici* submit that this is an important issue in defining the rights and obligations of parents, the State of Michigan, and judges presiding over termination proceedings.

I. INTRODUCTION

Michigan has the distinct dishonor of being among the states quickest to sever the parent-child relationship,[1] thereby forever breaking family ties and seriously undermining the rights of parents under the United States Constitution. *Amici* respectfully submit that the current approach to termination proceedings in Michigan violates both the Constitution and Michigan law. This case—along with the companion case, *In re D.N. Dailey*, MSC No. 165889—offers this Court the opportunity to (a) definitively clarify that, as a matter of constitutional and statutory law, parental termination must be the measure of last resort, ordered only after all possible alternatives have been considered and eliminated, and (b) articulate specific guidelines that Michigan trial and appellate courts must follow during termination proceedings to ensure this least restrictive means analysis is conducted properly. Indeed, the Constitution and the Juvenile Code demand that courts seriously explore and pursue less severe alternatives given the heightened stakes at play in termination proceedings—the permanent severing of a parent's fundamental liberty interest in the care, custody, and management of their child.

But it is not enough for this Court to simply declare a least restrictive means analysis necessary and leave it to the trial courts to sort out what that means. This analysis must be structured, in order to protect the rights, health, and safety of children, custodial parents or other relatives, and non-custodial parents. Especially in families where there is historic—or even active—addiction and abuse, the least restrictive means analysis must not be applied as a blanket rule that serves to abandon or even endanger vulnerable parents, children, and caregivers. This case provides an occasion for this Court to address these constitutional concerns and provide

[1] Agnel Philip, et al., *The 'death penalty' of child welfare: In 6 months, some parents lose their children forever*, NBC NEWS (Dec 20, 2022, 8:30 AM), https://www.nbcnews.com/news/us-news/termination-parental-rights-neglect-children-rcna61439.

guidance to Michigan's lower courts on the proper application of the best interests analysis in such a way that the rights and interests of all stakeholders involved are served.

II. FACTUAL BACKGROUND

Amici adopt the Statement of Facts and the discussion of proceedings presented by Appellant-Mother's Brief on Application for Leave to Appeal and Brief on Appeal.

III. ARGUMENT

A. The United States Constitution Requires Consideration and Elimination of Available, Less Restrictive Alternatives before Termination of Parental Rights

Both the United States Supreme Court and this Court recognize that the parent-child relationship is sacred—a fundamental liberty interest historically protected by the Fourteenth Amendment of the United States Constitution. See US Const, Am XIV, § 1; *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000); *Meyer v Nebraska*, 262 US 390, 399, 401; 43 S Ct 625; 67 L Ed 1042 (1923); *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009). "This right is not easily relinquished." *Hunter*, 484 Mich at 257. Indeed, "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Id.* As a result, "to satisfy constitutional due process standards, the state 'must provide the parents with fundamentally fair procedures.'" *Id.*

1. Termination of parental rights should be subject to the most exacting standard of review.

Parental termination cases must involve the strictest level of scrutiny because the complete deprivation of a fundamental constitutional right is at stake:

> Termination cases introduce a significantly heightened intrusion upon a parent's fundamental right to parent because they involve an all-or-nothing proposition: whether a parent's right to be a parent and make decisions regarding his or her child's upbringing is

> permanently severed. It follows logically that under circumstances where the parental interest is most in jeopardy, due process concerns are most heightened.

Hunter, 484 Mich at 269. See also *Santosky v Kramer*, 455 US 745, 759; 102 S Ct 1388; 71 L Ed 2d 599 (1982) ("When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it.").

Strict scrutiny applies when the State initiates an adverse action affecting a person's fundamental rights. See *Morreale v Dep't of Cmty Health*, 272 Mich App 402, 407; 726 NW2d 438 (2006). "[T]he Fourteenth Amendment forbids the government to infringe ... 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Washington v Glucksberg*, 521 US 702, 721; 117 S Ct 2258; 138 L Ed 2d 772 (1997) (quoting *Reno v Flores*, 507 US 292, 302; 113 S Ct 1439; 123 L Ed 2d 1 (1993) (emphasis in original)). In other words, to withstand strict scrutiny, the State must advance its compelling state interest "by the least restrictive means available." *Bernal v Fainter*, 467 US 216, 219; 104 S Ct 2312; 81 L Ed 2d 175 (1984).

State courts across the country have applied these foundational constitutional principles in parental rights termination proceedings, allowing termination ***only*** where no less restrictive alternatives exist. Alabama is a primary example. Alabama courts have consistently held that the United States Constitution requires a determination that termination is the least restrictive means of accomplishing the state's goals. See, e.g., *Ex parte Beasley*, 564 So 2d 950, 954–955 (Ala, 1990); *TDK v LAW*, 78 So 3d 1006, 1011 (Ala Civ App, 2011) ("Parents and their children share a fundamental right to family integrity that does not dissolve simply because the parents have not been model parents. That due-process right requires states to use the most narrowly tailored means of achieving the state's goal of protecting children from parental harm." (citations omitted)). In Alabama, a court may only terminate parental rights "once it has determined that the petitioner has

met the statutory burden of proof and that, having considered and rejected other alternatives, a termination of parental rights is in the best interest of the child." *Beasley*, 564 So 2d at 954–955.

But Alabama does not stand alone. Illinois courts apply strict scrutiny when the government seeks to terminate parental rights and "dissolve the bonds between parent and child." *In re DW*, 214 Ill 2d 289, 310; 827 NE2d 466 (2005) (the government must "use the least restrictive means consistent with the attainment of the government's goal"). Florida also recognizes that "the state must establish that the termination of rights 'is the least restrictive means of protecting the child from serious harm.'" *Florida Dep't of Child & Fams v FL*, 880 So 2d 602, 608 (Fla, 2004) (citation omitted). A termination decision in Florida must "be based on the totality of the circumstances," *id.*, and courts must utilize alternative measures short of termination "if such can permit the safe reestablishment of the parent-child bond," *RA v Dep't of Child & Fams*, 30 So 3d 722, 724 (Fla Dist Ct App, 2010) (declaring that short of a threat of "serious harm" to the child, the state should find a less drastic measure than termination). In Utah, courts must start from the position that "family life should be strengthened and preserved," meaning that "[i]f the child can be equally protected and benefited by an option other than termination, termination is not strictly necessary [a]nd the court cannot order the parent's rights terminated." *Interest of BTB*, 472 P3d 827, 841; 2020 UT 60 (2020). Utah courts should first look to "whether other feasible options exist that could address the specific problems or issues facing the family, short of imposing the ultimate remedy of terminating the parent's rights." *Id.* And Colorado courts must consider "less drastic alternatives" and undergo "a specific elimination of these alternatives" before termination. *People in Int of AM v TM*, 480 P3d 682, 687 n 2; 2021 CO 14 (2021).

The Constitution provides that Michigan must follow suit. Parents have a fundamental right in the care, custody, and management of their children—this cannot be disputed. As with

any fundamental right, strict scrutiny must apply in the termination of parental rights. This Court can—and should—make clear that the United States Constitution requires trial courts to find that termination of parental rights is the least restrictive means available to protect the child's safety and stability, and to make this finding, trial courts must first consider and eliminate available alternatives to termination.

2. When strict scrutiny is applied, termination must be a measure of last resort.

Because the United States Constitution requires consideration and elimination of available alternatives short of termination, termination of parental rights must be a measure of last resort. Termination cannot be the least restrictive option when other means exist to protect the child from harm and provide them with a stable home. For example, "[a] custody award to a third party … represents a lesser intrusion into the family sphere. It does not result in an irrevocable severance of parental rights or 'a unique kind of deprivation' that forces parents to confront the state." *Hunter*, 484 Mich at 269 (citing *Santosky*, 455 US at 759). See also *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010) ("a child's placement with relatives weighs against termination"); *In re Olive/Metts Minors*, 297 Mich App 35, 43–44; 823 NW2d 144 (2012) (same). Termination is thus inappropriate when, as here, the children live in a stable household with a relative or guardian and the parent and children maintain a relationship.

Various other states refuse to terminate parental rights when children live safely with family members. Most notably, Alabama courts consistently find that "continued placement with the relative foster parents is a viable alternative to the termination of … parental rights." *PM v Lee Cnty Dep't of Hum Res*, 335 So 3d 1163, 1172 (Ala Civ App, 2021). See also *Ex parte AS*, 73 So 3d 1223, 1230 (Ala, 2011). In particular, the Alabama Supreme Court has found it to be "premature" to terminate parental rights where the child lives with a close relative—like a non-

respondent parent—who maintains custody and supervises the relationship between parent and child. *Ex parte AS*, 73 So 3d at 1230.

Judge Gleicher, former Chief Judge of the Michigan Court of Appeals, has highlighted Alabama's approach to parental termination cases, noting that allowing a parent "restricted visitation rights can be a viable alternative to termination of parental rights" when the parent and child still have a "deep and beneficial emotional relationship" because "permanently depriving children of association with a parent by terminating parental rights could do more harm than good to the children." *In re Bates*, unpublished opinion per curiam of the Court of Appeals, issued March 23, 2023 (No. 361566), p 7 (GLEICHER, C.J., dissenting). In other words, other less restrictive means short of depriving a parent of a fundamental right exist and should be considered.

Both Maine and Florida similarly recognize that guardianship by a relative can be a less restrictive option than termination. Maine courts can create a permanent guardianship to establish safe, long-term care for a child, which allows parents whose children cannot be returned to them to have a meaningful opportunity to maintain a legal relationship with their children and to have the court determine their rights to have contact with their children. See 22 MRS § 4038–C (2016). And in Florida, continued guardianship custody is more appropriate than termination even when a parent makes slow progress on rehabilitation. See *RA*, 30 So 3d at 724 (finding that the child would not be harmed by continued custody with a foster family where the father had an established relationship with the child and the father was working on his case plan and rehabilitation).

In Michigan, when the child lives safely with the non-respondent parent, custody orders satisfy the State's interest in providing safety and stability to the child while allowing them to maintain their relationship with their parent. See MCL 722.2; MCL 722.3. In enacting the Child Custody Act, the Legislature created the presumption that it would be in "the best interests of a

child for the child to have a strong relationship with ***both*** of his or her parents." MCL 722.27a(1) (emphasis added).

When a child lives in a stable household with a relative or guardian and the parent and child maintain a relationship, it is clear that a less restrictive option exists short of termination of parental rights. Guardianships and custody orders leave the door open to parental rehabilitation and the resumption of parental custody while offering children the stability of placement with a caregiver.[2] Unlike termination, which permanently severs the parent-child relationship, a guardianship or custody arrangement meets the State's concern for the child's best interest while preserving the parent's fundamental right to parent. Thus, a presumption in favor of placement with relatives, in particular non-respondent parents, better fits constitutional principles and brings Michigan in line with national trends. This Court should formally recognize this arrangement as less restrictive than termination and reject termination requests where such an arrangement exists or may be possible given the facts of a particular proceeding.

B. The Juvenile Code Requires Consideration and Elimination of Available, Less Restrictive Alternatives before Parental Termination

In addition to being constitutionally required, the Juvenile Code requires a trial court to consider and eliminate available alternative remedies short of termination, specifically, whether the child is being cared for by relatives. See *In re Mason*, 486 Mich at 164, 169; *In re Olive/Metts Minors*, 297 Mich App at 43.

Pursuant to the Juvenile Code, a court may order termination only if "the court finds that there are grounds for termination of parental rights ***and*** that termination of parental rights is in the child's best interests." MCL 712A.19b(5) (emphasis added). This Court has stated that the child's

[2] Ann M. Haralambie, Annotation, *Guardianship Alternative*, 2 Handling Child Custody, Abuse and Adoption Cases § 13:24 (2022).

placement with relatives is "an ***explicit factor*** to consider in determining whether termination [is] in the [child's] best interests." *In re Mason*, 486 Mich at 164 (emphasis added). Termination of parental rights is ***not*** in the child's best interest when the child is "'being cared for by relatives' although a parent is not personally able to be a primary caregiver." *Id.* at 169 (quoting MCL 712A.19a(8)(a)). See also *In re Olive/Metts Minors*, 297 Mich App at 43 ("the trial court was required to consider the best interests of each child individually and was required to explicitly address each child's placement with relatives at the time of the termination hearing if applicable"). Moreover, MCL 712A.19a explicitly provides that a "court is not required to order the agency to initiate proceedings to terminate parental rights if … [t]he child is being cared for by relatives." MCL 712A.19a(8)(a).

Under the Juvenile Code and this Court's precedent in *Mason*, a trial court must consider a child's placement with relatives when determining whether termination of parental rights is in the child's best interests. It is only after a trial court has considered and eliminated the child's placement with relatives as a workable alternative option that the trial court may order termination of parental rights.

C. This Court Should Articulate Clear Guidelines for Trial Courts to Use in Assessing Alternatives to Termination of Parental Rights

The Constitution requires trial courts to consider less restrictive means to termination. And Michigan law makes clear that termination is not mandatory, especially when viable, less restrictive measures exist. But affirming this protection is not enough, and could leave vulnerable parents and children at risk if trial courts are not provided with guidance as to how to determine when less restrictive means exist. This Court should articulate specific guidelines that trial courts must use to develop a factual record when assessing whether such alternatives exist.

Parental termination proceedings in Michigan employ imprecise substantive standards, leaving determinations unusually open to the subjective values of the judge. See *Smith v Org of Foster Fams For Equal & Reform*, 431 US 816, 835 n 36; 97 S Ct 2094; 53 L Ed 2d 14 (1977) ("[J]udges too may find it difficult, in utilizing vague standards like 'the best interests of the child,' to avoid decisions resting on subjective values."). "Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias." *Santosky*, 455 US at 763. Courts, both in Michigan and nationwide, are terminating parental rights more often and more quickly than ever before.[3] Indeed, Michigan ranks among the top-10 nationally in quickest terminations.[4] This is problematic both legally and in its impact on families. Research indicates that many children who experience parental termination suffer "ambiguous loss," a phenomenon "similar to grieving after a death but without the closure of knowing a loved one is gone forever."[5] Given the weight of the liberty interest at stake, the social cost of even occasional error is substantial.

Clear guidance from this Court is necessary to minimize inappropriate terminations while also preventing trial courts from applying an overly broad presumption that the child's placement with a relative or other parent of the child is always a viable alternative to termination. *Amici* respectfully suggest that this Court clarify that a trial court's determination of whether termination of parental rights is in the child's best interest must include a phase in which the court considers, evaluates, and determines whether viable alternatives to termination exist. Trial courts should have to make a clear determination on the record on whether placement with a relative is an

[3] Philip, *supra* note 1.

[4] *Id.*

[5] *Id.*

available, less restrictive alternative to termination. As part of this inquiry, trial courts should have to hear testimony on the record, including from the relative proposed for placement or the non-offending custodial parent, on the viability of the child's placement with a relative, including the non-offending custodial parent, as an alternative to termination. Although the child's placement with a relative weighs against termination, this rebuttable presumption that a relative placement is viable may be overcome upon a showing that, based on the facts, termination of parental rights is in the child's best interests.

1. The trial court's consideration, evaluation, and determination of viable alternatives: placement with non-parent relatives.

If a non-parent relative caretaker will agree to guardianship and would prefer a less drastic option to termination, then it would be in the child's best interests to identify that preference ***before*** termination. When a trial court terminates parental rights based on the assumption that the child will remain with the relative with placement at the time of the termination proceedings, the court leaves the door open for greater uncertainty and instability for the child. There is no statutory preference for placement with relatives applicable to the process for appointing a guardian ***after*** termination of parental rights. *In re COH, ERH, JRG & KBH*, 495 Mich 184, 198; 848 NW2d 107 (2014); MCL 712A.19c(2); MCL 722.954a. As a result, the relative with placement during the termination proceedings would not receive the same guaranteed priority for placement in subsequent guardianship proceedings.

If termination is premised on the trial court's assumption that adoption will follow, and the relative would prefer guardianship over adoption if given a choice, then termination necessarily does not further the State's interest in permanency. The child's relative custodian may prefer not to adopt based on their relationship with the child's natural parent, family dynamics, or the caretaker's own assessment of the equities of the State's decision to terminate rights of their own

family member. But this information can ***only*** be elicited through testimony—a trial court cannot simply assume that the relative custodian can carry the burden of raising the child and managing what are by the very nature of termination proceedings challenging familial relationships. MDHHS guidelines already require the Department to consider juvenile guardianship in lieu of termination where the relative caretaker holds "strong cultural beliefs that are in opposition to termination of parental rights" or where a "relative is willing to provide a permanent home until the child is of appropriate age but does not want to change the legal relationship to the child." (State of Michigan Child Guardianship Manual, GDM 600, pp 3-4.) Requiring trial courts to hear testimony on the viability of the child's placement with a non-parent relative before termination will ensure that a trial court's best interests analysis reflects more than assumptions and guesswork.

Although a child's placement with relatives weighs against termination, this proposed factual inquiry allows for presentation of rebuttal evidence showing that relative placement without termination is not in the child's best interests. Taking testimony from a relative may inform the court of reasons why relative placement without termination would not be viable. For example, testimony regarding the relative's relationship with the respondent parent may provide a reason to terminate if the respondent parent has a history of violence or threats of violence against the relative. Similarly, testimony should reveal whether the relative is willing and able to manage risks to the child and the relative that the respondent parent may pose, including from substance use disorder, mental illness, domestic violence, sexual abuse, and/or history of coercive control or victimization. In such cases, testimony on these issues is necessary to allow trial courts to consider whether the relative guardian will be able and willing to limit contact between the respondent parent and child, if necessary, as part of the viability determination.

2. The trial court's consideration, evaluation, and determination of viable alternatives: placement with the non-respondent parent.

While all relative placements as an alternative to termination require scrutiny, placement with the non-respondent parent raises particular issues. When the child will remain in the care of the other natural or legal parent, the trial court should consider whether a custody order is an alternative to termination. In doing so, the trial court must assess whether the custodial parent is willing, able, and in a position to effectively control the risk that the respondent parent may pose to the child and the non-respondent parent under the proposed alternative to termination. The trial court should evaluate whether a custody order would sufficiently address safety during parenting time between the respondent parent and child, whether evidence of coercive control or domestic violence exists, or any other factors exist to indicate that the parent-custodian would be unable to control the risks that the respondent parent poses to the child if parental rights are not terminated. If the custodial parent believes they cannot control these risks, especially due to domestic violence or coercive control, the trial court should give that substantial weight.

The most important part of the viability analysis in this context would be that the alternative domestic relations order is adequately protective of the children and that it contains enforceable provisions to structure any parenting time with the respondent parent. Indeed, *Amici* agrees with Appellee's position that "[t]he burden of constant vigilance and active protection against a dangerous parent should not fall upon a non-offending parent because of a blanket application of a less restrictive option to termination being available." (MDHHS Supp, p 25.) To constitute a viable alternative, a custody order must not simply leave the non-respondent parent to manage the risks, leaving themselves open to the possibility of later being charged with Failure to Protect if something goes wrong during the respondent parent's time with the child.

The trial court must implement procedural safeguards to balance parental rights versus the best interests of the child. *Amici* believe this balancing must be fact specific and intentional. In each case where non-respondent parent placement is possible, the trial court should make a record of the non-respondent parent's position and evaluate the risk the respondent parent poses to the child holistically, considering whether the respondent parent poses a risk to the other parent and, by extension, to the child. Moreover, to avoid future uncertainty, a custody order that will establish the viable alternative to termination should be in place before closing the child protective proceeding. The trial court can use existing options to review the progress of the domestic relations case during the dispositional phase before terminating jurisdiction.

IV. CONCLUSION

For these reasons and those outlined in Appellant-Mother's Application for Leave to Appeal and Brief on Appeal, the Court should hold that when, as here, children are in the care of a relative, the trial court must consider and eliminate available alternative remedies short of termination both as a matter of constitutional due process and by statute.

Respectfully submitted,

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Statement as to Length and Form of Brief

The foregoing brief contains 4,760 countable words, see MCR 7.212(B)(1-3), and meets the formatting standards as directed by MCR 7.212(B)(5).

/s/ Andrew M. Pauwels

IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals

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PROOF OF SERVICE

I hereby certify that on April 22, 2024, I electronically filed the foregoing document, along with the Certificate of Service, using the MiFILE e-filing system which will send notification of such filing to all registered counsel of record.

/s/ Andrew M. Pauwels

Dated: April 22, 2024