

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TERRI LYNN HAAPT and
KAITLYN HAAPT, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHAEL C. HAAPT,

Respondent-Appellant,

and

SHELLY WARD,

Respondent.

UNPUBLISHED

September 26, 1997

No. 196406

Genesee Probate Court

LC No. 95-101030-NA

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Respondent-appellant appeals by leave granted from the probate court order making his minor children temporary wards of the court. We reverse and remand.

The probate court erred by refusing to allow respondent-appellant a trial by jury on the basis that respondent had waived the right. A jury demand was properly filed by respondent-appellant and was not withdrawn expressly in writing or on the record. MCR 2.508(D)(3); MCR 5.501; MCR 5.508. Contrary to the conclusion of the trial court, one may not "impliedly" waive one's right to a trial by jury. For that reason, we reverse the probate court order and remand for further proceedings with respect to the petition to make the children temporary wards of the court.

* Circuit judge, sitting on the Court of Appeals by assignment.

Next, in the event that the controversy arises on remand, we hold that the trial testimony of two witnesses concerning statements made to them by one of the children regarding alleged sexual abuse by respondent-appellant was properly admitted into evidence pursuant to MCR 5.972(C)(2).

Reversed and remanded for further proceedings on the petition. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood