

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ASHLEY NICOLE HARRIS, Minor.

JULIE ANN KUBACKI and KENNETH JOHN
KUBACKI,

UNPUBLISHED
March 29, 2007

Petitioners-Appellees,

v

RONALD WAYNE HARRIS,

Respondent-Appellant.

No. 273430
Huron Circuit Court
Family Division
LC No. 06-001510-AY

Before: Jansen, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under the stepparent adoption statute, MCL 710.51(6). We reverse and remand.

Respondent does not contend on appeal that the statutory ground for termination of his parental rights was not established, but rather that the trial court abused its discretion in refusing to provide him with court appointed counsel. The trial court possessed the discretion to appoint counsel for an indigent respondent facing involuntary termination of parental rights under MCL 710.51(6). *In re Sanchez*, 422 Mich 758, 770-771; 375 NW2d 353 (1985). Its refusal to do so is reviewed by this Court for an abuse of discretion.

An indigent parent has no right to court appointed counsel in proceedings under the Adoption Code, MCL 710.21 *et seq.*, but the Michigan Supreme Court held in *In re Sanchez* that termination of parental rights under § 51(6) of the Adoption Code is involuntary and based on fault, as is termination of parental rights on the basis of neglect under the Juvenile Code, and that

the probate court is authorized to appoint counsel for a nonconsenting noncustodial parent in proceedings brought pursuant to § 51(6) of the Adoption Code. In exercising such discretion, the trial court will be guided by the principle of assuring the nonconsenting parent the ability to present a case properly, measured in the particular case by factors such as the relative strength of the adversaries and the presence or absence of legal, factual, procedural, or evidentiary complexity.”

The evidence showed that respondent had been incarcerated since August 2004 and expected to remain so until August 2009, during which time he earned approximately \$5 per week in prison. The trial court did not inquire regarding his indigency or existence of assets but should have, given the circumstances. Nor did the trial court make statements on the record indicating that it had assured respondent's ability to properly present his case by considering the relative complexities of the case and the fact that petitioners were represented by counsel. Rather, the trial court's statements in response to respondent's requests for court appointed counsel indicated that the trial court either did not recognize that it had discretion to appoint counsel for respondent or that it disregarded its option to appoint counsel.

We cannot conclude that respondent's ability to present his case was not impaired by the absence of counsel, given the contested factual issues; the confusion over witnesses who were present at the initial proceeding, but were excluded from the courtroom and did not testify; respondent's inability to effectively question or cross-examine witnesses at the subsequent proceeding, as evidenced by his ineffective attempts at questioning Kubacki and his sister; and the court's own confusion concerning the evidence of respondent's finances. *In re Sanchez, supra; In re Fernandez*, 155 Mich App 108, 115; 399 NW2d 459 (1986). Further, respondent could participate in the proceedings only via telephone from prison and lacked subpoena power to ensure the presence of witnesses or secure alleged favorable documentary evidence, such as telephone records. Having reviewed the record in its entirety, we conclude that the court abused its discretion in denying respondent's request for appointed counsel without considering the relevant *Sanchez* factors.

Reversed and remanded for determination of respondent's indigency, appointment of counsel, and further proceedings under MCL 710.51(6). We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Janet T. Neff

/s/ Joel P. Hoekstra