

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DALTON ALAN SMITH, Minor.

UNPUBLISHED
September 26, 1997

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

No. 191569
Iosco Juvenile Division
LC No. 95-012762-NA

CYNTHIA ROCK,

Respondent-Appellant,

and

GLEN SMITH,

Respondent.

Before: Griffin, P.J., and Wahls, and Gribbs, JJ.

PER CURIAM.

Respondent mother, Cynthia Rock (respondent), appeals as of right an order terminating her parental rights to her son, Dalton, born March 13, 1993. We affirm.

On September 5, 1995, petitioner filed a petition alleging abuse and neglect and seeking termination of respondent's parental rights. On October 20, 1995, respondent pleaded no contest to the charges and the probate court took jurisdiction over Dalton.

On November 22, 1995, just before the scheduled trial, respondent decided to release her parental rights. After a short recess to allow respondent to review the release with her attorney, respondent stated on the record that her counsel had advised her of her rights and that she understood that she was waiving a trial and consenting to a permanent release of her parental rights. Respondent also denied that anyone coerced her into signing the release and agreed that she was signing the release

voluntarily. The probate court accepted the release after finding that respondent understood her rights. On December 14, 1995, following a trial on the father's parental rights, the trial court entered an opinion and order terminating both parents' parental rights.

After filing this appeal to contest the trial court's acceptance of her release, respondent filed a motion in this Court for a remand. This Court denied the motion on September 19, 1996, and denied reconsideration on November 1, 1996. Respondent then filed an interlocutory appeal with our Supreme Court and requested a stay in this Court. This Court denied respondent's motion to stay on March 11, 1997, and our Supreme Court denied the application for leave on February 28, 1997.

On appeal, respondent seeks to revoke the release. Respondent claims that she based her consent on a misrepresentation that petitioner would consider placing Dalton in her mother's or grandmother's care. However, respondent failed to preserve this issue by filing a timely motion for rehearing in the probate court.

Section 29(10) of the Michigan adoption code, MCL 710.21, *et seq.*; MSA 27.3178(555.21), *et seq.*, provides parents who release their parental rights the opportunity to petition for rehearing. This provision, however, clearly provides that "[a] release may not be revoked . . . [unless] a petition for rehearing or claim of appeal is filed within the time required." Section 64(1), establishes that the "time required" is twenty-one days from entry of any order. In *In the Matter of Myers*, 131 Mich App 160, 166; 345 NW2d 663 (1983), this Court held that adherence to this time limitation provision does not violate due process, stating that:

A primary and permissible legislative purpose of the code is to preserve the finality of decisions to release children for adoption. . . . A 20-day [now 21-day] limitation on the right of a parent acting without support of the child placing agency to attempt to revoke a previously executed release bears a reasonable relation to this purpose. Ample opportunity for a parent to be heard on the voluntary termination of his or her parental rights is provided under MCL 710.29(5); MSA 27.3178(555.29)(5).

In the present case, the probate court entered the order terminating respondent's parental rights on December 14, 1995. The "Advice of Rights After Order Terminating Parental Rights" specifically informed respondent that a request for rehearing must be made "in writing within 21 days of the date of the order terminating parental rights." Respondent failed to comply with this requirement, however. In fact, she did not even file a motion for remand within twenty-one days of either the appointment of her first appellate counsel, the filing of this appeal, or the substitution for present counsel. Instead, her motion for remand was filed more than two months after she filed her tardy claim of appeal. Because respondent failed to make any cognizable effort to seek rehearing within the allotted time, her request for a hearing to revoke the release is untimely and unpreserved.

Nevertheless, the release is valid even if we accept respondent's claim that she signed the release on the basis of a representation that releasing her parental rights would increase the chances that her mother or grandmother may gain custody of the child. Respondent makes no claim that she was promised that her mother or grandmother would become the child's adoptive parent. She only

contends that she was told that there was a *chance* that this would occur. There is no record evidence that the alleged representation was fraudulent and nothing to suggest that respondent's mother or grandmother were not considered as prospective adopters.

Additionally, after a thorough review of the record, we conclude that the probate court did not err in accepting the release at the time it was given. As respondent concedes, it is apparent from the record that the probate court gave respondent's attorney time to discuss the proposed release with respondent and that the probate court thoroughly reviewed with respondent the ramifications of signing the release. Moreover, respondent was clearly informed that a mere change of mind would not entitle her to revoke her release and that "for all practical purposes that this [release] is a permanent release of the child." Respondent also denied that she was coerced into signing the release and stated that she was releasing her rights voluntarily.

Affirmed.

/s/ Richard Allen Griffin

/s/ Myron H. Wahls

/s/ Roman S. Gibbs