

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JONATHAN CHRISTOPHER
HUGHES, Minor.

DAVID CIAK and LESLIE CIAK,

Petitioners-Appellees,

v

DANIELLE ELIZABETH HUGHES,

Respondent-Appellant.

UNPUBLISHED
February 13, 2001

No. 224140
Genesee Circuit Court
Family Division
LC No. 99-014280
AFTER REMAND

Before: Smolenski, P.J., and Holbrook, Jr. and Gage, JJ.

PER CURIAM.

This case returns to us after remand to the trial court for clarification of the record. Having reviewed the transcript of the proceedings on remand, we affirm.

The trial court terminated respondent's parental rights to the minor child under § 43 of the Adoption Code, MCL 710.43; MSA 27.3178(555.43), after she consented to the child's adoption by petitioners. Respondent subsequently filed a timely motion for rehearing in the trial court, alleging that her consent to the adoption was not voluntarily given, but was produced by duress and coercion. The trial court denied the motion without explanation. Respondent appealed to this Court, raising two arguments. First, respondent argued that the trial court abused its discretion by denying her motion for rehearing. Second, respondent argued that the trial court erroneously failed to explain, in writing or on the record, the reasons for its decision.

By opinion dated December 1, 2000, we remanded the matter with instructions for the trial court to state the reasons for its decision on respondent's motion for rehearing, in accordance with MCL 710.63; MSA 27.3178(555.63); MCR 5.756(B). On December 28, 2000, the trial court conducted further proceedings and set forth its reasons for denying respondent's motion. We now affirm.

The Michigan Adoption Code and the Michigan Court Rules permit a party to request a rehearing after voluntarily terminating parental rights for the purpose of adoption. MCL 710.64; MSA 27.3178(555.64); MCR 5.756(A). In such cases, the trial court may grant a rehearing only

for good cause shown. MCR 5.756(B). Although the decision to grant or deny such a motion for rehearing is entrusted to the sound discretion of the trial court, a mere change of heart is insufficient cause for granting rehearing. *In re Koroly*, 145 Mich App 79, 87; 377 NW2d 346 (1985).

Respondent's motion for rehearing requested that the trial court set aside her consent to the minor child's adoption by petitioners. That motion was based on respondent's allegation that her consent to the adoption was not voluntarily given, but was produced by the duress and coercion of her husband, the child's father. Respondent also argued that her consent had not been voluntary because her attorney had not provided her with adequate representation. This argument was based on the allegation that respondent and her husband were represented by the same attorney during the adoption proceedings and that the parties possessed conflicting interests which rendered joint representation impossible.

On remand, the trial court explained its reasons for denying respondent's motion. The trial court first noted that this case involved a direct placement adoption where respondent and her husband selected petitioners as the child's adoptive parents. The trial court then described the numerous occasions on which respondent indicated, either orally or in writing, that she understood her legal rights and that she consented to the adoption. Further, the trial court indicated that respondent failed to raise the issue of undue influence during the proceedings leading up to the adoption, even though she was given many opportunities to do so. The trial court also noted that respondent made only general allegations of undue influence and duress and stated no specific instances of such conduct on the part of her husband or his family.

Finally, the trial court made a factual determination that respondent's trial attorney did not represent respondent's husband during the voluntary adoption proceedings. There was some initial confusion during the adoption proceedings regarding the relationship between respondent's trial counsel and respondent's husband, if any. However, on more than one occasion, the attorney denied that he represented respondent's husband. Based on its questioning of respondent's attorney regarding this matter, the trial court ultimately determined that the attorney represented respondent alone and did not represent her husband. The trial court noted that respondent had been given an opportunity to confer with the attorney about the adoption matter, and respondent stated in open court that she did not have any further questions and that she understood the rights that she was relinquishing.

Based on all of the above factors, the trial court determined that respondent's consent to the adoption had been freely, voluntarily, and understandingly given. The trial court also determined that respondent's motion was based on a mere change of heart or change of mind, rather than on good cause. On this record, we cannot say that the trial court abused its discretion in denying respondent's motion for rehearing.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage