

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of A.M.U. and V.J.U., Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SUE BIGELOW,

Respondent-Appellant,

and

VINCENT JOSEPH UTTENWEILER,

Respondent-Not Participating.

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UNPUBLISHED

October 11, 2002

No. 237622

Muskegon Circuit Court

Family Division

LC No. 99-027926-NA

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

PER CURIAM.

Respondent-appellant Sue Bigelow (hereafter “respondent”) appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g). We affirm.

The trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. See MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not show that termination of respondent’s parental rights was clearly not in the children’s best interests. See MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

We reject respondent’s claim that reversal is required because the trial court violated MCR 5.915(B)(1)(b), by failing to appoint an attorney to represent her at the later proceedings involving respondent Uttenweiler. The trial court appointed counsel for respondent at the outset of the case and there is no indication in the record that counsel was ever discharged. Absent a discharge by the court, the attorney of record continued to represent respondent-appellant. MCR 5.915(E). In any event, regardless of whether respondent’s attorney was discharged or merely absent at the subsequent proceedings involving respondent Uttenweiler, respondent is not

entitled to relief. MCR 5.915(B)(1)(b) does not require the court to appoint counsel on the court's own motion. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). Rather, the court rule requires "affirmative action" on the part of a respondent to have counsel appointed. *Id.* Respondent failed to take affirmative action to request the appointment of counsel at the proceedings involving Uttenweiler.

Moreover, respondent does not suggest how she was prejudiced by the absence of counsel at those proceedings, nor do we discern any prejudice. The proceedings in question were focused on a new allegation concerning respondent Uttenweiler. It is apparent from the court's decision terminating respondent's parental rights that the decision was not based on evidence presented at the later proceedings. Rather, the court relied on the evidence presented at the earlier proceedings, at which respondent was represented by counsel, as the basis for its decision. Also, although respondent was not given an opportunity for closing argument at the close of the proceedings involving Uttenweiler, her attorney had previously submitted a written closing argument that addressed the evidence against her, on which the trial court's decision was based. Under the circumstances, any error was harmless. *Id.* at 222-223.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Mark J. Cavanagh