

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of C.R., R.R., and L.R., Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RODNEY REAMES,

Respondent-Appellant.

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UNPUBLISHED

November 22, 2002

No. 241612

Alcona Circuit Court

Family Division

LC No. 00-002109-NA

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Respondent-appellant appeals by delayed leave granted the order terminating his parental rights to his children under MCL 712A.19b(3)(g). This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

We first address the petitioner's claim that this Court lacks jurisdiction to hear this appeal because it was filed more than sixty-three days after entry of the order terminating respondent-appellant's parental rights. MCR 5.993(C)(1). The court's order was entered February 1, 2001. Respondent-appellant's appellate counsel, who was also respondent-appellant's trial counsel, was appointed on February 20, 2001. Respondent-appellant's claim of appeal was filed on May 28, 2001, not within twenty-one days of appellate counsel's appointment as required by MCR 7.204(A)(1)(c), or within the sixty-three days of the order as required by MCR 5.993(C)(1). This Court considered filing as a delayed application for leave to appeal.

Our Supreme Court has held that an indigent respondent in a parental rights termination case has a right to appointed appellate counsel to effectuate his appeal. *Reist v Bay Circuit Judge*, 396 Mich 326, 349; 241 NW2d 55 (1976).<sup>1</sup> However, subsequently, the United States Supreme Court held that there was no automatic constitutional right to counsel in every parental rights termination case under the due process clause of the fourteenth amendment; rather, it was

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<sup>1</sup> Three justices found a constitutional right and two justices found a statutory right.

within the trial court's discretion to determine if due process required such an appointment. *Lassiter v Dep't of Social Services*, 452 US 18, 31-32; 101 S Ct 2153; 68 L Ed 2d 640 (1981).

In this case, respondent-appellant timely requested appellate counsel, which the trial court granted.<sup>2</sup> Having been appointed appellate counsel, respondent-appellant had the right to the effective assistance of counsel. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2001); *People v Hurst*, 205 Mich App 634, 640-641; 517 NW2d 858 (1994). We believe that respondent-appellant was denied effective assistance of counsel because appellate counsel's failure to timely file respondent-appellant's claim of appeal pursuant to our court rules, foreclosed respondent-appellant's appeal opportunity.

We believe that the appropriate remedy is for this Court to hear respondent-appellant's appeal. While the requirements of the court rules were not met, enforcement of them in light of appellate counsel's actions would violate respondent-appellant's due process rights. *Evitts v Lucey*, 469 US 387, 397-399, 83 L Ed 2d 821, 105 S Ct 830 (1985). Accordingly, this Court has jurisdiction to review the merits of respondent-appellant's appeal.

We find that the trial court did not clearly err in finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Respondent-appellant's incarceration was the reason that he was unable to care for the children when they were removed from their mother's care. The evidence established the fragility of the children's and respondent-appellant's emotional state, and the need for continuing long-term psychological care for all. Respondent-appellant's release date is uncertain, and the evidence established that his projected plan for caring for the children after his release was unrealistic, given the stresses that will be placed upon him and the high needs of both respondent-appellant and the children.

Further, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). While the evidence indicated respondent-appellant's desire to care for the children and the strides he made in improving his life state, the evidence also indicated that the children needed a stable, loving environment and assurance of receiving consistent therapy, guidance, and discipline. Thus, the trial court did not clearly err in terminating respondent-appellant's parental rights.

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Michael R. Smolenski

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<sup>2</sup> Petitioner-appellee does not contest the trial court's decision to appoint counsel to respondent-appellant. It only argues that because the appeal was not timely filed, we do not have jurisdiction to hear the appeal.