

Court of Appeals, State of Michigan

ORDER

In re Witherell/White Minors

Docket No. 355014

LC Nos. 20-036157-NA; 20-036158-NA

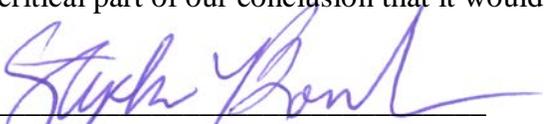
Stephen L. Borrello
Presiding Judge

Michael J. Kelly

Brock A. Swartzle
Judges

The Court orders that the motion to dismiss is DENIED. Further, the claim of appeal is treated as a delayed application for leave to appeal the September 1, 2020 family court order and leave to appeal is GRANTED without limitation as to the issues that appellant may raise on appeal regarding that order. See, e.g., *Wardell v Hincka*, 297 Mich App 127, 132 n 1; 822 NW2d 278 (2012).

In this regard, we reject the argument in the motion to the effect that MCR 3.993(A)(1) should be regarded as unconstitutional because it does not *expressly* define the orders it covers to be “final orders.” The rules of statutory construction apply to interpreting court rule provisions. *In re BAD*, 264 Mich App 66, 74; 690 NW2d 287 (2004). Thus, a court rule provision should be presumed constitutional unless its unconstitutionality is clearly apparent. See *People v Parker*, 319 Mich App 664, 669; 903 NW2d 405 (2017). Further, like the Legislature in enacting a new law, the Michigan Supreme Court should be presumed to be aware of all existing statutes when promulgating a new court rule provision. See *People v Kosik*, 303 Mich App 146, 158; 841 NW2d 906 (2013). Accordingly, when our Supreme Court adopted the current MCR 3.993(A), it should be considered to have been aware of MCL 600.308(1) and thus to have *implicitly* defined the orders covered by MCR 3.993(A) to be final orders within the meaning of MCL 600.308(1) so that they would be appealable of right. We further believe that it would be highly unfair to dismiss the claim of appeal as untimely where appellant requested appointment of appellate counsel within 21 days after entry of the September 1, 2020 order, which it appears all that she could reasonably be expected to do as an indigent respondent to pursue an appeal of right with appointed counsel. So, we exercise our discretion under longstanding case law to treat the claim of appeal as a delayed application for leave to appeal and grant leave so that the appeal may proceed on its merits. This does not make our consideration of the constitutionality of MCR 3.993(A)(1) superfluous because the September 1, 2020 order being an order that is appealable of right is a critical part of our conclusion that it would be unfair to simply dismiss this appeal.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 14, 2020

Date



Chief Clerk