

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TIMMOTHY TRAVIS SMITH,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRYAN SCOTT SMITH,

Respondent-Appellant,

and

CARRY ELLEN HORSLEY,

Respondent.

UNPUBLISHED

April 3, 1998

No. 205456

Branch Juvenile Court

LC No. 96-009215 NA

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

MEMORANDUM.

Respondent Smith appeals as of right from the juvenile court order terminating his parental rights under MCL 712A.19b(3)(a)(ii) and (g); MSA 27.3178(598.19b)(3)(a)(ii) and (g). We affirm.

Respondent Smith argues that the juvenile court erred in denying his motion for rehearing of its order terminating his parental rights. The motion for rehearing was not timely filed, MCL 712A.21(1); MSA 27.3178(598.21)(1); MCR 5.992(A). Furthermore, a claim of appeal had already been filed with this Court when respondent Smith filed his motion for rehearing. Because jurisdiction was already with this Court at the time the motion was filed, respondent Smith was required to seek leave in this Court before the juvenile court could address the merits of his motion, MCR 7.208(A). *Co-Jo, Inc v*

* Circuit judge, sitting on the Court of Appeals by assignment.

Strand, 226 Mich App 108, 118; 572 NW2d 251 (1997). Despite respondent Smith's failure to timely file the motion and seek leave of this Court, we will address the merits of his argument.

This Court reviews the juvenile court's refusal to grant a rehearing for an abuse of discretion. *In re Toler*, 193 Mich App 474, 478; 484 NW2d 672 (1992). The juvenile court did not abuse its discretion on the merits of the motion. Respondent Smith failed to present any matter for the court to consider that was not previously presented or that would have caused the court to reconsider its decision. *Id.* The caseworker's report to the juvenile court at the termination hearing included a statement about respondent Smith's change of plans concerning custody of the child and his decision to move so that he could obtain custody. In arguing for a rehearing of the court's order, respondent Smith relied upon these same reasons. The juvenile court was well aware of the change in his situation at the time of the termination hearing, yet the court obviously did not believe that the outcome of this case would have changed. Respondent Smith was therefore not entitled to a rehearing.

We affirm.

/s/ Richard A. Bandstra
/s/ Barbara B. MacKenzie
/s/ Nick O. Holowka