

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of NICOLE LEE HURT, DALLAS  
EDWARD HURT III, HEATHER LYNN BUTZ,  
JACOB ANDREW DROSTE, and LUIS  
ROBERTO RODRIGUEZ BOUTILIER III, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TERRI HURT,

Respondent-Appellant,

and

DANIEL BUTZ and LUIS BOUTILIER,

Respondents.

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In the Matter of NICOLE LEE HURT, DALLAS  
EDWARD HURT III, HEATHER LYNN BUTZ,  
JACOB ANDREW DROSTE, and LUIS  
ROBERTO RODRIGUEZ BOUTILIER III, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LUIS ROBERTO BOUTILIER,

Respondent-Appellant,

and

UNPUBLISHED

May 22, 2001

No. 225432

Wayne Circuit Court

Family Division

LC No. 90-286251

No. 225611

Wayne Circuit Court

Family Division

LC No. 90-286251

TERRI HURT and DANIEL BUTZ,

Respondents.

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Before: McDonald, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Respondent Hurt appeals as of right from the family court order terminating her parental rights to the minor children under MCL 712A.19b(3)(a)(ii), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (g) and (j). Respondent Boutilier appeals by delayed leave granted the family court order terminating his parental rights to Luis Roberto Rodriguez Boutilier III, pursuant to the same statutory grounds. We affirm.

Respondent Hurt argues that the family court abused its discretion by refusing to grant her attorney's requests to adjourn the termination hearing. We review the trial court's decision for an abuse of discretion. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993).

Respondent Hurt's attorney made two requests to adjourn the termination hearing. In denying the first request, made at the start of the termination hearing, the family court found that respondent Hurt had been properly served with a summons and petition at the prior hearing, that the court had advised Hurt that the proceedings would continue and of her duty to remain in contact with her attorney and appear in court, and that Hurt was aware of the date of the hearing. In light of the caseworker's testimony regarding Hurt's participation in a drug treatment program, the attorney subsequently renewed his request for an adjournment, stating that he would like to speak with the counselor at the program and possibly call her as a witness. The court denied the request, finding that Hurt could have met with her attorney after the last hearing to prepare her defense, but did not do so. The court stated that it would not adjourn the hearing so that a witness could be obtained for Hurt, who, herself, was not present at the hearing. Considering Hurt's failure to attend court hearings and maintain contact with her attorney, the family court did not abuse its discretion by denying the requests for an adjournment.

Respondent Boutilier argues that he was not provided with notice of the July 19, 1999, permanency planning hearing for Luis. This claim is not supported by the record. The record indicates that respondent Boutilier attended a permanency planning hearing for Luis on April 30, 1999. The family court informed him at that hearing that the child had been made a temporary court ward. Because Boutilier claimed that he could not afford an attorney, the court appointed House Counsel to represent him, and advised him that if he disappeared again, the court would act swiftly to place the child in a safe, suitable home. The court stated that it would consider the hearing as a review hearing rather than a permanency planning hearing because Boutilier had appeared, but noted that a termination petition would have been ordered if he had not appeared at the hearing. The court stated that a review hearing would be held on June 25, 1999.

A summons for that hearing was subsequently issued. The summons stated that the purpose of the hearing was to decide whether the court should exercise authority over the child because of neglect or abuse, that Boutilier had the right to be represented by an attorney and the right to a trial by jury or judge, that the hearing may result in a temporary or permanent loss of rights to the child and that a petition was attached. However, an unsuccessful attempt was made to serve Boutilier because the last known address was incorrect. The summons and petition were also sent to Boutilier by certified mail, but the mail was returned unclaimed.

Notice of the hearing was then made by publication, but Boutilier failed to attend the hearing. The family court found that there had been no contact by Boutilier, that he was not invested in the treatment plan and that he had warrants pending for his arrest. Due to Boutilier's continued non-appearance and lack of involvement, the court excused his appointed counsel. The court noted that a permanency planning hearing for Luis would be combined with the adjudication hearing for the other children on July 19, 1999.

The record indicates that Boutilier was provided with notice of the July 19, 1999, hearing by publication in the companion matter pending before the court. Boutilier did not attend that hearing, but knew or should have known that the court would be conducting a permanency planning hearing for Luis from his attendance in court on April 30, 1999. Boutilier's argument that he was not provided with notice of the hearing is without merit.

Boutilier also argues that the family court denied him his right to the assistance of an attorney by discharging his court-appointed attorney prior to the permanency planning hearing. In child protective proceedings, indigent respondents are afforded the right to court-appointed counsel by statute, MCL 712A.17c(5); MSA 27.3178(598.17c)(5), and court rule, MCR 5.915(B)(1). This Court has stated that MCR 5.915(B)(1) mandates the appointment of counsel for indigent parents at all hearings in a child protective proceeding. *In re Osborne*, 230 Mich App 712, 716; 584 NW2d 649 (1998), vacated on other grounds 459 Mich 360 (1999). However, this Court held in *In re Hall*, 188 Mich App 217, 220-222; 469 NW2d 56 (1991), that the court rule requires affirmative action on the part of the respondent to trigger the appointment and continuation of appointed counsel in all hearings which may affect the respondent's parental rights. We agree that Boutilier effectively terminated the attorney-client relationship by failing to maintain contact with his attorney and attend court hearings, thereby "waiving" or relinquishing his right to counsel under MCR 5.915(B)(1)(c). Therefore, the family court did not err in discharging Boutilier's attorney prior to the permanency planning hearing.

Finally, we conclude that the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence with respect to both respondents.<sup>1</sup> MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not establish that termination of respondents' parental rights was clearly not in

<sup>1</sup> We agree that the trial court erred to the extent that it terminated respondent Hurt's parental rights to her four older children under § 19b(3)(c)(i), inasmuch as 182 days had not elapsed since the initial disposition order was issued as to those children. However, the error does not warrant reversal because the remaining statutory grounds for termination were sufficiently established. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Thus, the family court did not err in terminating respondent Hurt's and respondent Boutilier's parental rights to the children.

Affirmed.

/s/ Gary R. McDonald

/s/ William B. Murphy

/s/ Patrick M. Meter