

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

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In the Matter of CJ and JJ, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SANDRA KAY REYNOLDS,

Respondent-Appellant.

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UNPUBLISHED

January 14, 2003

No. 242959

Saginaw Circuit Court

Family Division

LC No. 01-027013-NA

Before: Murray, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Respondent appeals from an order of the probate court terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

In making a termination decision, the trial court must engage in a two-step analysis. First, it must determine if a statutory ground for termination has been established by clear and convincing evidence. *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). Second, if a statutory ground has been established, the trial court must terminate parental rights unless there exists clear evidence on the whole record that it is not in the child's best interests to terminate parental rights. *In re Trejo Minors*, 462 Mich 341, 354; 603 NW2d 787 (2000).

The Court has carefully reviewed the record on appeal, the opinion of the trial court, and the parties' briefs. We are not persuaded that the trial court erred in finding that the statutory grounds for termination were met and that it was in the best interests of the children to terminate the parental rights. Accordingly, we find no abuse of discretion by the trial court in terminating respondent's parental rights.

Finally, respondent argues that she was denied her right to counsel at the termination hearing. We disagree. Respondent failed to appear at the termination hearing. The trial court began the hearing nearly thirty minutes late to afford respondent an opportunity to appear. At that point, the following exchange took place:

THE COURT: Please be seated. We are on the record in the matter of [CB and JJ]; this is file 01-27013-NA. The father of these children is unknown; the mother

is Sandra Reynolds. Mr. Brandt is present on her behalf at this point. There is a termination petition signed by Tina Thompson of the Family Independence Agency that was authorized March 29<sup>th</sup>, and filed at that point. The record reflects that publication was made to any father of the children, and that Sandra Reynolds was personally served with a summons and copy of the petition and that occurred on April 25<sup>th</sup> of this year. Mr. Brandt, your client is not present today. I delayed almost half an hour to give any possible opportunity for her to arrive, and I must now proceed. What can you tell the Court?

MR. BRANDT: Judge, I – I don't have any explanation for my client's absence. I can advise the Court that – ah – I wrote to Miss Reynolds on April 4<sup>th</sup>, asking her to arrange an appointment with me and again on April 16<sup>th</sup>, asking her to do the same thing and I have yet to hear from her. I don't know where she is today.

THE COURT: Counsel, are you prepared to proceed, or asking to withdraw?

MR. BRANDT: No, Judge, I would request to withdraw at this time.

THE COURT: Is there any objection from other Counsel if I allow him to withdraw at this stage?

MR. MARSH (for petitioner): I have no objection, you Honor.

MS. TOMCAL (for the minor children): No objection, your Honor.

THE COURT: Mr. Brandt, I'm satisfied you've made the effort to contact this lady and the court has contacted her by personal service. If, at any point this morning, she should come in, I'm going to ask you to make sure that you're available and that Mrs. Lamping knows how to reach you if you're not in the building, because if she should come, I may call you back and give you time to consult with her, but at this stage, this matter is almost – it's about 27 minutes of our starting time; you are excused with my thanks, and we'll proceed.

The procedure followed by the trial court was consistent with that approved by this Court in *In re Hall*, 188 Mich App 217; 469 NW2d 56 (1991), wherein the respondent's counsel had been relieved of his duties at a review hearing after indicating that not only was the respondent absent from the proceeding, but that the respondent had not been in contact with counsel for the past sixteen months. In reviewing this issue, the *Hall* Court, *supra* at 222, opined as follows:

Furthermore, we hold that the right to counsel may be "waived" or relinquished, MCR 5.915(B)(1)(c). We find that to be the case here. The record reflects that respondent failed to contact her appointed counsel for sixteen months, did not appear at review hearings herself, and was residing at an unknown address in Chicago where counsel was unable to locate her. We agree with the lower court that an ongoing attorney-client relationship is essential to the continuation of appointed counsel. Here, respondent effectively terminated the attorney-client relationship, thereby "waiving" or relinquishing her right to counsel until such time as she reasserted her right.

We recognize that this holding in *Hall* is dicta inasmuch as the Court then proceeded with a harmless error analysis, which was based upon the fact that counsel was reappointed by the time of the termination hearing at the respondent's request and that the new evidence which had come out at the review hearing in which the respondent was unrepresented did not form the basis for the ultimate decision to terminate respondent's parental rights. *Id.* at 222-223. Nevertheless, we believe that the *Hall* analysis on the counsel issue is sound and should be followed.

We note that this Court did distinguish the *Hall* decision in *In re Powers Minors*, 244 Mich App 111; 624 NW2d 472 (2000). In *Powers*, the respondent failed to appear at the termination hearing and respondent's counsel was late. When counsel arrived, the trial court summarily excused counsel, indicating that it was because respondent was not present. *Id.* at 120-121. After noting that *Hall* involved a review hearing and not a termination hearing, as well as the fact that *Hall* also employed a harmless-error analysis, the *Powers* Court ultimately decided that the record was not sufficiently detailed to permit review. It remanded for a hearing, specifically wishing to know if counsel remained present in the courtroom, whether the respondent had representation after the hearing, and the effect of the dismissal of counsel at the hearing. *Id.* at 124. The Court had also previously noted that it was unclear whether counsel was dismissed solely because of the respondent's failure to appear and that counsel had not requested to be excused. *Id.* at 123.

The case at bar is closer to *Hall* than to *Powers*. The trial court did not summarily dismiss counsel and, in fact, counsel requested to withdraw. It was established on the record that respondent had notice of the hearing, that counsel had endeavored to meet with respondent before the hearing and that respondent failed to contact counsel to do so. Further, the trial court had waited for respondent to appear before commencing the hearing and instructed counsel to remain available for the remainder of the morning to return to court because counsel would be reappointed if respondent at any point appeared. Although the case at bar involved a termination hearing, not just a review hearing, the principle of *Hall* that the attorney-client relationship is a two-way street is equally applicable here.

For the above reasons, we conclude, as did the Court in *Hall*, that respondent, by her conduct, waived or relinquished her right to counsel. The trial court did not err by permitting counsel to withdraw and proceeding without counsel.

Affirmed.

/s/ Christopher M. Murray  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald