

STATE OF MICHIGAN
COURT OF APPEALS

In re DAILY CHRISTINE STEBELTON, Minor.

RENEE ESTERLINE and DENNIS ESTERLINE,

Petitioners-Appellants,

v

4TH JUDICIAL CIRCUIT COURT – FAMILY
DIVISION, TODD KING, and LORI KING,

Respondents-Appellees.

In re SAVANNAH SELENA THERESA WEESE,
Minor.

RENEE ESTERLINE and DENNIS ESTERLINE,

Petitioners-Appellants,

v

4TH JUDICIAL CIRCUIT COURT – FAMILY
DIVISION, TODD KING, and LORI KING,

Respondents-Appellees.

In re BLADE JOSEPH STEBELTON, Minor.

RENEE ESTERLINE and DENNIS ESTERLINE,

Petitioners-Appellants,

v

UNPUBLISHED
November 13, 2003

No. 245768
Jackson Circuit Court
LC No. 02-000244-AM

No. 245769
LC No. 02-000245-AM

No. 245770
LC No. 02-000246-AM

4TH JUDICIAL CIRCUIT COURT – FAMILY
DIVISION, TODD KING, and LORI KING,

Respondents-Appellees.

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

In this adoption action, petitioners Renee and Dennis Esterline appeal as of right from the trial court's November 11, 2002 order dismissing their motion to set aside the confirmation hearing and its December 4, 2002 order denying their motion for reconsideration or clarification. We affirm.

We are asked to determine whether the trial court erroneously refused to consider petitioners' request for a hearing under MCL 710.45(3), commonly referred to as a "§ 45 motion." Because petitioners failed to file their § 45 motion with the required filing fees before the order of adoption was entered in this matter, we find that their request for a hearing was untimely under the statute.

I. Facts

In the instant case, consent to adopt was given to the children's foster family, respondents Todd and Lori King. The children were placed with the Kings on May 15, 2002, pursuant to an order under MCL 710.51. On June 11 or June 13, 2002, petitioners attempted to file a motion for a § 45 hearing on behalf of all children and tendered a total of \$200 to the clerk's office. The clerk's office left a message with petitioners on June 18, 2002, to contact them regarding the case. On June 20, 2002, the clerk's office verbally informed petitioners' counsel that the \$200 was insufficient, as there was a separate filing fee for each child.¹ The clerk's office then informed petitioners of the appropriate fee amount, as well as the fact that the order placing the children with their foster parents had been entered on May 15, 2002. As a result of the inadequate filing fee, the clerk's office did not docket petitioners' motion. The Kings subsequently moved for immediate confirmation of adoption on June 19, 2002, and the trial court issued an order of adoption on July 8, 2002. When petitioners sought to file their § 45 motion with the appropriate filing fees on July 10, 2002, they were informed that the adoption order had already been granted.

On July 18, 2002, petitioners moved to set aside the confirmation hearing. During the hearing on their motion, petitioners' counsel conceded "we didn't file the filing fee on all three of them, which we should have." The trial court denied petitioners' motion to set aside the confirmation hearing, based on MCL 710.45(3)(a) and (b). In reaching this decision, the trial court noted that petitioners' § 45 motion was never filed because petitioners failed to pay the

¹ The trial court assigned each child a separate docket number for the adoption proceedings.

appropriate filing fees. The trial court also noted that petitioners' attempt to file their motion with the appropriate filing fees after July 8, 2002 was futile because the adoption order had already been entered. Petitioners' subsequent motion for reconsideration and/or clarification of the order of dismissal was also denied.

II. Legal Analysis

On appeal, petitioners argue that the trial court should have docketed their request for a § 45 hearing because their motion was timely, and the alleged inadequacy of the filing fee did not provide a reason for the court to reject their request for a hearing. We disagree. Trial court decisions in adoption proceedings are generally reviewed on appeal for an abuse of discretion.² To the extent that resolution of an issue involves a question of law, our review is de novo.³

We initially set forth the language of the statutory provision at issue in this case. Pursuant to MCL 710.45:

(3) If consent has been given to another petitioner and if the child has been placed with that other petitioner pursuant to an order under section 51 of this chapter, a motion under this section shall not be brought after either of the following:

- (a) Fifty-six days following the entry of the order placing the child.
- (b) Entry of an order of adoption.

We next note that “[e]xcept as modified by MCR 3.801-3.806, adoption proceedings are governed by the rules generally applicable to civil proceedings.”⁴ The following is applicable to motion fees in civil proceedings:

(1) A motion fee *must* be paid on the filing of any request for an order in a pending action, whether the request is entitled “motion,” “petition,” “application,” or otherwise.

(2) The clerk *shall* charge a single motion fee, in the amount specified by MCL 600.2529(1)(e) . . . or MCL 600.8371(10), . . . for all motions filed at the same time in an action regardless of the number of separately captioned documents filed or the number of distinct or alternative requests for relief included in the motions.^[5]

² *In re TMK*, 242 Mich App 302, 304; 617 NW2d 925 (2000).

³ *Id.*

⁴ MCR 3.800.

⁵ MCR 2.119(G) (emphasis added).

The Legislature set forth these fees in MCL 600.2529 (emphasis added):

(1) In the circuit court, the following fees *shall* be paid to the clerk of the court:

(a) Before a civil action . . . is commenced . . . the party bringing the action or filing the application *shall* pay the sum of \$100.00.

(e) Except as otherwise provided in this section, upon the filing of a motion the sum of \$20.00.

Petitioners assert that their motion for a § 45 hearing was timely because they submitted their request for a § 45 hearing on June 11, 2002. Nevertheless, it is undisputed that petitioners failed to pay the appropriate filing and motion fees when submitting their request. Accordingly, the clerk's office properly refused to docket their motion under the law.⁶ We note that petitioners were informed on June 20, 2002, that the appropriate fee amount was \$120 per file, or \$360 total. Petitioners had almost three weeks to remedy this defect before the 56-day time limit ended on July 10, 2002, and before the order of adoption was entered on July 8, 2002. Because petitioners failed to pay the appropriate filing fees before the adoption order was entered, their motion for a § 45 hearing was not timely.

To the extent petitioners argue that the inadequacy of their filing fees was an improper basis for the trial court to deny their request for a § 45 hearing, we disagree. The primary rule in statutory construction is to ascertain and give effect to the intent of the Legislature.⁷ “We begin by examining the plain language of the statute. Where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written.”⁸ As a general rule, the term “shall” indicates a mandatory duty.⁹ These same rules of construction are applicable to court rules.¹⁰

Here, MCL 600.2529 and MCR 2.119(G) provide that filing fees and motion fees *shall* be paid before the commencement of an action. Petitioners fail to cite any authority to support their contention that the trial court was forbidden from maintaining a separate file for each child in adoption proceedings.¹¹ Thus, there is no evidence that the court clerk overcharged

⁶ MCL 600.2529; MCR 2.119(G).

⁷ *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000).

⁸ *Id.*

⁹ *Ross v Michigan*, 255 Mich App 51, 58; 662 NW2d 36 (2003).

¹⁰ *Grievance Administrator v Underwood*, 462 Mich 188, 193-194; 612 NW2d 116 (2000).

¹¹ See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002).

petitioners. And to the extent petitioners claim that the trial court erroneously failed to conduct a § 45 hearing on at least one of the children, we note that petitioners provide no support for their proposition that a clerk's office must, sua sponte, select one of many motions filed when the petitioner only provided a fee amount sufficient to cover one filing.¹²

In sum, once the order of adoption was entered, petitioners were precluded from bringing their motion for a § 45 hearing. Petitioners were aware that their motion was never docketed due to their failure to provide the applicable fees, yet they did not attempt to correct the defect until after the order of adoption was entered. MCL 710.45(3)(b) mandates that a motion for a § 45 hearing shall not be brought after entry of an order of adoption. It cannot be said that the trial court erred in following the legislative mandate set forth in MCL 710.45(3).

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper

¹² See *id.*