

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRITTANY RAY RICH, Minors.

MANDY ELIZABETH MERRITT and KEVIN
ALAN MERRITT,

UNPUBLISHED
July 14, 2005

Petitioners-Appellees,

v

BENNIE RAY RICH,

No. 258839
Ottawa Circuit Court
Family Division
LC No. 04-049227-AY

Respondent-Appellant.

Before: Murphy, P.J. and Sawyer and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating his parental rights to the minor child under the stepparent adoption provision of the Michigan Adoption Code, MCL 710.51(6). Because the trial court abused its discretion by failing to consider the relevant factors before denying respondent's request for counsel, we reverse.

Respondent argues the trial court abused its discretion in failing to consider the relevant factors before denying his request for counsel.¹ We agree.

Respondent was incarcerated in a federal prison in another state at the time of the termination hearing and was indigent. After being served with the relevant documents by mail, respondent wrote a letter to the trial court before the termination hearing. Respondent's letter has not been provided to this Court, but it apparently indicated that he would not consent to the termination of his parental rights to the child. Respondent apparently did not request counsel in his letter. However, during the hearing, respondent twice raised the issue of desiring counsel to assist him. The trial court denied respondent's request as untimely without analyzing the factors set forth by the Michigan Supreme Court in *In re Sanchez*, 422 Mich 758, 770-771; 375 NW2d 353 (1985). Pursuant to *Sanchez*, the trial court should have considered "the relative strength of the adversaries and the presence or absence of legal, factual, procedural, or evidentiary

¹ The trial court appointed counsel to represent respondent on appeal.

complexity.” The trial court abused its discretion by denying respondent’s requests for counsel without considering these factors. *Id.* at 771; see also *In re Fernandez*, 155 Mich App 108; 399 NW2d 459 (1986). In determining whether legal representation was necessary to assist in presenting the case properly, the trial court should consider that respondent was indigent, incarcerated in another state, and wanted to present witnesses to refute petitioners’ assertions that he did not contribute to the child’s support. Because this issue is dispositive of the matter, we need not address respondent’s second issue on appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Pat M. Donofrio