

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

In the Matter of: M. M. and H. M.

Court of Appeals No. WD-09-014

Trial Court Nos. 2006 JC1268
2006 JC1269

DECISION AND JUDGMENT

Decided: August 11, 2009

* * * * *

Scott T. Coon, for appellant.

Paul A. Dobson, Wood County Prosecuting Attorney, and Charles S.
Bergman, Assistant Prosecuting Attorney, for appellee.

* * * * *

SINGER, J.

{¶ 1} This matter is before the court on the motion of appellant, M. M. and H. M.'s mother, for appointment of different counsel for her appeal to the Supreme Court of Ohio. In *In the Matter of M. M. and H. M.*, 6th Dist. No. WD-09-014, we affirmed the termination of appellant's parental rights to two children.

{¶ 2} According to appellant, she intends to appeal our decision as well as explore a possible ineffective assistance of appellate counsel claim. Since she was, and is, indigent, appellant asks that we appoint different counsel to file her notice of appeal and memorandum in support of jurisdiction, pursuant to S.Ct.Prac.R. II, Section 2(A)(1).

{¶ 3} Juv.R. 4(A) provides, in material part:

{¶ 4} "(A) Assistance of counsel. Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. * * * This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute."

{¶ 5} "A child, the child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel *at all stages of the proceedings* under this chapter or [R.C. 2152.] If, as an indigent person, a party is unable to employ counsel, the party is entitled to have counsel provided for the person pursuant to [R.C. chapter 120] except in [certain] civil matters * * *." R.C. 2151.352. (Emphasis added.)

{¶ 6} An indigent party has the right to appointed counsel at every stage of criminal proceedings through an appeal as of right. Sixth Amendment of the United States Constitution; Section 10, Article I, Ohio Constitution; Crim.R. 44. However, there

is no constitutional or statutory right to appointed counsel for a discretionary appeal.

Ross v. Moffitt (1974), 417 U.S. 600; *State v. Watts* (1989), 57 Ohio App.3d 32, 33.

{¶ 7} Appellant's proposed appeal to the Ohio Supreme Court is discretionary. S.Ct.Prac.R. II, Section 1(A)(1)-(3). The question, then, is whether an appeal from an affirmation of a juvenile court judgment terminating a party's parental rights is a "stage" of the juvenile proceeding to which the indigent aggrieved party is statutorily entitled to appointed counsel. We have been unable to locate any authority on this question. We reason, however, that it is not.

{¶ 8} R.C. 2151.352 is part of the juvenile code. Juv.R. 4 is part of the juvenile rules. The provision requiring appointment of counsel for indigent parties may then reasonably be read as being for "*all stages of the [juvenile] proceedings.*" An appeal is not a stage of the juvenile proceedings. It is a separate and distinct event governed by different rules and different statutes. As stated above, those rules provide that an indigent party in a criminal or quasi-criminal matter is entitled to counsel only on an appeal of right. While an appeal to this court is of right, a further appeal to the Supreme Court of Ohio is discretionary. Thus, in this matter, appointment of counsel is unwarranted.

{¶ 9} We are fully aware of the seriousness the permanent loss of the custody of one's children carries. Nevertheless, we must conclude that appellant's motion is not well-taken and is, hereby, denied.

MOTION DENIED.

In the Matter of: M. M.
C.A. No. WD-09-014

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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