

STATE OF MICHIGAN

COURT OF APPEALS

IN THE MATTER OF:

ALYSSA ANNE KEAST and
AMBER MARIE KEAST,

Court of Appeals No. 277354

Lower Court No. 05-06388-

NA

Minors.

Shon A. Cook (P51452)
Susan M. Franklin (P66047)
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**APPELLEES' RESPONSE TO APPELLANTS MOTION TO WAIVE
MCR 7.209 REQUIREMENTS FOR STAY OF PROCEEDINGS**

NOW COME the Appellees, by and through their attorney of record, Shon A. Cook, of Williams, Hughes & Cook, PLLC, and in support of their response to the Appellant's Motion to Waive the Requirements of MCR 7.209, state:

MCR 7.209 states:

- (A) Effect of Appeal; Prerequisites.
- (1) An appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders.
 - (2) A motion for bond or for a stay pending appeal **may not be filed in the Court of Appeals unless such a motion was decided by the trial court.**
 - (3) A motion for bond or stay pending appeal filed in the Court of appeals **must** include a copy of the trial court's opinion and order, and a copy of the transcript of the hearing on the motion in the trial court.

The Court rule does not provide alternatives or contingencies to this procedural process. There are no built in exceptions to the due process created by the Michigan Court Rules.

The Order that the Appellants wish to have stayed, dates back to March 5, 2007. No other Order has been entered by the trial Court (other than the Order denying the Appellants Motion for Reconsideration). The Appellants waited until April 16, 2007 to request a stay of proceedings from this Court on an Order entered six weeks ago. In the time from March 5, 2007, until the filing of the Motion for Stay with this Court, the Appellant had sufficient time to seek their Motion for Stay, pursuant to MCR 2.614 in the trial court and proceed according to the Court rules. The trial Court even held a hearing on April 4, 2007 in this matter, where the Appellant could have timely noticed their Motion for Stay. The Appellant's counsel did not even appear at the proceedings on April 4, 2007.

The Appellant's counsel cites no case law or legal authority to support its position that this Appellate Court should leap frog the trial court and skip the procedural due process afforded by the Court rules. In Zarka v. State Employee's Retirement, unpublished opinion per curiam of the Court of Appeals, decided December 30, 2003 (Docket No. 239391), the trial court tried to eliminate the right of a party to request a stay of proceedings at the trial level. (Exhibit 1). The trial court concluded that the defendant's motion for stay was frivolous because the opinion and order entered in the case remanded the matter to the board for reconsideration and consequently was not a final order subject to a motion for stay. The Court of Appeals responded by stating:

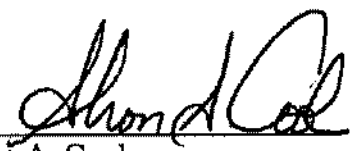
"MCR 7.209(a)(2) requires a party to request a stay in the lower court before filing a motion for a stay in this court. . . . Because MCR 7.209(A)(2) requires that a motion for stay in this Court **must be preceded by one in the lower court,**

defendant's motion was required, even though the Circuit Court's Order was not a final order." Emphasis added. Id. at 3.

The Appellant provides statements from the trial court on April 4, 2007. To date, there is no order that has emanated out of the proceedings. The statements that are provided in the motion to the Court are only glimpses of what occurred at hearing. The attorney for the foster-care mother did not file an appearance in the matter until after the hearing was conducted. The attorney also did not file any written motions for either a Consent Hearing or a "section 45" hearing before the trial court. The oral requests for such relief were contrary to statutory authority and constitutional principles of due process. Further, the trial Court's statement that the foster-care mother's business was with the Court of Appeals dealt directly with his issues of consent, the "section 45" hearing and the attorney's disagreement with the Court's holding relating to the Foster Care Review Board opinion. It had nothing to do with a stay of proceedings in the matter. No motion for stay of proceedings had been filed as of the April 4, 2007 hearing by the Appellant or the foster care mother.

The Appellant's claim that a Motion for Stay, pursuant to MCR 7.209, would be frivolous and impede the ability of the Appellant to have a timely appellate review of this case. The frivolity of the motion at the trial Court level has no bearing as stated by the Court in Zarka, *infra*. Further, the time delay argument has no merit. Six weeks has passed since the entry of the Court's order. The Appellant provides no reason why it did not follow the procedural commands of MCR 7.209 and timely file its Motion for Stay of Proceedings at the trial Court level.

Dated: April 17, 2007.


Shon A. Cook,
Attorney for Appellees