

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HEATHER BRIANNE
SZAFRANSKI, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

HEATHER BRIANNE SZAFRANSKI,

Respondent-Appellant.

UNPUBLISHED

March 23, 2006

No. 257950

Oakland Circuit Court

Family Division

LC No. 2003-686914-DL

Before: Owens, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Respondent, a juvenile, appeals as of right the trial court's dispositional order placing her at Oakland County Children's Village following her plea of admission to fourth-degree criminal sexual conduct, MCL 750.520e. We affirm.

Respondent argues that she should be allowed to withdraw her plea because it was involuntary and lacked an insufficient factual basis. Respondent did not preserve these issues by moving to withdraw her plea in the trial court. The trial court's acceptance of the plea did not preclude it from exercising its discretion to allow respondent to withdraw her plea pursuant to MCR 3.941(D) and the rehearing procedure in MCR 3.992. See also MCL 712A.21 ("At any time while the juvenile is under the jurisdiction of the court, an interested person may file a petition in writing and under oath for a rehearing upon all matters coming within the provisions of this chapter"); *In re Alton*, 203 Mich App 405; 513 NW2d 162 (1994). But there is no absolute right to withdraw a plea once it is accepted. *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989). Because respondent did not move to withdraw her plea in the trial court, we have no decision to review. *Id.*

We note that juvenile proceedings are not considered adversarial in nature, but are closely analogous to criminal proceedings. *In re Carey*, 241 Mich App 222, 227; 615 NW2d 742 (2000). Here, regardless of whether the merits of respondent's claims are considered under standards for unpreserved issues generally, see *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002), or the plain-error standard in *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), reversal is not warranted.

As respondent concedes, the trial court complied with the procedure for determining a voluntary plea at the plea hearing. See MCR 3.941(C)(2). The court, after questioning respondent, found that the plea was made freely and voluntarily before taking the plea under advisement. There is no basis in the record for concluding that respondent's plea was not voluntarily made.

To the extent that respondent claims she was coerced not to withdraw her plea at the dispositional hearing—during a recess in which the trial court allowed respondent to discuss the matter with her mother and her attorney—respondent's claim affects only her right to withdraw her plea before it was accepted by the trial court. MCR 3.941(D). Because this Court denied respondent's motion to remand and there is no record support for respondent's argument on appeal that she was coerced, we find no error, plain or otherwise, warranting relief.

Nor is it apparent that the trial court failed to comply with the procedure for determining an accurate plea. MCR 3.941(C)(3)(a). A factual basis for a plea exists if an inculpatory inference could be drawn from what the respondent admits, even if an exculpatory inference could also be drawn. *People v Thew*, 201 Mich App 78, 85; 506 NW2d 547 (1993). Evidence of the "sexual contact" element of MCL 750.520e is examined objectively. *People v Piper*, 223 Mich App 642, 647; 567 NW2d 483 (1997). "Sexual contact" is defined as

the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

- (i) Revenge.
- (ii) To inflict humiliation.
- (iii) Out of anger.

Here, even if an exculpatory inference could be drawn from respondent's admission that she touched the crotch of an 11-year-old boy, an inculpatory inference could also be drawn that the touching was for a sexual purpose. Thus, there was a sufficient factual basis for respondent's plea.

Finally, we apply by analogy the procedures developed in the context of the criminal law to review respondent's claim that she was denied the effective assistance of counsel. See generally *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001), and *In re Carey, supra* at 227 (right to counsel at adjudicative stage is an essential due process requirement). A claim of ineffective assistance of counsel generally presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Limiting our review to mistakes apparent from the record, we are not persuaded that respondent has demonstrated that she was denied the effective assistance of counsel or that a remand is warranted for her to pursue this matter. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000); *People v Avant*, 235 Mich App 499, 507-508; 597 NW2d 864 (1999); *Thew, supra* at 89-90.

We conclude that respondent has not established any basis for relief based on the existing record and therefore we affirm the trial court's dispositional order.

Affirmed.

/s/ Donald S. Owens
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood