

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of POLASHAK/SOHN/MAYNARD,
Minors.

UNPUBLISHED
April 17, 2014

No. 318470
Jackson Circuit Court
Family Division
LC No. 13-001604-NA

Before: OWENS, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor children upon her voluntary release of her parental rights. We affirm.

The children were removed from respondent after she told law enforcement that her husband had sexually abused their daughter and that she had been aware of, and complicit in, this abuse. Petitioner's original and amended petitions sought termination of respondent's parental rights. Respondent pleaded no contest to the amended termination petition and, at the same hearing, voluntarily released her parental rights to the minor children. The trial court took jurisdiction over the children on the basis of respondent's plea and terminated her parental rights on the basis of her voluntary release.

On appeal, respondent first argues that the trial court erred by accepting her no contest plea because the court failed to advise her, pursuant to MCR 3.971(B)(4), that her plea could be used as evidence at a subsequent termination proceeding. We review this unpreserved issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). MCR 3.971(B)(4) provides that "[b]efore accepting a . . . plea of no contest, the court must advise the respondent . . . of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent."

Here, it is uncontroverted that the trial court did not advise respondent that her no contest plea could be used as evidence in a proceeding to terminate her parental rights. This omission constituted plain error. *Carines*, 460 Mich at 763. However, in order to be entitled to relief on the basis of this plain error, respondent must show "that the error affected the outcome of lower court proceedings." *Id.* At the time respondent entered her no contest plea, her stated intention was to release her parental rights to the children, which she did immediately after the trial court accepted her no contest plea. Thus, given respondent's intention to release her parental rights, the record supports that she would have pleaded no contest even if the trial court had advised her that her plea could be used as evidence at a termination proceeding. In fact, there was no

proceeding where evidence was considered. The trial court terminated respondent's parental rights on the basis of her voluntary release of her parental rights; it did not rely on respondent's no contest plea as evidence. The trial court's failure to advise respondent pursuant to MCR 3.971(B)(4) did not affect her substantial rights. *Carines*, 460 Mich at 763.

Respondent also argues that she was denied the effective assistance of counsel where her counsel did not object to the trial court's failure to advise her that her plea could be used as evidence in a termination proceeding. "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002) (quotation marks and citation omitted). This Court's review of respondent's unpreserved ineffective assistance of counsel claim "is limited to mistakes apparent on the record." *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008). "[T]his Court presumes that a defendant received effective assistance of counsel, and the defendant bears a heavy burden to prove otherwise." *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001). "To establish ineffective assistance of counsel, the defendant must first show: (1) that counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms, and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Yost*, 278 Mich App 341, 387; 749 NW2d 753 (2008).

Even if we assume that respondent's counsel was ineffective for not objecting to the trial court's failure to comply with MCR 3.971(B)(4), for the same reasons discussed above, respondent has not shown "that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *Yost*, 278 Mich App at 387. See also *In re CR*, 250 Mich App at 198. Thus, respondent is not entitled to relief on the basis of her counsel's performance. *Yost*, 278 Mich App at 387; *In re CR*, 250 Mich App at 198.

Finally, respondent argues that the trial court erred by accepting her release of parental rights without fully explaining the impact of the release. Our review of respondent's unpreserved claim of error is "limited to plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008), citing *Carines*, 460 Mich at 763. In general, "[i]n a termination of parental rights proceeding, a trial court must find by clear and convincing evidence that one or more grounds for termination exist and that termination is in the child's best interests." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). However, respondent's rights were released under the adoption code, rather than the juvenile code. MCL 710.29(6) provides, in relevant part:

A release by a parent or a guardian of the child shall not be executed until after the investigation the court considers proper and until after the judge [or] referee... has fully explained to the parent . . . the legal rights of the parent . . . and the fact that the parent . . . by virtue of the release voluntarily relinquishes permanently his or her rights to the child

At the time of respondent's release, in response to the trial court's inquiry about why respondent believed it was in her children's best interest for her to release her parental rights, she stated: "Because I'm trying to get my life back to the way I should be. I'm trying to better myself and make it so I would be able to have my children." The trial court immediately asked

respondent, “But do you understand you won’t have your children?” And respondent replied: “Yes. Yes, I do.” Respondent went on to testify that she would like her children to be “in a better place” and that there would be “a better life out there” for the children if she released her parental rights. Earlier in the same hearing, the trial court had explained to respondent that if she voluntarily released her parental rights, she would be “giving up always and forever” her right “to be involved in” her children’s lives and would “have no contact with them under any circumstances,” would “not have any ability to make decisions for them,” and would “be cutting all ties permanently and always[.]” Respondent testified that she understood this. Thus, on the record before us, respondent has not shown that the trial court plainly erred by failing to fully explain to her the permanence of her release. *Carines*, 460 Mich at 763.

Respondent also contends that the trial court should have read the content of her release form into the record. At the time the trial court gave respondent her parental rights release form, the court asked respondent if she knew how to read. Respondent replied, “For the most part, yes.” The trial court told respondent that it “would be happy” to read her release form and asked her if she needed the court to read the forms to her. Respondent stated that she did not need the forms read to her, but indicated that she would ask the court if she had “a problem with it[.]” Respondent subsequently signed and submitted her release form, and nothing in the record indicates that she had any difficulty reading or comprehending the form. Thus, on the record before us, respondent has not demonstrated that the trial court plainly erred by not reading her release form into the record. *Carines*, 460 Mich at 763.

Affirmed.

/s/ Donald S. Owens
/s/ Christopher M. Murray
/s/ Michael J. Riordan