

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* MCDOW-RUTHERFORD, Minors.

UNPUBLISHED  
May 10, 2016

No. 328412  
Wayne Circuit Court  
Family Division  
LC No. 13-514054-NA

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Before: BOONSTRA, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Respondent appeals by right the order terminating his parental rights to his three minor children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and (g) (failure to provide proper care and custody). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent is the father of the three minor children at issue, BM, LM, and CM. In August 2013, petitioner filed a petition against respondent and the children's mother<sup>1</sup>, while BM was in the custody of his maternal aunt; the petition related only to BM, as LM and CM, twins, were not yet born. The petition alleged that removal of BM was necessary due to improper supervision and threatened harm or abuse, as respondent and the mother had been "involved in a domestic violence incident" that left her with "severe injuries" and ultimately resulted in respondent's incarceration for felonious assault. Additionally, the petition listed respondent's criminal history and alleged that the mother frequently left BM in the care of relatives to "pursue[] social activities with [respondent]," and that those actions "presented a risk of harm" to BM.

Over the course of the next year and a half, respondent for the most part was non-compliant with services. Although he blamed many of his issues on a lack of transportation, his compliance did not improve when he was provided with bus passes. Further, he refused to take drug screens or complete a psychological evaluation. LM and CM were born in 2014 and were the subjects of a supplemental petition; respondent was ordered to complete the same services

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<sup>1</sup> The children's mother was a party to the adjudication and review hearings; however, she released her rights to all three children on May 1, 2015, and is not a party to this appeal.

with regard to them as he was to complete with regard to BM. LM and CM were removed and placed in non-relative foster care. Respondent continued to be noncompliant with his service plan and was incarcerated in August 2014 with an early release date of November 2015.

Petitioner filed a supplemental petition in March 2015 to terminate respondent's rights to the children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood, based on conduct or capacity of custodian that children would be harmed if returned home). The petition noted respondent's lack of compliance with services and that his earliest release date from prison was November 3, 2015.

The adjudication and termination hearing commenced in May 2015; respondent was present via telephone from prison. Respondent testified at the beginning of the hearing that he wished to release his parental rights to the three children. However, the trial court informed him that because he was not physically present to sign the appropriate release form, he could admit to the allegations in the petition, and that the court would use his admission to find statutory grounds to terminate his parental rights and find that termination of his parental rights was in the best interests of the children. Respondent stated that he understood. Respondent agreed that his admission would have the effect of waiving a termination hearing and admitting that the statutory grounds for termination alleged in the petition existed and that termination was in the children's best interests.

Respondent's attorney then conducted a voir dire examination of respondent, who testified that he had not fully complied with his treatment plan, that the conditions that had brought the children into care continued to exist and that there was no likelihood that they would change within a reasonable time, that he was presently unable to provide proper care and custody, and that terminating his parental rights was in the best interests of the children for their stability and permanency. The trial court found that respondent's admissions were sufficient "to substantiate the allegations contained in the petition and find that the Statutory [sic] grounds exist to terminate [respondent's] parental rights by clear and convincing evidence." The trial court also found that no bond existed between respondent and LM and CM, and that it was in all of the children's best interests that respondent's rights be terminated. The trial court recognized that BM was placed with his maternal grandmother and that the grandmother was willing to adopt BM and provide him permanence and stability, while the foster family with which the twins were placed was also willing to adopt them and provide them permanence and stability. The trial court entered an order terminating respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g) and finding that termination was in the children's best interests. This appeal followed.

## II. ANALYSIS

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g). Respondent contends that he only admitted to the allegations in the petition because he knew that "fighting for his children would be useless," and that because the Department of Health and Human Services (DHHS) did "nothing" to aid in his reunification with his children, the trial court clearly erred on both grounds. We disagree, because the trial court did not err in accepting his plea.

Respondent did not challenge his plea of admission in a motion before the trial court. See *In re Zelzack*, 180 Mich App 117, 126; 446 NW 2d 588 (1989); see also *People v Nowicki*, 213 Mich App 383, 385; 539 NW2d 590 (1995). Because the issue is thus unpreserved, “review is limited to determining whether a plain error occurred that affected substantial rights.” *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

MCR 3.971 allows a plea of admission or no contest to allegations in a petition to be taken at any time after the filing of the petition. Here, after being repeatedly informed of the consequences, respondent admitted that the allegations in the petition constituted sufficient evidence to find that a statutory ground had been established. Respondent repeatedly stated that he wished to voluntarily release his rights. During voir dire examination by his attorney, he agreed that if he were present at the hearing in person he would voluntarily release his rights, and conceded that he was currently unable to provide proper care and custody and there was no likelihood that he would be able to provide that care within a reasonable time, and that the conditions that led to the adjudication continued to exist and there was no likelihood that they would change in the future.

“A party cannot stipulate to a matter and then argue on appeal that the resultant action was error.” *Holmes v Holmes*, 281 Mich App 575, 588; 760 NW 2d 300 (2008), quoting *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW 2d 339 (2001). Further, a respondent who pleads no contest to the allegations in a petition waives challenge on appeal to the sufficiency of the evidence supporting termination. See *In re Hudson*, 294 Mich App 261, 264; 817 NW 2d 115 (2011) (finding that where respondent pleaded no contest to the allegations in the petition at a termination hearing and she claimed no irregularity in her plea on appeal, her argument that the evidence to support termination was not clear and convincing is waived). Here, respondent initially sought to voluntarily release his parental rights but eventually entered a plea of admission to the allegations in the supplemental petition, as allowed by MCR 3.971(A). Respondent has thus waived any challenge to the evidence in support of statutory grounds for termination unless his plea was knowingly, understandingly, and voluntarily made, as well as accurate. *Hudson*, 294 Mich App at 264; see also MCR 3.971(C).

The record establishes that the plea was knowingly, understandingly, and voluntarily made, and was accurate. The trial court advised respondent of the right to counsel, the right to a termination hearing, the allegations against him, petitioner’s burden of proof in establishing both of the alleged statutory grounds for termination and the best interests of the children, the right to present witnesses, the right to cross-examine witnesses, and the right to have witnesses subpoenaed by the court. Respondent stated that he understood those rights. The trial court and respondent’s attorney advised respondent of the effect of a termination order, and respondent stated that he understood that as well. Respondent repeatedly affirmed that it was his own choice to plead to the allegations in the petition. The trial court also stated that respondent’s admission established a factual basis to find that statutory grounds for termination existed under MCL 712A19b(3)(c)(i) and (g), as required by MCR 3.971(C)(2).

The record clearly demonstrates that respondent understood that he was not contesting petitioner’s request to terminate his parental rights. Although respondent argues on appeal that he believed that contesting the petition would be futile, a respondent’s beliefs concerning the likelihood of success or failure in contesting a petition are not factors in determining whether a

plea is knowingly, understandingly, and voluntarily made, and is accurate. Given respondent's plea of admission, respondent has waived any claim that the evidence did not establish a statutory basis for the termination of his parental rights. *Hudson, Hudson*, 294 Mich App at 264; *Holmes*, 281 Mich App at 587-588; *Chapdelaine*, 247 Mich App at 177.

Respondent also argues that the trial court erred in determining that termination was in the children's best interests. We disagree. This Court reviews the trial court's determination regarding best interests for clear error. *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014).

Respondent admitted that the termination of his parental rights was in the children's best interests, and the court stated its findings of fact and conclusions of law on the record; respondent thus waived any claim that the termination of his parental rights was not in the children's best interests. *Hudson*, 294 Mich App at 264; *Holmes*, 281 Mich App at 587-588; *Chapdelaine*, 247 Mich App at 177. As stated above, the record indicates that the plea was given in accordance with MCR 3.971(C). Further, the trial court noted that no bond existed between respondent and LM and CM, and that all of the children were in placements that were willing to adopt them and provide them with the permanency and stability that respondent could not. We find no error in the trial court's best-interest determination. *White*, 303 Mich App at 709.

Affirmed.

/s/ Mark T. Boonstra  
/s/ Patrick M. Meter  
/s/ Jane M. Beckering