

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

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*In re* JONES/LAUGHLIN, Minors.

UNPUBLISHED  
June 21, 2016

No. 329982  
Cass Circuit Court  
Family Division  
LC Nos. 14-000093-NA;  
14-000094-NA;  
14-000095-NA

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Before: MARKEY, P.J., and OWENS and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals by right the October 14, 2015 orders terminating her parental rights to the three minor children upon a voluntary release of her rights. We agree that the trial court improperly entered orders terminating her parental rights under the Juvenile Code, MCL 712A.1 *et seq.*; however, we conclude that respondent validly released her rights under the Adoption Code, MCL 710.21 *et seq.*

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

Respondent is the mother of three minor children, AJ, LL, and AL. Children’s Protective Services (CPS) became involved with respondent in 2013 while she was pregnant with AL. AL’s father (also the father of LL)<sup>1</sup> threatened to kill her and her child if the child were not his. Respondent was referred for services including mental health treatment, and the children were referred for “Early On” intervention services. In April 2014, the Department of Health and Human Services (DHHS) filed a petition seeking to remove the children from respondent’s home. The petition alleged that respondent had been the victim of domestic violence from LL and AL’s father, who lived in the home, and that the children had witnessed at least some of these incidents. Further, despite respondent’s claim that she had kicked the father out of the house, he was observed at the house during an unannounced visit in April 2014 and told CPS that he been to the house twice in the previous two weeks. Finally, the petition alleged that the Early On coordinator for LL was very concerned regarding LL’s emotional and behavioral health and

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<sup>1</sup> The fathers of the three minor children voluntarily released their rights to their respective children and are not parties to this appeal.

speech, but that respondent had withdrawn him from services because she believed she could “handle her kids better than someone else.” The trial court authorized the petition and removed the children to relative placements, granting respondent supervised parenting time. An amended petition was filed in May 2014, alleging in addition to the original allegations that respondent had additional contact with the father of LL and AL, and had refused domestic violence counseling. The petition also alleged that respondent had contacted the children’s foster care placements despite being asked not to do so.

In June of 2014, respondent pleaded to the allegations in the amended petition and was adjudicated by the trial court. The trial court assumed jurisdiction over the children and ordered that they remain in their placements and that respondent continue receiving supervised parenting time.

In October 2014, LL and AL were moved from their relative placement to an unrelated foster care home after the relatives reported that they could not handle the children’s behavioral problems and special needs. There were no issues with AJ’s placement with relatives.

LL’s and AL’s behavioral problems continued, and eventually the children were diagnosed with Reactive Attachment Disorder. The children were placed in a specially licensed foster care home in the Upper Peninsula in May 2015.

Respondent continued to receive services, but still struggled with unstable employment, anger issues, and unstable housing. She also continued to associate with LL and AL’s father despite her claims that she was not seeing him, and became angry when questioned about this ongoing relationship.

In October 2015, DHHS filed a petition seeking termination of respondent’s parental rights. A termination hearing was scheduled for November 10, 2015; however, on October 14, 2015, a hearing was held before the trial court wherein respondent voluntarily released her rights to the children under the Adoption Code. The trial court informed respondent of her rights as a parent and that by signing the relevant forms (which also explained her rights) she was relinquishing those rights. The trial court then confirmed that respondent understood her rights and that she was voluntarily choosing to release them. Following the hearing, the trial court entered orders terminating respondent’s parental rights after release or consent both under the Adoption Code, see MCL 710.29, and the Juvenile Code, see MCL 712A.19a.

This appeal followed.

## II. STANDARD OF REVIEW

We review for clear error a trial court’s termination of parental rights under the Juvenile Code. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011); MCR 3.977(K); *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). To the extent that respondent challenges the efficacy of her releases of her parental rights under the Adoption Code, as she did not challenge these releases below, our review is for plain error affecting substantial rights. See *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

### III. ANALYSIS

At the outset, we note that this case proceeded below in a commingling of proceedings under both the Juvenile Code and the Adoption Code. Until respondent informed the trial court that she wished to release her parental rights, the trial court was presiding over a Juvenile Code proceeding. When respondent later indicated that she wished to release her rights, the trial court accepted respondent's release, terminated her rights, and committed the children to the care of DHS, all under the Adoption Code. The trial court then also ordered respondent's parental rights terminated under the Juvenile Code.

As we have in the past,<sup>2</sup> to avoid confusion, we urge trial courts not to mix Juvenile Code and Adoption Code proceedings. We suggest that when respondent indicated that she wished to release her rights, the trial judge should have ordered a recess in the Juvenile Code proceeding and commenced an Adoption Code proceeding. After accepting respondent's release and entering the appropriate orders, the trial court could then have reconvened the Juvenile Code proceeding, terminated the fathers' rights under the Juvenile Code, and entertained and taken under advisement a motion to dismiss the Juvenile Code termination petition as to respondent. Upon the expiration of the time period for respondent to request a rehearing, MCL 710.64(1), or file an appeal, MCL 710.65(1), the trial court could then have granted the motion to dismiss the Juvenile Code termination petition as to respondent. By proceeding in such a manner, trial courts can avoid or prevent needless confusion.

In any event, the trial court's termination of respondent's parental rights under the Juvenile Code was clearly erroneous in light of the fact that there was no termination hearing at which evidence was received, and thus no evidence was presented to the trial court concerning statutory grounds for termination, *VanDalen*, 293 Mich App at 139, or the best interests of the children, *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). See also MCR 3.977(3). The orders the trial court issued under the Juvenile Code are therefore invalid, and we vacate them.

With regard to respondent's voluntary release of her rights under the Adoption Code, we note that a release of parental rights is not to be executed "until after the investigation the court considers proper and until after the judge . . . has fully explained to the parent or guardian the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the release voluntarily relinquishes permanently his or her rights to the child . . . ." MCL 710.29(7); see also *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). In other words, such a release must be "knowingly and voluntarily made." *Burns*, 236 Mich App at 292.

As noted above, respondent did not challenge the knowing and voluntary nature of her release in the Court below. And respondent does not raise such a challenge in her appeal; rather, respondent argues that the trial court erred in allowing DHHS to place AL and LL in a

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<sup>2</sup> See *In re Hernandez/Vera Minors*, unpublished opinion per curiam of the Court of Appeals, issued April 16, 2013 (Docket No. 312136).

specialized foster home in the Upper Peninsula.<sup>3</sup> The closest respondent comes to an argument concerning the knowingness and voluntariness of her plea is her argument that the placement impacted the lawyer-guardian ad litem's (L-GAL) recommendation to the trial court that termination would be in AL's and LL's best interests. Specifically, she alleges that the placement resulted in the L-GAL's failure to visit AL and LL for almost six months. She asserts that she relied on the recommendation of the L-GAL when she determined that releasing her rights was in her children's best interests.

Respondent does not argue that she did not understand her parental rights or that she was giving up those rights, or that she was coerced or tricked into releasing her rights. Rather, she argues that the decision she made to release her rights was based on allegedly incomplete or incorrect information. Respondent cites no authority, and this Court has found none, in support of the proposition that alleged failings of the L-GAL in a Juvenile Code proceeding are valid grounds for the withdrawal of a respondent's voluntary release in an Adoption Code proceeding. The L-GAL owes no duty to respondent mother to assist her in determining best interests; the L-GAL's duty is only to the child. MCL 712A.17d(1). The trial court investigated whether respondent understood that she was giving up the rights to her children, whether she had sufficient time to consider her decision, and whether her decision was coerced in any way. We therefore find no plain error in the trial court's determination that respondent's releases were knowingly and voluntarily made. See *In re Curran*, 196 Mich App 380, 385; 493 NW2d 454 (1992).

Vacated with respect to the trial court's termination orders relative to respondent under the Juvenile Code. Affirmed with respect to the trial court's termination orders pursuant to respondent's voluntary release of her parental rights under the Adoption Code.

/s/ Jane E. Markey  
/s/ Donald S. Owens  
/s/ Mark T. Boonstra

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<sup>3</sup> Respondent does not raise any argument with respect to AJ, although she requests that this Court restore her parental rights to all three children.