

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOHNIKKIA NICOLE
LASHOWN FEAGIN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GLORIOUS FEAGIN,

Respondent-Appellant.

UNPUBLISHED

June 14, 2005

No. 259949

Saginaw Circuit Court

Family Division

LC No. 04-028931-NA

Before: Owens, P.J., and Cavanagh and Neff, JJ.

MEMORANDUM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i) and (j). We affirm.

On February 6, 2004, respondent was found severely injured, apparently from self-inflicted injuries, in the bathroom of her apartment with the infant minor child. The minor child was removed from respondent and later taken to the hospital where it was determined that the child's body temperature had fallen to a dangerous level of about ninety-one degrees. The dead body of respondent's two-year-old son was found in a bedroom closet. His feet and wrists were bound with shoelaces and next to his head was a bandana that contained some vomit. An autopsy indicated that he had been asphyxiated by way of smothering. In statements made to the police, respondent said the young boy had been possessed and had spoken in women's voices. She said that she put salt in his mouth because the Bible said that would dry up the demons. She admitted putting her son in the closet and binding his wrists and hands to keep him away from her. On the basis of her statements and other evidence, respondent was charged with open murder. A later evaluation deemed respondent incompetent to stand trial on the criminal charges. In her termination case, the trial court appointed a guardian ad litem for respondent.

Two of respondent's appellate arguments are based on constitutional principles more commonly associated with criminal proceedings: the Fourth Amendment right to exclude evidence obtained without a warrant and the Fifth Amendment right to suppress statements made

while in custodial interrogation that were not voluntarily provided. Because respondent did not move to suppress or timely challenge this evidence at trial, our review is limited to plain error affecting respondent's substantial rights.¹

It is unnecessary to determine whether the Fourth Amendment right to exclude evidence obtained in a warrantless search applies by analogy to child protective proceedings. Although unclear in this case whether certain evidence was obtained without a warrant, it would have been admissible regardless pursuant to the inevitable discovery exception to the exclusionary rule.² Therefore, the trial court did not commit plain error in admitting the evidence.

Respondent next argues that her Fifth Amendment rights were violated. It is well established that the Fifth Amendment applies by analogy to child protective proceedings to prevent a respondent from compulsory self-incrimination.³ A variant of this rule renders inadmissible statements of an accused made during custodial interrogation unless the accused voluntarily, knowingly and intelligently waived her Fifth Amendment rights. The "totality of circumstances"⁴ shows that respondent made some statements to police that were removed from reality. However, because respondent failed to preserve her argument concerning the voluntariness of her statements, we are left without a complete record that would permit review of all circumstances surrounding the statements. Nevertheless, even if we assume that plain error occurred, we conclude that the error did not cause prejudice because it did not affect the outcome of the trial court proceedings.⁵ Respondent's mental illness, which rendered her incompetent to stand trial in her criminal case, provided clear and convincing evidence that the child would likely be harmed if returned to respondent's care. Thus, termination was warranted by at least one statutory ground.

Respondent next argues that her attorney committed prejudicial errors that deprived respondent of her constitutional right to effective counsel. Because respondent failed to seek an evidentiary hearing or move for a new trial on this ground, our review is limited to mistakes apparent on the record.⁶ After reviewing the record, we conclude that respondent has failed to demonstrate ineffective assistance of counsel because she is unable to show that the results of the proceeding would have been different.⁷ Similarly, respondent's argument that newly discovered evidence mandated a new trial must fail. Even if respondent had timely moved for a new trial on

¹ *People v Carines*, 460 Mich 750, 763-765; 597 NW2d 130 (1999).

² See *People v Stevens (After Remand)*, 460 Mich 626, 637; 597 NW2d 53 (1999).

³ *In re MU*, 264 Mich App 270, 283 n 5; 690 NW2d 495 (2004).

⁴ *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988); *People v Abraham*, 234

⁵ *People v McNally*, 470 Mich 1, 5; 679 NW2d 301 (2004).

⁶ *People v McCrady*, 213 Mich App 474, 478-479; 540 NW2d 718 (1995).

⁷ *People v Grant*, 470 Mich 477, 486; 684 NW2d 686 (2004).

the basis of newly discovered evidence pursuant to MCR 2.611(B), the motion would have failed because the alleged new evidence would not have made a different result probable on retrial.⁸

Affirmed.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Janet T. Neff

⁸ *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003).