

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MERCEDES JASMIN LANDES,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

UNPUBLISHED
April 22, 2008

v

JEREMY SHANNON LANDES,

Respondent-Appellant.

No. 280654
Ionia Circuit Court
Family Division
LC No. 06-000020-NA

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

MEMORANDUM.

Respondent appeals as of right from the order terminating his parental rights to the minor child following his execution of the voluntary release of his parental rights. We affirm.

Respondent does not challenge the voluntariness of the release of his parental rights. Rather, he contends that he released his rights because the lower court consistently favored the hearsay comments from the foster mother, leaving respondent to believe that his only option was to release his parental rights to the child and appeal to this Court on the ground of a due process violation. Because respondent did not raise a constitutional claim below, this argument is not preserved. We review unpreserved constitutional error claims for outcome-determinative plain error. *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996). To avoid forfeiture under the plain error rule, there must be a plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Respondent argues that he was deprived his due process rights when the court relied upon “incorrect and unsupported hearsay” from the child’s foster mother. In *In re Ovalle*, 140 Mich App 79, 82; 363 NW2d 731 (1985), this Court noted that “[t]he probate court may consider all relevant and material evidence, including hearsay, at the dispositional phase of a termination proceeding.” *Id.* This Court further explained that “[t]he requirements of due process do not prevent the admission of hearsay testimony as long as the evidence is fair, reliable and trustworthy.” *Id.* Pursuant to MCR 3.972(E)(2), the trial court may rely on all relevant and material evidence to the extent of its probative value during the dispositional phase of child protective proceedings, including written or oral information from the child’s foster parent.

Based on *In re Ovalle* and MCR 3.973(E)(2), we find that respondent has failed to show that the trial court erred in relying on hearsay statements during the dispositional phase of this case. Even if the trial court plainly erred in relying on unreliable hearsay statements, respondent has failed to show that such reliance was outcome-determinative. The trial court did not terminate respondent's parental rights based on such statements. Rather, it found that temporary removal from the home was necessary and that it was necessary that the removal continue pending the dispositional review hearing. Respondent's parental rights were terminated following his voluntary release of his parental rights. Thus, respondent's due process rights were not violated.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey