

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 13, 2012

In the Matter of PERKINS, Minors.

Nos. 310662; 310663
Allegan Circuit Court
Family Division
LC No. 10-047404-NA

Before: TALBOT, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father appeal as of right the trial court order terminating their parental rights to the minor children pursuant to releases both respondents executed. We affirm.

I. FACTUAL BACKGROUND

The minor children were removed from respondents' care based on allegations that respondents were smoking marijuana in the presence of the children, crushing and snorting narcotic pain killers in the presence of the children, and respondents had lost their housing. Respondents entered a plea consenting to jurisdiction, and the trial court found there was a sufficient factual basis to take jurisdiction over the children.

Numerous dispositional review hearings were held, one of which revealed that respondent father had tested positive for heroin and respondent mother tested positive for marijuana. While respondents claimed they were lawfully taking other prescription medications, respondents refused to sign medical releases or provide their prescription medications for a pill count to establish the medications were being used appropriately. There was also evidence that respondent father had admitted he was selling his prescription medicines and that respondent mother appeared overmedicated during parenting time.

A termination hearing was held and the trial court denied the request to terminate parental rights. The trial court stated that it did not believe the statutory grounds for termination had been proven by clear and convincing evidence and that it lacked sufficient information to determine whether termination was in the children's best interest. Nevertheless, on the date of a subsequent dispositional review hearing, respondents informed the court of their desire to release their parental rights. The trial court explained to respondents the type of rights included in parental rights, that a release had to be voluntary, and that a release would be permanent. The

respondents executed a release for each child, which their attorneys also signed. Respondents now appeal.

II. RESPONDENT MOTHER'S RELEASE

A. Standard of Review

Respondent mother first contends that the court erred in failing to inquire about whether she released her parental rights in reliance on promises and assurances by the Department of Human Services. Generally, whether the trial court properly complied with the statutory requirements of the relinquishment of parental rights before accepting the release is a question of law reviewed de novo. See *Minority Earth Movers, Inc v Walter Toebe Const Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002). However, respondent mother did not raise this issue below and did not seek revocation of the release in accordance with MCL 710.29(10) or MCL 710.64. Thus, this issue is not preserved for appellate review and will only be reviewed for plain error affecting substantial rights. See *In re Hudson*, 483 Mich 928, 928; 763 NW2d 618 (2009).¹ Respondent mother also failed to raise an equal protection challenge below, so that issue is likewise unpreserved. *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996). Unpreserved errors are reviewed only for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

B. Analysis

Respondent mother argues that the lower court should have applied the requirements of a release under the Adoption Code, MCL 710.21 *et seq.*, rather than those of the Juvenile Code, MCL 712A.1 *et seq.*

An initial flaw in respondent mother's argument is that her release was taken pursuant to the Adoption Code. On the bottom right corner of the release forms, the relevant statutory sections cited are MCL 710.28, MCL 710.29, and MCL 710.54, all sections in the Adoption Code. Further, although the release occurred in the context of termination proceedings, the release occurred after a request for termination was denied, and upon the initiative of respondents. There is no indication that respondent mother released her rights because of a recognition that the trial court would find a statutory basis to terminate her rights under the Juvenile Code, especially since the trial court expressly declined to do so at an earlier time. See *Matter of Toler*, 193 Mich App 474, 478; 484 NW2d 672 (1992) (holding that the release of the respondent's parental rights was pursuant to the Juvenile Code, not the Adoption Code, because respondent "conceded in effect that the court would be able to find statutory authorization for the termination and that termination would be in the best interest of the children."). Thus, the release in the instant case is most appropriately considered under the Adoption Code. Consequently, respondent mother's argument about the consistency of requirements between the

¹ We also note that respondent mother references, in the "Law and Argument" section of her appellate brief, that this issue is unpreserved.

Adoption Code and Juvenile Code in the context of releases, and the equal protection implications, is inapplicable.

As respondent mother correctly argues, certain conditions must be met in order to effectuate a proper release of parental rights under the Adoption Code. See MCL 710.29. In particular, respondent mother cites MCL 710.29(5)(d), which requires a verified statement signed by respondent to be obtained and to include a statement “[t]hat the validity and finality of the release is not affected by any collateral or separate agreement between the parent or guardian and the agency, or the parent or guardian and the prospective adoptive parent.” No such detailed verified statement was obtained in this case.

However, to the extent that the trial court failed to follow the procedures provided in the Adoption Code, respondent mother’s claim still must fail. Other than a mere mention that the trial court did not inform her about the potential significance of collateral agreements, respondent mother makes no claim that such agreements actually existed in this case. There also is no indication in the lower court record that such agreements existed or induced respondent mother to release her parental rights. Further, while respondent mother suggests that her release was not knowing or voluntary, the evidence at the hearing contradicts her. Respondent mother had an attorney present who signed the release, and she was informed about the extent of the rights she was relinquishing. She also was informed that the release had to be voluntary; she did not have to sign the release; it would be permanent; there was a right to request a rehearing or appeal; and she acknowledged that she had not been offered, given, or received any money, other consideration, or thing of value in connection with the release. Considering the lack of evidence of a collateral agreement and the evidence signifying the voluntariness of her release, we conclude respondent mother has failed to demonstrate any “plain error affecting substantial rights.” *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008); see also *Matter of Blankenship*, 165 Mich App 706, 712; 418 NW2d 919 (1988) (“[b]ecause the consequences and final nature of her decision had been explained to her, there is no reason to believe that the release was given other than freely and knowingly.”).

III. BEST INTERESTS

A. Standard of Review

Respondent mother and father argue that the trial court erred when it determined that the best interests of the children were served by the release of parental rights. The determination that a child is best served by release of parental rights is left to the sound discretion of the trial court. *Matter of Blankenship*, 165 Mich App at 714. “An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes.” *In re Utrera*, 281 Mich App at 15 (internal quotations and citation omitted).

B. Analysis

If a child is over five years old, the court must determine “that the child is best served by the release.” MCL 710.29(6). In this case, respondents attended parenting times and maintained a bond with the children. However, respondents were unable to address their substance abuse issues and continued to test positive for drugs while persistently refusing to sign medical releases

or provide prescription medications for pill counts. Further, the children were placed in multiple foster care homes and had difficulty transitioning to the foster care home after parental visits. In light of the much needed stability and permanency that was lacking with respondents, the trial court did not err in determining that the release of parental rights best served the minor children.²

IV. CONCLUSION

There was no error requiring reversal regarding respondent mother's release. Also, the trial court's determination that accepting the releases were in the best interest of the minor children was not in error. We affirm.

/s/ Michael J. Talbot
/s/ Jane E. Markey
/s/ Michael J. Riordan

² While respondents argue that the trial court improperly considered the release as evidence in the best interest determination, they fail to cite any caselaw to support their argument. It is not enough for a party “simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Furthermore, while respondents claim that the trial court improperly relied on reports that had not been admitted, the trial court specifically noted that the issues informing its decision were present at the termination hearing.