

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 16, 2013

In the Matter of HERNANDEZ/VERA, Minors.

No. 312136
Mason Circuit Court
Family Division
LC No. 11-000007-NA

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

PER CURIAM.

Respondent appeals as of right from orders terminating her parental rights to her four children, challenging the validity of her releases of her parental rights. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Petitioner filed a petition, pursuant to the Juvenile Code, MCL 712A.1 *et seq.*, requesting the trial court's jurisdiction and removal of respondent's children from her home following an incident where she allegedly had sex with multiple men at the home of her boyfriend, a drug dealer, while her children were in the next room, abused substances, and was involved in a car accident with her children in the car. Following a preliminary hearing, trial court authorized the petition, assumed jurisdiction over the children, appointed a lawyer-guardian ad litem to represent the children, and ordered them removed from respondent's care.

Over the next year, numerous services were provided to respondent. These included parenting classes, educational services, community mental health and psychiatric services, "wraparound," substance abuse therapy, random drug screens, parenting time, and financial assistance. She regularly missed appointments. She showed up for only half of a substance abuse evaluation, tested positive for substances three times, and was abusing her prescription medication. Moreover, she failed to consistently attend parenting classes and, after she missed eight of 15 scheduled visitations, parenting time was suspended on December 29, 2011 because the missed sessions were upsetting to the children. At one visitation, she tested positive for hydrocodone. She also had issues with compliance with medication and mental health treatment.

During the pendency of this matter, respondent married a registered sex offender. She also had to vacate her home when she failed to stay current on the land contract; she became homeless. On June 11, 2012, petitioner filed a supplemental petition seeking to terminate respondent's parental rights under the Juvenile Code.

On July 30, 2012, the day before the scheduled termination of parental rights proceeding, the court convened based on the understanding that respondent would be releasing her parental rights. However, respondent indicated that what she really wanted was an adjournment to secure new counsel. When the court denied the motion, respondent's attorney indicated that she had not decided whether to release her rights or proceed with the termination hearing.

The termination proceeding commenced the following day. After two witnesses testified at the hearing on the petition to terminate, respondent indicated that she wanted to release her parental rights to the children. Her counsel stated that she and respondent had talked about it the previous day and in the past, and that she had reviewed the release forms with respondent and had "read them out loud to her." The court then asked respondent a series of questions to determine if her decision to release her parental rights was knowing and voluntary. Respondent indicated that she had mixed feelings about releasing her parental rights but acknowledged that no one had threatened or coerced her, no one had promised her anything in exchange for the releases, she had had time to ponder the decision, and that her decision to release her parental rights was voluntary and knowing. Moreover, the written releases themselves recited that respondent's legal rights had been fully explained, that she did not have to sign the releases, and that if she did so she would be voluntarily giving up permanently all of her parental rights to the children.

The record shows that respondent signed a "Release of Child by Parent" form for each of her minor children. The release forms cite provisions of the Adoption Code, MCL 710.21 *et seq.*, that govern a parent's voluntary release of parental rights under that Code. See MCL 710.28, MCL 710.29, MCL 710.54. Respondent also was also given an "Advice of Rights after Order Terminating Parental Rights (Adoption Code)" form for each child, dated the same date as the releases. The trial court entered an "Order Terminating Parental Rights after Release or Consent" and an "Order Committing Child to Agency/Department of Human Services" for each child, pursuant to the Adoption Code. See MCL 710.29(7); MCL 710.55(1). The trial court also entered an "Order Following Hearing to Terminate Parental Rights" which terminated the rights of the children's fathers under the Juvenile Code.

II. STANDARD OF REVIEW

Respondent now argues that her answers to questions regarding her decision to release her parental rights were equivocal, that the written releases were not knowingly and voluntarily executed, and that she was not competent to relinquish her parental rights or, at a minimum, that the trial court erred in failing to order a competency hearing. Because respondent did not challenge the efficacy of her releases below, review is for plain error affecting substantial rights. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

III. PROCEDURAL IRREGULARITIES

We briefly note that the manner in which this case proceeded below was confusing. Until respondent informed the trial court that she wished to release her parental rights, the trial court was presiding over a Juvenile Code proceeding. However, when respondent indicated that she wished to release her rights, the trial court took respondent's release, terminated her rights, and committed the children to the care of DHS, all under the Adoption Code. Meanwhile, the trial

court also terminated the fathers' rights under the Juvenile Code. Despite the release of parental rights under the Adoption Code, a Juvenile Code file number was placed on the Adoption Code forms and orders, adding to the confusion.

We urge the trial court not to mix Juvenile Code and Adoption Code proceedings in the future, in order to avoid confusion. 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 begun an Adoption Code proceeding. After taking 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, the trial court could insure that needless confusion does not result.

Having noted the above, we now turn to the substance of respondent's claims.

IV. RESPONDENT'S DECISION TO RELEASE WAS KNOWING AND VOLUNTARY

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(6); see also *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). In other words, such a release must be "knowing and voluntarily made." *Id.*

As noted above, the release forms executed by respondent recite that an authorized person fully explained to respondent her legal rights as a parent. Her counsel represented that there had been repeated discussions relative to releasing her rights, and the written documents themselves recited that respondent did not have to sign and that she understood she was voluntarily and permanently giving up all of her parental rights. While respondent's comments to the judge indicated she had some reservations about giving up her rights to her children, the colloquy established that she understood the gravity of her decision and that, despite mixed sentiments, she was nonetheless choosing to release her parental rights:

The Court: . . . This case is protective proceedings. It's been pending since February 7th 2011. So, it's been quite a while. But you have counseled? You've obviously counseled with your attorney about this and you've talked about this occasionally?

Respondent: Yes.

The Court: Okay. Have you counseled with anyone else regarding this release? A minister or a friend or—

Respondent: No.

The Court: —or aunt or anything?

Respondent: No.

The Court: No, okay. Do you feel like you've had adequate time to consider your decision?

Respondent: Some ways yes and some ways no, so.

The Court: Well, has anyone threatened you or coerced you in any way to get your . . . to come in here today when you really don't want to?

Respondent: No.

The Court: Okay. Has anyone promised you anything in exchange for your release?

Respondent: No.

The Court: Okay. Do you consider this decision to release your rights to the children a well thought out decision?

Respondent: Yes and no.

The Court: Well, I know that these . . . Well, I'm assuming these are, these are never easy decisions. But you've had a chance to ponder it and think about it for a while?

Respondent: Yes.

The Court: Okay.

Respondent: But if it's the right thing to do, I don't think it is, but all right, yeah, I thought of it.

The Court: Do you understand that by releasing all of your rights you'd be giving up all legal rights, for visitation and to have input into a child's health, education or welfare?

Respondent: Yes.

The Court: Okay. Do you have the release forms in front of you? One of . . . you understand that if you sign this release then I enter an order terminating your parental rights—which is what you're asking me to do, in effect, today, which is what you're asking me to do—that you would have 21 days from today to request a rehearing or to appeal the matter to the Michigan Court of Appeals? Do you understand that?

Respondent: Yeah, I understand.

The Court: Okay. Is there anything else the Court needs to address?

Respondent's attorney: No, Your Honor.

Guardian ad litem: I don't believe so.

The Court: Okay. Before you do this, are you telling me that you're signing this release voluntarily, knowingly and without coercion?

Respondent: Yes.

Here, 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 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).

V. THE TRIAL COURT DID NOT ERR IN ACCEPTING RESPONDENT'S RELEASES AS COMPETENTLY GIVEN

Respondent also argues that she was not competent to relinquish her parental rights or that the lower court should have ordered a competency evaluation. As stated above, MCL 710.29(6) provides that a release by a parent shall not be executed until the trial court has performed "the investigation the court considers proper[.]" The adequacy of the trial court's investigation is left to its sound discretion. See *Burns*, 236 Mich App at 292.

Respondent points to a psychologist's observation that respondent "distorts reality" and suffers from depression and posttraumatic stress disorder (PTSD). However, the psychologist expressly stated that the distortions did not indicate psychosis, but rather that respondent "tends to see the world the way she wishes it were." There is no indication that the distortion rose to a level of incompetency or that the judge would have been alerted to a significant problem. Similarly, there is nothing on the record to indicate that respondent's issues with depression and PTSD impaired her competency. Respondent had been contemplating releasing her parental rights before the termination hearing commenced. The statements at the hearing itself indicate that she had misgivings about releasing her rights but not that she lacked the competency to understand what she was doing. Nothing in the record indicates that the trial court should have determined *sua sponte* that respondent was not capable of knowingly and voluntarily executing the releases. We conclude that the trial court did not abuse its discretion in relying on its colloquy with respondent in accepting the releases.

Affirmed.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Mark T. Boonstra