

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NIYA CASEY, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CYNTHIA CASEY,

Respondent-Appellant.

UNPUBLISHED
December 18, 2003

No. 247742
Washtenaw Circuit Court
Family Division
LC No. 02-000143-NA

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Respondent Casey appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (g), (j) and (k). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first contends that the trial court erred in accepting her no contest plea to the allegations in the petition because it failed to comply with the requirements of MCR 5.971. Because respondent failed to raise this issue below, it is not preserved for appeal and our review is for plain error that affected substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

The court failed to advise respondent of the allegations in the petition as required by MCR 5.971(B)(1). However, the record shows that respondent and her attorney had received a copy of the petition so it appears that respondent was aware of the allegations to which she entered the plea. Moreover, given the evidence introduced at the dispositional hearing, it is clear that the court had jurisdiction over the child under MCL 712A.2(b)(2). Therefore, had respondent elected to go to trial, it is unlikely that the outcome of the proceedings would have been different. Accordingly, we find that respondent is not entitled to relief on the basis of this unpreserved error.

Respondent's contention that the court failed to comply with other requirements of MCR 5.971 likewise does not warrant reversal. The record shows that the court properly advised respondent of the consequences of her plea, i.e., that it could be used to establish a basis for termination at the dispositional hearing. MCR 5.971(B)(4). Although the court did not state why a no contest plea was appropriate, MCR 5.971(C)(2), respondent's counsel placed the

reason on the record, which is sufficient. *People v Byrd*, 150 Mich App 624, 628; 389 NW2d 710 (1986). While respondent contends counsel's stated reason was not appropriate, she has not cited an applicable authority in support of that contention and is thus deemed to have abandoned the issue. *Central Cartage Co v Fewless*, 232 Mich App 517, 529; 591 NW2d 422 (1998). Finally, the record shows that respondent's plea was voluntarily and knowingly made.

Respondent next contends that the trial court erred in denying her motion to withdraw her plea. We review the trial court's ruling on such a motion for an abuse of discretion. *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989).

The rules governing pleas in criminal cases are applied by analogy to juvenile cases. *Id.* at 125. In the criminal context, there is no right to withdraw a plea once it is accepted. *People v Lamar Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997). The defendant must establish a fair and just reason for withdrawing the plea. *Id.*

Respondent contends that the court erred in failing to apply the "great liberality" standard to her motion. That standard governed withdrawal of pleas in the criminal context until October 1, 1989, when the applicable court rule was amended. The amendment "discarded the 'great liberality' standard in favor of a more restrictive standard that considers the interests of justice and the potential prejudice to the prosecution." *People v Gomer*, 206 Mich App 55, 57; 520 NW2d 360 (1994).

Respondent's asserted reason for withdrawing her plea was that she did not understand the court proceedings and that her plea could lead to termination. That contention is belied by the record of the plea proceedings, in which respondent stated that she understood her rights and the consequences of the plea, that she was not under the influence of drugs or alcohol, and that she was not suffering from any mental condition that would affect her ability to understand the proceedings or to make a decision. Although a guardian ad litem was appointed for respondent at a later date and she was referred to the Forensic Center for an evaluation as to competency and criminal responsibility in connection with related criminal proceedings, respondent did not present any evidence to show that she was incompetent at any time. The court did not abuse its discretion in denying the motion.

Finally, respondent contends that the attorney who represented her prior to the dispositional hearing was ineffective. Because respondent failed to raise this claim below in a motion for a new trial or an evidentiary hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

A respondent has a right to effective assistance of counsel in child protective proceedings. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re EP*, 234 Mich App 582, 598; 595 NW2d 167 (1999), overruled in part on other grounds by *In re Trejo Minors*, 462 Mich 341, 353, n 10; 612 NW2d 407 (2000). The general rule in the criminal context is as follows:

To prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel's performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To

demonstrate prejudice, the defendant must show that, but for counsel's error, there was a reasonable probability that the result of the proceedings would have been different. This Court presumes that counsel's conduct fell within a wide range of reasonable professional assistance, and the defendant bears a heavy burden to overcome this presumption. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001), aff'd 468 Mich 233 (2003) (citations omitted).]

Respondent has alleged various deficiencies in counsel's performance but has not explained how the actions counsel should have taken would likely have altered the outcome of the case. Because respondent has not adequately briefed the merits of her claim, it is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White