

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 2, 2012

In the Matter of GAMBLE, Minors.

No. 309288
Kent Circuit Court
Family Division
LC Nos. 09-054230-NA;
10-053953-NA

Before: M. J. KELLY, P.J., AND HOEKSTRA AND STEPHENS, JJ.

PER CURIAM.

Following a voluntary relinquishment of her parental rights under the Juvenile Code, respondent mother appeals as of right the trial court's order terminating her parental rights.

Respondent contends that the trial court erred when it terminated her parental rights because it relied entirely on her relinquishment of parental rights and failed to make findings under MCL 712A.19b to determine whether there were statutory grounds for termination. In general, "[i]n a termination of parental rights proceeding, a trial court must find by clear and convincing evidence that one or more grounds for termination exist and that termination is in the child's best interests." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). An appellate court "review[s] for clear error both the [trial] court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the [trial] court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). However, in cases where a respondent voluntarily agrees to a termination of her parental rights under the Juvenile Code, the trial court does not need to announce a statutory basis for its decision. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992) (holding that "a respondent can consent to termination of his parental rights under the juvenile code, in which case the judge need not announce a statutory basis for it[s] [decision]."). Consequently, respondent's argument is without merit.

Next, respondent argues that her relinquishment of parental rights was not knowing and voluntary and that her cognitive impairments rendered her incompetent to execute a release of her parental rights. She also argues that the trial court should have inquired into her competency because it knew about her cognitive impairments. Respondent did not raise these issues before the trial court; therefore, they are not preserved. See *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). In order to be entitled to relief, respondent must demonstrate plain error affecting substantial rights. *Id.*

When a parent relinquishes her parental rights, she must do so knowingly and voluntarily. See *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). Here, the record reveals that the trial court engaged in an extensive colloquy with respondent to determine whether her release of parental rights was knowing and voluntary. Specifically, the trial court repeatedly asked respondent about her release of her parental rights and respondent repeatedly answered that she understood her decision, and that she knowingly and voluntarily agreed to relinquish her parental rights. Where the trial court engages in an extensive colloquy with the respondent on the issue of whether the respondent voluntarily relinquishes her parental rights and the respondent assures the trial court that she understands her actions, the respondent's relinquishment is knowing and voluntary. See *In re Curran*, 196 Mich App 380, 381-382, 385; 493 NW2d 454 (1992). Furthermore, respondent's trial counsel and the guardian ad litem appointed to represent respondent testified that respondent's waiver was knowing and voluntary. Thus, respondent's argument is unavailing.

Respondent disagrees, and cites an affidavit she filed with her brief on appeal. In her affidavit, she contended that "[a]t a hearing on January 26, 2011, I released and gave up my parental rights to my children I did not fully understand at the time that this release was permanent, and so I appealed the release, and ask for my release to be set aside." This statement was not part of the lower court record. In general, this Court does not permit an expansion of the record on appeal. See, e.g., *Miller v Purcell*, 246 Mich App 244, 249 n 1; 631 NW2d 760 (2001). Furthermore, in spite of the assertions in respondent's affidavit, there is no evidence in the record to support respondent's claim that her relinquishment of parental rights was not knowing and voluntary. Respondent repeatedly responded in the affirmative when she was asked by the trial court if she wished to relinquish her parental rights. She also indicated that she understood the consequences of her decision. Moreover, respondent previously relinquished her rights to two other children, and had her parental rights to two additional children terminated. Instead of demonstrating that respondent did not knowingly understand her relinquishment, the record reveals that respondent merely changed her mind. Where the record reveals that a respondent's release of parental rights was knowing and voluntary, the respondent's change of heart will not serve as a sufficient basis for allowing the respondent to withdraw her release of parental rights. *In re Burns*, 236 Mich App at 292-293; *In re Curran*, 196 Mich App at 384-385.

Respondent also contends that she was not competent to execute a release of her parental rights and that the trial court should have inquired into her competency. Here, the guardian ad litem appointed to represent respondent expressly testified that respondent was competent to execute a release of her parental rights. Respondent also repeatedly assured the trial court that she understood the consequences of her release of parental rights. There is no support in the record for respondent's position that she was not competent to execute such a release. Moreover, the trial court did not have a duty to *sua sponte* order a competency hearing in this case. In termination proceedings, this Court adopts the standards used to evaluate competency in criminal proceedings. Thus, we presume that respondents are competent, *People v Abraham*, 256 Mich App 265, 283; 662 NW2d 836 (2003), and the trial court does not have a duty to *sua sponte* order a competency hearing unless facts become known that raise "a bona fide doubt about the competency of the [respondent]." *In re Carey*, 241 Mich App 222, 227-228; 615 NW2d 742 (2000). Here, the trial court, despite knowing about respondent's cognitive impairments, did not have a duty to order a competency hearing because respondent repeatedly assured the trial court that she understood her release. Further, the guardian ad litem assured the trial court that

respondent was competent to relinquish her parental rights. Thus, the facts in this record were not sufficient to raise a bona fide doubt regarding respondent's competence and the trial court did not have a duty to inquire into this matter. *Id.*

Affirmed.

/s/ Michael J. Kelly

/s/ Joel P. Hoekstra

/s/ Cynthia Diane Stephens