

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* JEZOWSKI, Minors.

UNPUBLISHED  
July 21, 2015

Nos. 325112; 325116  
Arenac Circuit Court  
Family Division  
LC No. 12-012047-NA

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Before: SAWYER, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondents T. Jezowski (respondent father) and S. Jezowski (respondent mother) each appeal as of right an order terminating their parental rights to their minor children under MCL 712A.19b(3)(g) and (j). We affirm in both appeals.

Respondents have a history of involvement with petitioner. Respondents previously received services from petitioner in 2009, after the family residence was found to be in an unlivable condition. Services were provided, but respondents failed to take action to rectify the situation until the children were removed from the home. The children were returned to respondents' custody, and the case was closed several months later.

In September 2014, respondents' son was found alone several miles from home; respondents had not reported him missing. Petitioner's caseworker received information that the home was once again in very poor condition. Respondents refused to allow the caseworker into their home, causing the caseworker to obtain a court order, following which the children were removed because of the condition of the home. The home lacked heat, electricity, and running water, and was strewn with clothing, rotting food, and trash. The mattresses in the home lacked bedding, the walls of the home had holes in them, some windows were broken, and wiring was exposed.

Petitioner sought termination of respondents' parental rights at the initial dispositional hearing. Respondents entered pleas of admission to various allegations in the petition. Following a termination hearing, the trial court found that clear and convincing evidence existed to terminate respondents' parental rights under MCL 712A.19b(3)(g) and (j). The trial court also found that termination of respondents' parental rights was in the children's best interests.

I. APPOINTMENT OF COUNSEL FOR MOTHER

We first address respondent mother's argument that the trial court denied her due process by failing to appoint counsel for her before the plea hearing. Whether the right to counsel was violated is a constitutional question that we review de novo. *People v Hickman*, 470 Mich 602, 605; 684 NW2d 267 (2004). However, because respondent mother never raised the issue of being deprived of the right to counsel at the trial court, the issue is not preserved, and we review it for plain error affecting her substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

A parent in a termination proceeding has a right to counsel. *In re Williams*, 286 Mich App 253, 275; 779 NW2d 286 (2009); see also MCL 712A.17c(4) and MCR 3.915(B). However, just like most other rights, it can be waived. *In re Contempt of Dorsey*, 306 Mich App 571, 590; 858 NW2d 84 (2014); see also *People v Russell*, 471 Mich 182, 188; 684 NW2d 745 (2004). During the early stages of this case, the trial court repeatedly offered to appoint counsel for respondent mother, but she refused, stating on multiple occasions that she wished to retain counsel. Respondent mother concedes in her brief on appeal that she repeatedly refused trial court's offer for the appointment of counsel.<sup>1</sup> She maintains that the trial court erred because it should have sua sponte appointed "standby counsel"<sup>2</sup> for her. However, there is no constitutional right to standby counsel. *People v Kevorkian*, 248 Mich App 373, 422; 639 NW2d 291 (2001). Accordingly, respondent mother cannot establish how any constitutional right was violated, let alone any plain error. Moreover, respondent mother's assertion that, had she been appointed standby counsel, it is likely that petitioner's request for termination would have been withdrawn at the plea hearing is based solely on speculation.

## II. VALIDITY OF MOTHER'S PLEA

Next, respondent mother argues that the trial court denied her due process by failing to elicit a sufficient factual basis for her plea, in her own words. Because respondent mother did not raise this issue in the trial court at the time the plea was taken, in a motion to withdraw her plea, the issue is unpreserved, and our review is for plain error affecting her substantial rights. *In re Utrera*, 281 Mich App at 8.

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<sup>1</sup> In fact, right before the trial court accepted respondent mother's plea, the court confirmed with respondent mother the following:

*THE COURT*: And up until now, at least, you have waived your right to counsel, is that correct?

*[Respondent mother]*: Yes, your Honor.

*THE COURT*: You understand you have a right to counsel, is that correct?

*[Respondent mother]*: Yes, I do. Your Honor.

<sup>2</sup> "Standby counsel" involves "a situation in which a pro se [party] is given the assistance of advisory counsel who may take over . . . if for some reason the [party] becomes unable to continue." *People v Dennany*, 445 Mich 412, 439 n 15; 519 NW2d 128 (1994) (Griffin, J. opinion).

MCR 3.971 governs the taking of a plea to allegations in a petition. MCR 3.971(C) provides:

(1) *Voluntary Plea.* The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.

(2) *Accurate Plea.* The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

The trial court directly questioned respondents, and respondent mother responded separately to each question. This procedure complied with the court rule. Respondent mother provides no support for her assertion that a respondent in a termination case must essentially restate in his or her own words the allegation in the petition in order to make an accurate and voluntary plea. No plain error has been established. The trial court's procedure did not deny respondent mother due process.

### III. TERMINATION DECISION

On appeal, both respondents argue that the trial court erred in finding that clear and convincing evidence existed to terminate their parental rights and in finding that termination of their parental rights was in the children's best interests.

A trial court must terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) a preponderance of the evidence establishes that that termination is in the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). We review for clear error both a trial court's determination that a statutory ground has been proven by clear and convincing evidence and its determination that termination of parental rights is in the best interests of the children. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).

The trial court terminated respondents' parental rights under MCL 712A.19b(3)(g) and (j), which permit termination under the following circumstances:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The gravamen of respondents' arguments is that their recently diagnosed conditions of dependent personality disorder (respondent father) and antisocial personality disorder (respondent mother) could have affected their ability to keep their house clean and see to the medical and educational needs of the children, and that the trial court erred by terminating their parental rights without first giving them the opportunity to demonstrate that, with treatment of their conditions, they could provide proper care for the children.

Respondents rely on *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), overruled in part on other grounds in *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000), and *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991). In both cases, this Court found that termination of parental rights was premature because the respondents cooperated with the petitioner, had been making progress, and were able to demonstrate that they could provide proper care for their children if given adequate support. *In re Boursaw*, 239 Mich App at 172-176; *In re Newman*, 189 Mich App at 65-68, 70-71.

In this case, respondents failed to provide proper care for the children for years, even after petitioner provided services through Families First and a public health nurse. Respondents cleaned their house in 2012 only after the children were removed from the residence. After the children were returned to the home, respondents allowed the home to fall back into the same unlivable condition that prompted the removal of the children. No evidence supported a finding that respondents' conditions were the reason they allowed their home to become unlivable, both in 2012 and 2014. In fact, respondents showed an ability to clean their home after the children were removed in 2012. They do not explain how they would have been able to do so if their conditions were debilitating.

Moreover, a psychologist opined that it was very unlikely that respondents would make significant progress through counseling because respondents tended to minimize the seriousness of the condition of the home and failed to maintain the home in proper condition even after the children were removed in 2012. The undisputed evidence showed that at the time the children were removed in 2014, the home lacked heat, electricity, and water, had broken windows and holes in the walls, and had clothing and trash strewn around to the extent that walking was difficult. Such conditions presented obvious safety risk to the children, and no evidence showed that respondents were motivated to rectify the conditions.

We conclude that the trial court did not clearly err in finding that clear and convincing evidence existed to terminate respondents' parental rights under MCL 712A.19b(3)(g) and (j). Further, the court did not clearly err in concluding that termination of respondents' parental rights was in the children's best interests. Notwithstanding any bond between respondents and the children, termination was necessary to provide the children with a safe environment, stability,

and permanency, which respondents were not able to provide. *In re VanDalen*, 293 Mich App 120, 141-142; 809 NW2d 412 (2011).

Affirmed.

/s/ David H. Sawyer  
/s/ Pat M. Donofrio  
/s/ Stephen L. Borrello