

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* MJP, Minor.

UNPUBLISHED  
July 28, 2015

No. 326640  
Lapeer Circuit Court  
Family Division  
LC No. 15-003361-RL

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

PER CURIAM.

Respondent appeals as of right the circuit court’s order terminating her parental rights to the minor child pursuant to § 29(8) of the Adoption Code, MCL 710.29(8) (parent’s release of parental rights). For the reasons set forth in this opinion, we affirm.

The minor child was removed from respondent’s custody in August 2013 and adjudicated a court ward pursuant to MCL 712A.2(b) of the Juvenile Code. A supplemental petition to terminate respondent’s parental rights to the child was later filed and the hearing was scheduled for March 5, 2015. On that date, respondent, after being fully advised of her rights by the court and waiving those rights, elected to release her parental rights. On March 20, 2015, respondent sent a letter to the court indicating her desire to appeal because she did “not want to give up my rights to my son.” In it, she stated, “I was given false information by my attorney [ ] convincing me to give up rights to my son when that is nothing close to what I want to do.” Respondent did not provide any further information.

On appeal, respondent argues that the trial court failed to ensure that her decision to release her parental rights was knowing and voluntary. This issue has not been preserved because it was not raised at the time of the release or later in a motion for revocation of the release in accordance with MCL 710.29(11). *Lenawee Co v Wagley*, 301 Mich App 134, 164; 836 NW2d 193 (2013); *In re Baby Girl Fletcher*, 76 Mich App 219, 221; 256 NW2d 444 (1977). Therefore, review “is limited to determining whether a plain error occurred that affected substantial rights.” *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008).

The general rule is that “a child shall not be placed in a home for the purpose of adoption until an order terminating parental rights has been entered” under the Adoption Code, MCL 710.21 *et seq.*, or under the Juvenile Code, MCL 712A.1 *et seq.* MCL 710.41(1). A parent’s parental rights can be terminated under the Adoption Code by release. MCL 710.28; MCL 710.29. A release “is valid if executed in accordance with the law at the time of execution.” MCR 3.801(B). Specifically, the release must be “knowingly and voluntarily made.” *In re*

*Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). The release may be executed before a judge or referee and “a verbatim record of testimony related to execution of the release shall be made.” MCL 710.29(1). Before accepting a release, the court must fully explain to the parent her legal rights and the fact that the release operates as a voluntary permanent relinquishment of parental rights to the child. MCL 710.29(7); *In re Blankenship*, 165 Mich App 706, 711-712; 418 NW2d 919 (1988). Upon release, the court shall immediately issue an order terminating the parent’s parental rights and the child becomes a state ward. MCL 710.28(8); MCL 710.29(8).

The record reveals that the trial court went to great lengths to explain to respondent her rights and the consequences of her actions. The following is the record of the colloquy between respondent and the trial court regarding her decision to voluntarily release her parental rights:

Q. Okay. You are aware that there is a termination of parental rights trial scheduled right now regarding [MJP], date of birth, [ ] Do you understand that?

A. Yes.

\* \* \*

Q. Do you have an attorney appointed to represent you?

A. Yes.

Q. Have you had enough time to talk to your attorney?

A. Yes.

Q. Are you satisfied with her services and advice, up to this point?

A. Yes.

Q. Do you understand, again, you have a right to go through this trial where . . . it’s the Department of Human Services’ burden, represented by the prosecutor, to prove the . . . case by clear and convincing evidence before the Court can or would terminate parental rights. However, in this adoption file I have in front of me a form called a Release of Child by Parent.

By signing that form, even though it says Release of Child by Parent, the result is a full, final, and complete termination of all parental rights to the child, [MJP], and that the child would be turned over to the Department of Human Services for the purpose of adoption. Do you understand that, ma’am?

A. Yes.

Q. Okay. Now by parental rights what I mean are all the rights a parent has to a child. The right to have any say in the child’s education, the right to have . . . a say in the child’s religious upbringing, the right to have any say in any medical care, the right to have a say even in the child’s name. It would include

the right to contact the child, telephone, email, send gifts, cards, letters – it would terminate all the rights a parent has to a child and you would stand in the place as a complete stranger, legally.

It would also terminate any right to have any say in any property owned by the child, and it would terminate any obligation to pay child support. Do you understand that by signing this form, it would terminate all rights to the child, [MP]?

A. Yes.

\* \* \*

*Q.* Okay. The form further states I understand my right to request a rehearing or an appeal within 21 days after an order is entered terminating my parental rights. While I want you to understand that you have a right to request a rehearing or to appeal or to appeal the denial of a rehearing, if that's what took place, it would only be granted if you could show some sort of fraud, coercion, or misrepresentation, but if you simply had a change of heart, that would not be grounds to set aside the release on rehearing or appeal. Do you understand that, ma'am?

A. Yes.

*Q.* Okay. Have you received or been promised any money or anything of value for your release of the child except charges and fees approved by the Court?

A. No.

*Q.* And do you, of your own freewill [sic], give up completely and permanently all of your parental rights to the child, [MJP], . . . and release the child to the Michigan Department of Human Services/Michigan Children's Institute for the purpose of adoption?

A. Yes.

The trial court then read to respondent the provisions of the Statement to Accompany Release. See MCL 710.29(6). The trial court continued:

*Q.* I'll tell you more about the form to keep information up . . . to date in a few minutes, but [respondent's counsel], do you want to take these forms to your client and review them with her?

A. Judge, actually, we read both of these forms . . . when we were in the . . . conference room in there. So she's fully aware of what these said both by what she's read and what you've just indicated to her.

Q. Okay. I need her to check the box of whether she's received counseling or waives counseling, if that's her choice, and if she fully understands them and does not have any questions and her desire is to release the child for adoption, then she can go ahead and sign the forms. If she does not want to release them [sic], she does not have to sign anything – release the child. [respondent] have you reviewed the forms?

A. I have.

Q. Do you understand them?

A. I do.

Q. Do you have any questions?

A. I don't.

Q. And do you voluntarily release the child, [MP], for adoption?

A. I do.

Q. Okay, go ahead and sign them. Today's date is March 5<sup>th</sup>.

The trial court then ruled as follows:

Okay. Okay, at this time, the Court is satisfied an investigation of release has been made at a hearing where a verbatim record of testimony is made.

I explained to the mother her parental rights and that by signing this release she was giving up permanently and completely and voluntarily all of her parental rights to the child. The Court is satisfied that the parent then did voluntarily sign the release before me and the child is under five years of age and the parent is an adult.

The Court is satisfied that this child was removed in August of 2013 and, therefore, it's over a year and a half since the child was removed and there's no reasonable likelihood that if we gave her more time, a reasonable length of time, that permanency would be achieved as she is currently set for sentencing on criminal charges with a strong likelihood of continued jail. She's in custody and cannot provide adequate care for the child and it does not appear to be possible in the near future; that while the child maybe [sic] in relative placement, the child is . . . very young and all its needs are being met and under the circumstances termination is appropriate as returning the child to the mother, under these circumstances would in all likelihood create a risk of harm to the child, given her continued criminal behavior and inability to care for the child....

Contrary to respondent's assertions on appeal, there is nothing in this record to indicate that the trial court failed to ensure that respondent's release was knowingly and voluntarily

made. The trial court was very thorough in explaining to respondent the nature of her parental rights, the fact that those rights would be lost upon execution and acceptance of the release, which would result in the complete and permanent termination of her parental rights. Finally, as is apparent from the above-quoted record, the trial court specifically questioned respondent whether it was her choice to execute the release and she clearly and unequivocally responded in the affirmative when asked if she was acting voluntarily and of her own free will.

Respondent's argument on appeal suggests that the trial court failed to ensure that she was competent to execute a release, given that she claims to have been suffering from the effects of withdrawal from heroin at the time. The standards used to evaluate competency in criminal proceedings are applicable by analogy in termination proceedings. In the criminal context, a defendant must be competent in order to plead guilty or to stand trial. MCL 330.2022(1); *People v Whyte*, 165 Mich App 409, 411; 418 NW2d 484 (1988). "[A] defendant is presumed competent to stand trial unless his mental condition prevents him from understanding the nature and object of the proceedings against him or the court determines he is unable to assist in his defense." *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). Where the defendant does not raise the issue of his competency, "the trial court ha[s] no duty to *sua sponte* order a competency hearing," *People v Inman*, 54 Mich App 5, 12; 220 NW2d 165 (1974), unless facts are brought to the trial court's "attention which raise a 'bona fide doubt' as to the defendant's competence." *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

Here, respondent did not raise the issue of her competency in the trial court and again there is nothing in this record to even suggest that respondent did not understand the nature of the proceedings. She provided coherent answers to questions in a manner that indicated that she understood the questions she was asked. Thus, there was nothing to raise a bona fide doubt as to her competency. We note also that there is nothing in the record before this Court to indicate either that respondent was a drug addict or that she was suffering from withdrawal symptoms at the time she tendered the release. Respondent has not provided any evidence regarding the effects of withdrawal from heroin or whether those effects can render one incompetent. In addition, respondent stated that she had been in jail for 40 days as of March 5, and she has not shown that such a period was insufficient to overcome any withdrawal symptoms she may have had. Accordingly, we find no error in the trial court's decision to accept the release.

Respondent next argues that she elected to release her parental rights due to ineffective assistance of counsel. She contends that she was coerced into releasing her parental rights by counsel, who was aware that she was hysterical and withdrawing from heroin, and that counsel provided incorrect legal advice. "[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*, 462 Mich 341, 353 n 10; 612 NW2d 407 (2000). Because respondent did not raise this issue in the trial court by way of a motion for an evidentiary hearing or other relief, our review is limited to mistakes apparent from the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002); *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). Effective assistance of counsel is presumed and respondent bears a heavy burden of proving otherwise. See *People v Eloby (After Remand)*, 215 Mich App 472, 476; 547 NW2d 48 (1996). To establish a claim of ineffective assistance of counsel, respondent must "show both that counsel's performance fell below objective standards of reasonableness, and that it is reasonably probable that the results of

the proceeding would have been different had it not been for counsel's error." See *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). Respondent has the burden of establishing the factual predicate for her claim of ineffective assistance of counsel. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Respondent contends that counsel provided inaccurate legal advice and allowed her to proceed with the release at a time when she was "hysterical" and withdrawing from heroin. Our review of the transcript from the release proceeding contains nothing to suggest that respondent was "hysterical." The most it shows is that she was offered a tissue, but afterward the court asked, "Are you ready to proceed?" and respondent answered, "Yes." As previously discussed, there is nothing in the record to indicate that respondent was suffering from any drug withdrawal symptoms, much less that those symptoms could have clouded her judgment. Respondent was afforded numerous opportunities by the trial court to halt the proceedings. Respondent never told the trial court that she was in withdrawal, or that she was "hysterical." Nothing in the record supports a finding that either of these assertions is true. Rather, our review of the record shows that respondent discussed with her attorney whether to execute a release that respondent was satisfied with her counsel, and that respondent wished to proceed. Simply stated, there is no evidence from which this Court could make a finding that counsel's performance was objectively unreasonable. For all these reasons, respondent is not entitled to relief.

Affirmed.

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