

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SABRINA MARIE GUILFOIL and
STEVEN PAUL GUILFOIL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BONNIE GUILFOIL,

Respondent-Appellant.

UNPUBLISHED

May 18, 2004

No. 252320

Tuscola Circuit Court

Family Division

LC No. 02-008135-NA

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

MEMORANDUM.

Respondent appeals by delayed leave granted the order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (c)(i), (g), and (j). We affirm.

The trial court did not abuse its discretion in admitting testimony regarding Sabrina's hearsay statements of respondent's knowledge of and participation in Sabrina's sexual abuse without first conducting a tender years hearing in accordance with MCR 3.972(C)(2). Respondent did not object to lack of a tender years hearing, and the issue was not preserved for appeal. Unpreserved nonconstitutional error requires that respondent show plain error that affected her substantial rights. *People v Carines*, 460 Mich 750, 773-774; 597 NW2d 130 (1999).

The record showed that Sabrina's statements regarding respondent's knowledge of the abuse contained sufficient indicia of trustworthiness, and the trial court's failure to hold a separate tender years hearing did not affect her substantial rights. *In re Snyder*, 223 Mich App 85, 92-93; 566 NW2d 18 (1997). Sabrina's statements regarding respondent photographing the abuse did not contain sufficient indicia of trustworthiness, but the admission of these statements was harmless error in light of the ample other evidence supporting the statutory grounds for termination. Admitting testimony about the photographs did not affect respondent's substantial rights.

Respondent also argues that the trial court erred in relying on her plea of no contest because the trial court's failure to advise her that her plea could be used in terminating her

parental rights rendered her plea constitutionally defective. MCR 3.971(B)(4). Substantial compliance with the court rule in giving a defendant an advice of rights is required in criminal cases. *Guilty Plea Cases*, 395 Mich 96, 113; 235 NW2d 132 (1975). While the trial court in a child protective proceeding need not conform to all requirements in criminal procedure, the essential requirements of due process and fair treatment must be met. *In re Campbell*, 170 Mich App 243, 250; 428 NW2d 347 (1988).

The evidence showed that respondent was advised that her no-contest plea allowed the trial court to consider the evidence presented by petitioner as establishing the allegations in the petition, and that if a petition for termination was later brought the court could terminate her parental rights if the evidence warranted. Respondent was represented by counsel and consulted with counsel about her plea. The trial court's advice substantially complied with the requirement that respondent be advised that her plea could be used to terminate her parental rights. Respondent's plea was not constitutionally defective, and the trial court did not err in relying on it in the proceedings.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Karen Fort Hood