STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HOLLY MARIE SANTILLI and TERRANCE SAMUEL WILLIAM SANTILLI, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TERRANCE T. SANTILLI,

Respondent-Appellant,

and

LINDA SANTILLI,

Respondent.

UNPUBLISHED
July 1, 2004

No. 251953
Lapeer Circuit Court
Family Division
LC No. 02-009207-NA

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court's order terminating his parental rights to the two minor children, which followed respondent-appellant's written release of parental rights. We affirm.

Termination of respondent-appellant's parental rights was sought under the Juvenile Code, MCL 712A.1 *et seq*., based upon allegations that he sexually penetrated one of the minor children on two separate occasions. Respondent-appellant pleaded no contest to the allegations of the amended petition. On appeal, respondent-appellant contends that his plea was not knowingly and voluntarily given. This issue is not preserved for appellate review because respondent-appellant did not seek to withdraw his plea in the lower court. *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989). In any event, the record does not support respondent-appellant's claim. The trial court properly advised respondent-appellant of his rights as delineated in MCR 3.971(B), and respondent-appellant indicated on the record that he had not received any promise or threat inducing him to offer the plea. In short, respondent-appellant has offered no factual support, and none appears in the record, for the claim that his plea of no contest was not knowingly and voluntarily made.

Respondent-appellant also claims that his release of parental rights was not given knowingly and voluntarily because it was not explained that, while he could seek rehearing or appeal within twenty-one days, this right would not permit the court to set aside the release unless it was convinced that it would be in the best interests of the child to do so. We disagree. The trial court's statement on the record that the order would become final if respondent-appellant did not seek appeal or rehearing in that time in no way suggested that rehearing or appeal would allow respondent-appellant to revoke the termination at will. *In re Burns*, 236 Mich App 291; 599 NW2d 783 (1999), cited by respondent-appellant, does not compel the result he seeks. Although in *Burns* this Court urged the creation of a clearly worded release form that would advise parents that the right to rehearing would not permit the court to set aside a release unless it was convinced such action would be in the best interests of the child, we did not require that such advice be given and indeed affirmed the trial court's denial of a request to vacate a release after a change of heart by the parents. *Id.* at 293 n 1. The record in the present case supports the trial court's finding that respondent-appellant's release of parental rights was freely and voluntarily given.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens