

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHRISTOPHER JAMES
MARKS, SANDY DIANE MARKS, and KALEB
BARRETT MARKS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ARTHUR ALEXANDER MARKS,

Respondent-Appellant.

UNPUBLISHED

March 13, 2007

No. 270535

Tuscola Circuit Court

Family Division

LC No. 05-008972-NA

Before: Wilder, P.J., and Kelly and Borrello, JJ.

PER CURIAM.

Respondent, Arthur Alexander Marks, appeals of right from orders terminating his parental rights to three of his minor children,¹ pursuant to respondent's voluntary release of his parental rights. We affirm.

I

On April 21, 2005, the Michigan Department of Human Services (DHS) filed child protective proceedings under the Michigan juvenile code, MCL 712A.1 *et seq.*, specifically under MCL 712A.2(b)(1) and (b)(2),² alleging abuse/neglect of the minor children and

¹ Respondent does not appeal the termination of his parental rights, pursuant to his voluntary release of parental rights, to his oldest child, whom he was alleged to have sexually abused.

² MCL 712A.2 provides, in relevant part:

The court has the following authority and jurisdiction:

(continued...)

requesting the court to remove the minor children from respondent's home and to take jurisdiction over them. The petition alleged that numerous referrals had been made beginning in July 1998 regarding, among other things, (1) the unclean condition of both the home and the children, (2) the children not being appropriately supervised, (3) inappropriate housing for the children, and (4) sexual abuse of the oldest child. On April 22, 2005, a hearing was held on the petition. The petition was "authorized" at the preliminary hearing. The trial court entered an order to place the children into protective custody. The children went to temporary foster care. At a plea hearing on September 26, 2005, respondent pleaded no contest to the allegations in the petition unrelated to the alleged sexual abuse.

On April 7, 2006, petitioner filed a petition to terminate respondent's parental rights to the children under MCL 712A.19b(3)(b)(i) (child or sibling suffered physical injury or abuse and parent's act caused the injury or abuse), (g) (parent fails to provide proper care and custody), (j) (reasonable likelihood that the children will be harmed if returned to the home of parent), and (k) (parent abused child or sibling of child). Trial on the termination petition was scheduled for May 30, 2006.

However, at a hearing on May 1, 2006, respondent indicated that he wished to forfeit his parental rights. Respondent admits on appeal that he voluntarily released his parental rights to his children on May 1, 2006, before the trial court judge.

At the May 1, 2006, hearing, the trial court took testimony from respondent. The trial court was careful to insure that respondent understood what it meant to give up his parental rights resulting in permanent termination. The trial court advised respondent of his right to an attorney and to consult with his attorney or others before entering the release. The trial court gave as examples a variety of rights that respondent was relinquishing, including the right to custody and control of the children, determining their religious affiliation or education, making medical decisions, inheriting from the children, or the children inheriting from him.

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(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent . . . when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents . . . or who is without proper custody or guardianship. . . .

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent . . . is an unfit place for the juvenile to live in.

The trial court questioned respondent about his understanding of the hearing and whether it was his own choice to release his parental rights. Respondent stated that it was his own choice to do so. The trial court specifically asked respondent why he wanted to release his parental rights to the children, and respondent stated that he was unemployed, that he did not have a solid foundation for the children, and that even before he became unemployed, he did not see a light at the end of the tunnel in terms of providing a stable life for them. The trial court also asked respondent if he thought it was in the best interests of the children to release his parental rights and respondent stated that he thought it was. The trial court then read a release of rights form used under the adoption code³ into the record, and confirmed that respondent understood the rights he was releasing.

The guardian ad litem questioned whether proceeding with a voluntary release of parental rights under the adoption code was in compliance with the requirements of MCR 3.977(H)(3),⁴ which governs the termination of parental rights under the juvenile code, MCL 712A.1 *et seq.* The trial court stated its belief that, because respondent wished to terminate his parental rights voluntarily, proceeding with a voluntary release of parental rights under the adoption code was an appropriate alternative to “proceeding to trial on a termination petition [under] the juvenile code.” After direct inquiry from the trial court, respondent’s attorney stated that he did not object to the procedure. The guardian ad litem did not object, but was not specifically asked by the trial court to further comment on the procedure. The trial court then found that respondent had voluntarily, knowingly and understandingly released his parental rights to the children, and that respondent was “making a gift of their future to the kids.” After respondent signed releases of parental rights for each child, as well as a “Statement to Accompany Release” for each child, prepared in accordance with MCL 710.29(5),⁵ and MCL 722.956(1)(c),⁶ the trial court entered

³ MCL 710.21 *et seq.*

⁴ MCR 3.977(H)(3) provides: “An order terminating parental rights under the Juvenile Code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order.”

⁵ MCL 710.29(5) provides:

(5) A release by a parent or guardian shall be accompanied by a verified statement signed by the parent or guardian that contains all of the following:

(a) That the parent or guardian has received a list of support groups and, if the release is to a child placing agency, a copy of the written document described in section 6(1)(c) of the foster care and adoption services act, Act No. 203 of the Public Acts of 1994, being section 722.956 of the Michigan Compiled Laws.

(b) That the parent or guardian has received counseling related to the adoption of his or her child or waives the counseling with the signing of the verified statement.

(c) That the parent or guardian has not received or been promised any money or anything of value for the release of the child, except for lawful payments that are itemized on a schedule filed with the release.

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(d) That the validity and finality of the release is not affected by any collateral or separate agreement between the parent or guardian and the agency, or the parent or guardian and the prospective adoptive parent.

(e) That the parent or guardian understands that it serves the welfare of the child for the parent to keep the child placing agency or department informed of any health problems that the parent develops that could affect the child.

(f) That the parent or guardian understands that it serves the welfare of the child for the parent or guardian to keep his or her address current with the child placing agency or department in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years of age or older.

⁶ MCL 722.956(1)(c) provides, in relevant part:

(1) An adoption facilitator shall do all of the following:

(c) Prepare and provide to each individual who inquires about services a written document that includes all of the following information:

(i) Types of adoptions the adoption facilitator handles.

(ii) A description of the services that the adoption facilitator provides.

(iii) A description of services that are available by referral.

(iv) Eligibility requirements the adoption facilitator has for adoptive families, if any.

(v) If the adoption facilitator is a child placing agency, the procedure used, or range of options the agency offers, for selecting a prospective adoptive parent for a child, including the role of the child's parent or guardian in the selection process.

(vi) The extent to which the adoption facilitator permits or encourages the exchange of identifying information or contact between biological and adoptive parents.

(vii) A description of postfinalization services that the adoption facilitator provides, if any.

(viii) A schedule of all fees that the adoption facilitator charges for adoption services.

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four orders under the adoption code which terminated respondent's parental rights to the four children.

The children's mother also released her parental rights, and the trial court entered orders committing each child to petitioner for purposes of adoption. Subsequently, on May 19, 2006, the trial court signed another order terminating respondent's parental rights to the four children, this time under the juvenile code. Respondent now appeals, contending that his parental rights were not terminated in compliance with the dictates of the Juvenile Code, and that, therefore, the order terminating his parental rights should be reversed.

II

Whether a trial court complied with legal requirements for termination of parental rights pursuant to a voluntary relinquishment is a question of law. We review questions of law de novo. *In re Fried*, 266 Mich App 535, 538; 702 NW2d 192 (2005).

III

Respondent argues that the trial court reversibly erred by terminating respondent's parental rights without making findings of fact and conclusions of law, and without stating a statutory basis for the termination of his parental rights as required by MCR 3.977 (H)(3). However, respondent's attorney specifically stated he had no objection to the procedure used by the trial court to confirm that respondent wished to voluntarily terminate his parental rights. Waiver is the "intentional relinquishment or abandonment of a known right," *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000), and waiver extinguishes any error. *Id* at 215. Because respondent's attorney agreed to the procedure, there is no error to review. *Id* at 219.

IV

Respondent specifically agreed to the voluntary relinquishment of his parental rights under the procedure utilized by the trial court. Thus, any error in this procedure was waived, and there is no error for this Court to review.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello

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(ix) A statement that each party to an adoption has a right to independent representation by an attorney and that 1 attorney may not represent both the biological parents or guardian and the prospective adoptive parents.