

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JESSICA SAYLES and DARYL
JO JACKSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JENNIFER SAYLES,

Respondent-Appellant.

UNPUBLISHED

May 29, 2008

No. 281450

Tuscola Circuit Court

Family Division

LC No. 03-008619-NA

Before: Servitto, P.J., and Cavanagh and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to her voluntary release of parental rights. MCL 710.29. We affirm.

Respondent asserts on appeal that the order terminating her parental rights should be reversed or the matter remanded for additional proceedings because the trial court abused its discretion in three instances: (1) in denying respondent's motion to dismiss the termination petition, (2) in denying her counsel's motion to withdraw, and (3) in accepting respondent's release of parental rights as voluntary and knowing.

I. Motion to Dismiss the Termination Petition

We review the trial court's decision whether to grant or deny respondent's motion to dismiss the termination petition for an abuse of discretion. *People v Stephen*, 262 Mich App 213, 218; 685 NW2d 309 (2004). At the hearing on respondent's motion to dismiss the termination petition, respondent argued that the petition was legally and factually premature because the proceedings were governed by MCR 3.977(G), which required a review hearing or permanency planning hearing to be held before the trial court took action on a termination petition. In addition, respondent had not yet had the opportunity to engage in services. Petitioner argued that it had alleged new or different circumstances in the amended supplemental petition and that the proceedings were thus governed by MCR 3.977(F), which did not require a review hearing, or other, to be held before the trial court took action on a termination petition. All parties agreed that a review hearing had not yet been held, but the trial court found petitioner

had alleged the new fact of respondent's use of opiates and benzodiazepines at the time she gave birth to another child and the less new, though somewhat enhanced, fact that Jessica's therapist felt any contact with respondent would be emotionally harmful to Jessica. There was no evidence of the trial court's bias or perversity of will in denying respondent's motion to dismiss the petition, and the trial court's decision to deny the motion was based on a factual decision that was not clearly erroneous. The trial court did not abuse its discretion in denying respondent's motion to dismiss the amended supplemental termination petition.

II. Motion to Withdraw

The trial court's decision whether to allow counsel to withdraw is reviewed for an abuse of discretion. *In re Withdrawal of Attorney*, 234 Mich App 421, 431; 594 NW2d 514 (1999). After ten months representing respondent, counsel moved to withdraw one month before the scheduled termination hearing, citing Rule 1.16 of the Michigan Rules of Professional Conduct. Although the Michigan Rules of Professional Conduct do not expressly apply to a motion to withdraw, it is logical "to consider the question of withdrawal within the framework of our code of professional conduct." *In re Withdrawal of Attorney*, *supra* at 432. Counsel asserted that respondent desired his discharge, and he should therefore withdraw pursuant to RPC 1.16(a)(3), which requires withdrawal upon discharge by the client, and that respondent had accused him of not adequately representing her, which allowed withdrawal under RPC 1.16(b)(6), a catchall provision "for other good cause."

Our review of the lower court record reveals that counsel had done an exemplary job representing respondent, vigorously filing motions and arguing on her behalf against petitioner's repeated filings of termination petitions. There was no evidence of counsel's incapacity or inadequacy, or respondent's shortcomings in her relationship with counsel of the type listed under RPC 1.16(b)(1) to (5). The reasons for withdrawal were not of the nature contemplated by the Rules of Professional Conduct, but consisted primarily of respondent's perception that her attorney in a prior child protective proceeding had done a better job, that the case had been going on too long and was not going her way, and that counsel was not adequately answering her questions. Therefore, the trial court did not abuse its discretion in refusing to allow counsel to withdraw, particularly when the scheduled termination hearing was imminent.

III. Release of Parental Rights

The trial court's decision that respondent's release of parental rights was voluntary and knowing is reviewed for an abuse of discretion. *In re Blankenship*, 165 Mich App 706, 714; 418 NW2d 919 (1988). Respondent asserts the trial court did not comply with certain provisions of MCL 710.29 at the release hearing, thus invalidating her release of parental rights. She advances these arguments on appeal: (1) respondent had signed the release documents before the hearing, and the lower court record was not clear whether respondent was actually shown the release documents at the hearing; (2) the trial court's examination of respondent did not ensure that she understood the proceeding or that her release was knowing and voluntary because the trial court's questions to her required only "yes" or "no" answers; (3) the proceeding did not stop when respondent requested additional counseling regarding her decision; (4) and the proceeding did not stop when evidence showed that respondent was induced to release her parental rights by the agency's collateral agreement to attempt to obtain photographs of the children for her, to

allow her a visit with the children, and to refrain from filing a termination petition with regard to her newborn child.

Although respondent did not execute the forms “before a judge of the court or a juvenile court referee” as provided for in MCL 710.29(1), the trial judge’s inquiry of respondent showed she read and understood the content of the forms, understood that the purpose of the forms was to relinquish her parental rights, and signed them voluntarily on the date of the hearing, albeit before the hearing. A verbatim record of testimony related to execution of the release was made. The fact that respondent may have seen and signed the forms before the hearing but not at the hearing, and did not execute the forms in the judge’s presence, did not negate the fact that she understood them and voluntarily signed them, and did not render them invalid.

A review of the lower court record shows respondent usually answered only “yes” in response to the trial court’s questions, but that the trial court also asked her to express the purpose of the hearing in her own words and encouraged her to “go right ahead” and speak when she desired to. Respondent and her counsel were provided every opportunity to present any information relevant to the proceeding, and the trial court’s explanation of the release and its impact, and its examination of respondent, was thorough and adequate to determine whether her release was knowing and voluntary, and whether she understood the impact of termination. The trial court also found the release to be in the children’s best interests. The trial court did not fail to comply with the requirement of MCL 710.29(6) that it fully explain to the parent the legal rights of the parent, and the fact that the parent by virtue of the release voluntarily relinquished permanently her rights to the child; and that the child was best served by the release.

On the date of the release hearing, respondent executed a verified statement stating that she had received or waived counseling, as required by MCL 710.29(5)(b). The trial court’s inquiry at the release hearing whether respondent felt “the need to have other counsel” could have been construed as a desire to have a different attorney as she had requested a month earlier, a need for therapeutic counseling before deciding to release her parental rights, or the need to counsel therapeutically after the release about the grief associated with loss of her parental rights. The lower court record showed that after she answered “yes” to a “need to have other counsel,” respondent consulted with her attorney, who then related to the trial court that respondent meant she desired grief counseling following the termination. The trial court took care to clarify its question, ascertain exactly what respondent meant, and to ensure that she did desire to release her parental rights.

On the date of the release hearing, respondent executed a verified statement stating that the validity and finality of the release was not affected by any collateral or separate agreement between herself and the agency, as required by MCL 710.29(5)(d). The lower court record clearly indicated the trial judge inquired more than once whether respondent was pressured by anyone or promised anything to release her parental rights, and reminded her that she need not release her parental rights that day but could proceed to trial the next day, as scheduled. The record also clearly showed that a last visit and photographs were not definitely promised respondent, particularly since respondent’s incarceration might make a visit impossible, but that the guardian ad litem had agreed to attempt to arrange them.

The record also showed that respondent consented to her newborn child’s guardianship and the release of her parental rights to Jessica and Daryl Jo as part of a negotiated agreement

with petitioner that petitioner would not use the voluntary release of parental rights in this proceeding as a ground upon which to later petition for termination of respondent's parental rights to the newborn child. Given several years of evidence in Jessica and Daryl Jo's two child protective proceedings, and respondent's re-incarceration just before the termination hearing, the agency certainly had grounds to request termination of respondent's parental rights to the newborn child. Respondent made a considered judgment in negotiating with petitioner, and the agreement did not render her release involuntary.

The trial court did not abuse its discretion in denying respondent's motion to dismiss the termination petition, in denying counsel's request to withdraw, or in accepting respondent's release of parental rights as voluntary and knowing.

Affirmed.

/s/ Deborah A. Servitto

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly