STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AMANDA JANE HENSLEY,[1] MASON TAYLOR HOLT, SARA MARIE HOLT, SAVANNAH JEAN HOLT, CHRISTIAN JAMES HOLT, MADISON ANGEL HOLT, and KAITLYN JOYCE HOLT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BLAIN GERROME HOLT,

Respondent-Appellant,

and

SHARON FAYE HENSLEY, a/k/a SHARON FAYE HOLT, a/k/a SHARON FAYE HENSLEY HOLT,

Respondent.

UNPUBLISHED
June 10, 2008

No. 282063
Wayne Circuit Court
Family Division
LC No. 06-460016-NA

In the Matter of AMANDA JANE HENSLEY, MASON TAYLOR HOLT, SARA MARIE HOLT, SAVANNAH JEAN HOLT, CHRISTIAN JAMES HOLT, MADISON ANGEL HOLT, and KAITLYN JOYCE HOLT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

[1] Although this minor child is listed in the order appealed from, neither respondent has appealed the termination of parental rights with regard to this child.

v

No. 282064
Wayne Circuit Court
Family Division
LC No. 06-460016-NA

SHARON FAYE HENSLEY, a/k/a SHARON FAYE HOLT, a/k/a SHARON FAYE HENSLEY HOLT,

Respondent-Appellant,

and

BLAIN GERROME HOLT,

Respondent.

Before: Fort Hood, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the order terminating their parental rights to their minor children. Respondent father's parental rights were terminated under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii), and respondent mother's rights were terminated under MCL 712A.19b(3)(b)(ii), (g), and (j). We affirm.

On appeal, respondent father argues that the trial court improperly admitted a computer printout of his criminal history. In the lower court, respondent father objected to the reliability and accuracy of the printout. Therefore, his objection is preserved only on those grounds. *City of Westland v Okopski*, 208 Mich App 66, 72-73; 527 NW2d 780 (1994). We review the additional grounds cited on appeal for plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Respondent father first contends that the computer printout was inadmissible because it constituted prior bad acts evidence. Evidence of other crimes or wrongs is not admissible to prove the character of a person to show actions in conformity with that character. MRE 404(b)(1). Evidence of other bad acts is admissible only when: (1) the evidence is admitted for a proper purpose, MRE 404(b)(1); (2) the evidence is relevant, MRE 402; and (3) any unfair prejudice does not substantially outweigh the probative value, MRE 403. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). In the present case, there was no indication that the trial court used respondent father's criminal record to determine whether he sexually abused his stepdaughter. The court only cited respondent father's past as further evidence that respondent mother should have been more vigilant in investigating the abuse; a proper purpose for prior bad acts evidence. There was no plain error requiring reversal. *Carines*, *supra*.

Respondent father argues further that the evidence was inadmissible because the prior conviction was pursuant to a no-contest plea, citing MRE 410(2). However, this Court held in *Shuler v Michigan Physicians Mut Liability Co*, 260 Mich App 492, 511-512; 679 NW2d 106 (2004), that, although a no-contest plea could not be used as an admission, it could form the basis

of a conviction used to impeach under MRE 609. A conviction does not become inadmissible as evidence merely because it followed a no-contest plea. See *id.* There was no indication the trial court in the present case used the plea as an admission. Therefore, there was no plain error requiring reversal. *Carines*, *supra*.

Respondent father also argues that the printout was inadmissible because it was not certified, citing MCL 600.2106. This ground was arguably encompassed by his lower court objection regarding accuracy. A copy of a public record or document, including a compilation, is admissible if certified or testified to be correct by a witness. MRE 902; MRE 1005. The computer printout was not certified, and petitioner offered no extrinsic evidence establishing its authenticity. However, we do not reverse a decision based on a harmless error. See *In re Perry*, 193 Mich App 648, 650-651; 484 NW2d 768 (1992). An error was harmless if it was not inconsistent with substantial justice. MCR 2.613(A). Respondent father's attorney argued in the lower court that he pleaded no contest to fourth-degree criminal sexual conduct, not first-degree, and noted that he could not have been sentenced to probation for the latter offense. Petitioner's attorney conceded that first-degree criminal sexual conduct may have only been the initial charge. The computer printout stated only the charge and sentence and did not clarify to what respondent father pleaded no contest. We presume that the trial judge possessed an understanding of the law. See *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971). Therefore, the lower court recognized the discrepancy between the original charged offense and the ultimate sentence imposed. Further, there was no indication the trial court relied on the computer printout in its decision. The court stated that it believed respondent father's stepdaughter when she testified that he sexually abused her for five years. Admission of the printout was not inconsistent with substantial justice. MCR 2.613(A).

Respondent mother first argues that she was denied her right to a jury. In the adjudicative phase of child protective proceedings, the respondent has the right to a trial with a jury as fact-finder. MCR 3.911(A); *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). According to the lower court record, respondent mother filed a jury request, as set forth in MCR 3.911(B), but she then participated in a bench trial without objection. Under MCR 2.508(D)(3), a jury demand cannot be "withdrawn without the consent, expressed in writing or on the record, of the parties or their attorneys." Respondent mother did not file a document withdrawing the demand, and nothing stated on the record indicates that respondent withdrew her jury demand. Respondent mother argues on appeal that a jury demand cannot be withdrawn absent express waiver, citing *Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 54; 698 NW2d 900 (2005). However, waiver can be inferred by a party's conduct under the totality of the circumstances test. *Prentis*, *supra* at 54, citing *Marshall Lasser, PC v George*, 252 Mich App 104, 108; 651 NW2d 158 (2002). Although this test must be applied with awareness of the importance of trial by jury, error cannot be harbored as an appellate parachute. *Marshall Lasser, PC*, *supra* at 108-109, citing *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989). A party may not deem a course of action as proper at trial and submit on appeal that the lower court proceeding was improperly held. *Marshall Lasser, PC*, *supra* at 109.

In the present case, respondent mother did not mention her jury request before the trial judge and participated in the bench trial without objection. Although a new attorney was appointed to represent her after she filed the request, she could have mentioned the jury request

to her attorney or asked the trial court why there was no jury. She could not remain silent and then attempt to overturn the results by raising the issue on appeal. See *Marshall Lasser, PC*, *supra* at 109. Respondent mother waived her right to a jury under the totality of the circumstances. *Id.*

Respondent mother also argues that the trial court erred when it found statutory grounds to terminate her parental rights. A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Respondent mother argues that she could have benefited from services to address her lack of income and prescription drug use. However, the more significant problems were the long-term sexual abuse of her eldest daughter and neglect of her children's well-being and education.

There was clear and convincing evidence that respondent mother had the opportunity to protect her daughter from sexual abuse, she failed to do so, and it was reasonably likely her children would suffer injury or abuse if placed in her home. MCL 712A.19b(3)(b)(ii). The trial court believed the daughter's testimony that respondent father sexually abused her and respondent mother witnessed one incident and allowed him to return to the home. The court found respondent mother's denial of every allegation unbelievable. We defer to the trial court's assessment of credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent mother claims on appeal that she planned to divorce; however, she only testified that she would divorce if it was proven respondent father sexually abused her daughter. She never acknowledged the abuse and suggested her daughter had reason to lie. Respondent mother's failure to protect her children, home conditions, neglect, and failure to admit any problems also constituted clear and convincing evidence that she failed to provide proper care and custody and was not reasonably likely to provide it within a reasonable time, MCL 712A.19b(3)(g), and the children were reasonably likely to be harmed if returned to her care, MCL 712A.19b(3)(j). The trial court did not err when it found statutory grounds to terminate her parental rights.

A trial court is required to terminate parental rights after finding a statutory ground, unless it determines that termination is clearly not in the child's best interests. MCL 712A.19b(5). Respondent mother argues that it was in her children's best interests to offer services and preserve the continuity of care she provided. The strength of the children's bond with respondent mother, the time they spent in her care, and their ages were relevant to the best interests analysis. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). However, respondent mother's failure to protect her children after many years and continued denial of any problems in the home were strong evidence that the children could not be safe in her care. The trial court did not err when it held that termination was not clearly against their best interests and terminated respondent mother's parental rights.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Stephen L. Borrello