

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

July 29, 2010

In the Matter of SCOTT, Minors.

No. 294621

Kent Circuit Court

Family Division

LC No. 08-053086-NA

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Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor children following her voluntary release of parental rights.<sup>1</sup> We affirm.

A petition was filed alleging that respondent was admitted to the hospital for panic issues, that she could not find alternative housing or care for her children, and that she was residing at the River Valley Crisis Home for evaluation. Respondent admitted these allegations. At the termination hearing, respondent voluntarily consented to termination of her parental rights, admitting that she was not able to provide the children with a safe home environment and that she would not be able to do so within a reasonable time. The sole issue on appeal is whether respondent's consent to termination of her parental rights was knowingly and voluntarily made. Because respondent did not move to withdraw her plea in the lower court, this issue is not preserved for appeal. *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989). Unpreserved constitutional claims are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

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<sup>1</sup> A supplemental petition was filed seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (risk of harm to the child if returned to parent's care). At the termination hearing, respondent signed an "Amendment to Petition for Termination," which stated that respondent was unable to provide a safe, non-neglectful home environment for the children and would be unable to do so within a reasonable amount of time. In the order terminating respondent's parental rights, the trial court found that respondent fully understood her rights and agreed with the amended petition. The trial court did not specify the statutory basis for termination in the order or on the record. However, this Court has stated that "a respondent can consent to termination of his parental rights under the juvenile code, in which case the judge need not announce a statutory basis for it." *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

Respondent contends that because she was not advised that, following her voluntary consent, she could be ordered to continue to pay child support for the children until they were adopted, she was not fully advised of her rights and of the consequences of her plea, and thus, was not able to make a knowingly and voluntarily release of her parental rights. Respondent cites MCR 3.971(B)(4), which requires the trial court to advise respondent “of the consequences of the plea.” We disagree.

“The proper interpretation and application of a court rule is a question of law, which this Court reviews de novo.” *Haliw v City of Sterling Hts*, 471 Mich 700, 704; 691 NW2d 753 (2005). In *In re Le*, 278 Mich App 1, 22; 747 NW2d 883 (2008), this Court stated:

Well-established principles guide this Court’s statutory [or court rule] construction efforts. We begin our analysis by consulting the specific . . . language at issue. This Court gives effect to the Legislature’s intent as expressed in the statute’s terms, giving the words their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written. This Court does not interpret a statute in a way that renders any statutory language surplusage . . . . [Internal citations omitted.]

Respondent has failed to demonstrate that the trial court erred by failing to advise her that, following her consent to termination, she could remain financially responsible for the children until they were adopted. As noted above, MCR 3.971(B)(4) provides that the court “must” advise respondent of the consequences of the plea. The use of the word “must” denotes mandatory action. See e.g., *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 130; 573 NW2d 61 (1997). MCR 3.971(B)(4) further provides that the court must advise respondent of the consequences of the plea, “including” that the plea can later be used as evidence in a proceeding terminating parental rights if the respondent is a parent. A “consequence” is “the effect, result or outcome of something occurring earlier.” *Random House Webster’s College Dictionary* (1992).

First and foremost, we observe that continuing financial responsibility for the children is not a *consequence* of respondent’s plea. Respondent’s ongoing financial responsibility for the children was not the “effect, result or outcome” of her plea. Instead, it is an obligation that she has, as a parent, which continues notwithstanding the termination of her parental rights, until her children are adopted. Respondent’s financial obligation for her children was unchanged by her plea; it did not result in any way from that plea. Stated differently, the plea had no consequent effect on that obligation. Therefore, the court was not required to advise respondent that her financial obligation would continue, unaffected by her decision to plead to the allegations in the petition.

Moreover, “when used in the text of a statute, the word ‘includes’ can be used as a term of enlargement or of limitation, and the word in and of itself is not determinative of how it is intended to be used.” *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 469; 633 NW2d 418 (2001), quoting *Frame v Nehls*, 452 Mich 171, 178-179; 550 NW2d 739 (1996). We find that the word “including,” as used in the court rule at hand, is restrictive. MCR 3.971(B)(3) lists all the other consequences to entering a plea, i.e., losing the right to trial, losing the right to have petitioner prove the allegations in the petition by a preponderance of the evidence, and losing the

right to have witnesses testify, to cross-examine witnesses, and to subpoena witnesses. MCR 3.971(B)(4) relates only to advising respondent that the plea can later be used as evidence in a subsequent termination proceeding. Therefore, even without regard to the fact that respondent's financial responsibility for her children was not a consequence of her plea, the plain language of MCR 3.971(B)(4) does not require that respondent be advised that, following the voluntary consent to termination of her parental rights, she could be ordered to continue to pay child support until the children are adopted. Thus, respondent has failed to demonstrate that the trial court clearly erred by failing to advise her of her continuing financial obligation for her children. *Carines*, 460 Mich at 763.

We further conclude that respondent's consent was knowingly, understandingly and voluntarily made. MCR 3.971(C) does not define what constitutes an understanding, knowing, and voluntary plea. Our Supreme Court has stated:

Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory. Further, we give undefined statutory terms their plain and ordinary meanings. In those situations, we may consult dictionary definitions. [*Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002) (internal citations omitted).]

The record demonstrates that respondent's consent was knowingly and understandingly made. "Knowing" is defined as "having knowledge or information," *Random House Webster's College Dictionary* (1992), while Black's Law Dictionary (5th Ed) defines "understand" as "to understand the nature and effect of an act." Respondent was advised that if she voluntarily consented to termination of her parental rights, she would be giving up the right to a trial, the right to cross-examine witnesses, and the right to subpoena witnesses.<sup>2</sup> The record further shows that respondent understood the effect of voluntarily consenting to termination. After advising respondent of each of these rights, the trial court asked respondent if she understood the right she would be giving up, and each time respondent stated, "Yes." Respondent was also informed about the consequences to consenting to termination of her parental rights. Respondent was told that she would not have any input into the children's education, discipline, residence, and medical treatment. She was further told that she would not have any enforceable legal rights to the children, including the right to inherit from them. As discussed above, the trial court did not err by failing to inform respondent that, following her consent to termination, she could remain financially responsible for the children until they were adopted. Thus, we find that respondent's consent was knowingly and understandingly made pursuant to MCR 3.971(C).

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<sup>2</sup> We note that the trial court erroneously advised respondent that the prosecutor would have to prove the allegations by a preponderance of the evidence. MCL 712A.19b(3) provides that "[t]he court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the" statutory grounds. However, respondent does not raise the argument that because the trial court advised her as to the wrong standard that would be used at a trial, her consent was not knowingly made, and, consequently, should be set aside.

Consent was also voluntarily given. *Random House Webster's College Dictionary* (1992) defines "voluntary" as "brought about or undertaken of one's own accord or by free choice." The record demonstrates that the trial court asked respondent if it was correct that nobody was forcing her to consent to this termination, and she stated, "Yes." Respondent was also asked if it was right that nobody made any promises to her or any representations, and she stated, "Yes." We find that respondent's consent was made of her own free choice, and, consequently, was voluntarily made.

We affirm.

/s/ David H. Sawyer  
/s/ Richard A. Bandstra  
/s/ William C. Whitbeck