

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 16, 2010

In the Matter of B. MALMBERG, Minor.

No. 298030
Kent Circuit Court
Family Division
LC No. 10-050618-NA

Before: SERVITTO, P.J., and ZAHRA and DONOFRIO, JJ.

MEMORANDUM.

Respondent Malmberg appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to his plea whereby he agreed to not contest a petition to terminate his parental rights. Because respondent did not withdraw his plea in the trial court, and because no special advice of rights was necessary, we affirm.

Petitioner sought termination of respondent's parental rights at the initial dispositional hearing pursuant to MCL 712A.19b(3)(j) and (k)(iv). In lieu of a contested hearing, respondent agreed not to contest the termination of his parental rights pursuant to a "difficult and loving" amendment to the petition. Respondent now contends that the trial court erred by failing to inform him of his continued obligation to support the child pending adoption. See *In re Beck*, 287 Mich App 400; ___ NW2d ___ (2010), lv gtd 486 Mich 936 (2010).

Because respondent did not move to withdraw his plea in the trial court, this issue is not preserved. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007); *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989). Therefore, review is limited to whether a plain error affected his substantial rights. *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), aff'd 480 Mich 19 (2008).

Under the Adoption Code, a release of parental rights shall not be executed until certain circumstances are met, including a full explanation to the parent or guardian the legal rights of the parent or guardian and the fact that those rights would be permanently relinquished. MCL 710.29(6). There are, however, no similar established rules governing a consent to termination under the Juvenile Code, MCL 712A.19b(3). Thus no special advice of rights is necessary. In addition, while a trial court is required to advise a respondent of the consequences of a plea when taking a plea of admission under MCR 3.971(B)(4), the obligation to support one's child exists whether one's parental rights are terminated or not, see MCL 722.3(1) and *In re Beck*, 287 Mich App at 403-405, and thus the continued obligation to support the child is not a consequence of

the respondent's consent to termination, i.e., it does not result or arise from the respondent's consent to termination.

Furthermore, the record does not establish that respondent's plea was not voluntarily, knowingly, and understandingly made. As previously indicated, respondent did not raise this issue in a motion to withdraw in the trial court. Further, he has not submitted any affidavit indicating that he was unaware of his independent obligation to support his child, or that he would not have agreed to relinquish his parental rights if he had been advised of his continued obligation to pay child support. Thus, there is no basis for concluding that respondent's plea was not voluntarily, knowingly, and understandingly made. Under these circumstances, respondent has not established a plain error entitling him to withdraw his plea.

Affirmed.

/s/ Deborah A. Servitto

/s/ Brian K. Zahra

/s/ Pat M. Donofrio