STATE OF MICHIGAN

COURT OF APPEALS

In re KRUEGER, Minors.

UNPUBLISHED
May 17, 2016

No. 329862
Hillsdale Circuit Court
Family Division
LC No. 14-000482-NA

Before: RIORDAN, P.J., and SAAD and MARKEY, JJ.

PER CURIAM.

Respondent father appeals the trial court's orders that terminated his parental rights to minor children, TJLK, TAK, and KK, pursuant to his voluntary release of parental rights under the Adoption Code, MCL 710.21 *et seq.* For the reasons provide below, we affirm.

Respondent's sole argument on appeal is that the trial court erred when it denied his request to revoke his release of parental rights. We disagree. We review a trial court's decision to deny revocation of a voluntary release of parental rights for an abuse of discretion. See *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *In re MKK*, 286 Mich App 546, 564; 781 NW2d 132 (2009) (quotation marks and citation omitted).

With respect to release by a parent under the Adoption Code, MCL 710.29(7) provides, in pertinent part:

> A release by a parent or a guardian of the child shall not be executed until after the investigation the court considers proper and until after the judge . . . has fully explained to the parent or guardian the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the release voluntarily relinquishes permanently his or her rights to the child; and, if the child is over 5 years of age, the court has determined that the child is best served by the release.

After a petitioner voluntarily releases his child for adoption, he does not have an absolute right to revoke the release for "a mere change of heart." *In re Blankenship*, 165 Mich App 706, 713; 418 NW2d 919 (1988). Instead, the release can only be set aside if, in the sound discretion of the probate judge, the revocation is in the best interests of the child. *Id.*; see also *In re Burns*, 236 Mich App at 292-293 ("Because petitioner's release was both knowing and voluntary and because petitioner sought rehearing on the specific ground of a change of heart, the family court properly relied on the best interests of the child for guidance when determining whether to vacate

petitioner's release."); *In re Curran*, 196 Mich App 380, 385; 493 NW2d 454 (1992), ("Petitioner was not entitled to revoke her release solely on the basis of her change of heart, and we are unable to conclude that the court abused its discretion.").

Here, on September 10, 2015, respondent testified that he wanted to release his parental rights because it was in the best interests of his children. He explained that it was "best for them because they deserve to be with somebody that's not playing around; where they don't have to worry about being in the path of attacks, and they shouldn't have to see drugs and alcohol." Respondent admitted to his drug problem and indicated that he would continue to suffer from the problem. With respect to his rights, the trial court fully explained to respondent that by relinquishing his rights, he would (1) give up any right to have a say in the children's lives, (2) terminate any rights of his extended family, and (3) vest the Department of Health and Human Services with the discretion for purposes of placement and adoption. The trial court inquired into whether respondent was making the decision voluntarily, free of coercion, and free of compensation, and he indicated that he was. Moreover, respondent indicated that he had been seriously considering the matter for some time. The trial court also informed respondent that he could not withdraw his release except by order of the trial court. Thus, based on the record, respondent was informed of the consequences and finality of his decision.

As our Court held in *In re Blankenship*, 165 Mich App at 712, even if a parent was "in a state of emotional turmoil at the time of relinquishment," the decision is still deemed to have been given "freely and knowingly" if there is no evidence that the parent's "ability to make an informed, voluntary decision was ever impaired." Moreover, when "the consequences and final nature" of a parent's decision had been explained to the parent, there is no reason to believe that the parent's release is anything but freely and knowingly given. *Id.* Therefore, although respondent argues that he was not in a clear mental state, the record fully supports that respondent's decision was given freely and knowingly.

Furthermore, respondent's underlying arguments are unavailing. With respect to respondent's argument that he believed that his extended "family would be considered for adoption," the trial court indicated that the extended family would be investigated and considered if the biological mother's rights were terminated. There were no promises made about familial adoption. With respect to respondent's argument that he was under the impression that "the prosecutor in his criminal case would go easy on him" if he terminated his parental rights, respondent's attorney testified that this was not the case. In any event, respondent testified at the October 2, 2015, hearing on his motions for rehearing that he was still facing the same potential criminal penalty that he was facing on September 10, 2015, and that he still had not accepted a plea offer. The fact that respondent was facing the same possible penalty when he argued to revoke his voluntary termination demonstrates that any circumstances surrounding his pending criminal charges did not unduly influence his release and that respondent, instead, was experiencing a change of heart. Additionally, while respondent cursorily argues that revocation was not in the best interests of the children, he has waived this argument.[1] He testified that he

[1] Respondent incorrectly cites to MCL 712A.19b(5), which is part of the Juvenile Code, and this case was decided under the Adoption Code. In any event, respondent has not demonstrated how,

made the difficult decision to release his parental rights based on the children's best interests, and it is well established that "[a] party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008) (quotation marks and citation omitted).

Affirmed.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Jane E. Markey

given the circumstances of this case, rescinding his termination would be in the best interests of the children.