

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 6, 2012

In the Matter of HMV, FAV and LJC, Minors.

No. 307375
Ingham Circuit Court
Family Division
LC No. 11-000049-NA

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

Respondent appeals by right from an order terminating her parental rights to three of her children pursuant to MCL 712A.19b(3)(g), (j) and (m). We affirm.

I. FACTS

Respondent is the biological mother of HMV, FAV, and LC. On January 12, 2011, petitioner filed a petition with the lower court requesting that the court take jurisdiction over the children and terminate respondent's parental rights. At a bench trial on the petition, respondent entered a plea of admission to the allegations in the petition, and petitioner agreed to delay the termination portion of the proceedings by "a couple of months" so that petitioner could monitor respondent's progress. The lower court did not inform respondent that her plea of admission could be used against her at a subsequent termination proceeding.

Respondent admitted that she was at Meijer with the children on October 22, 2010, and that she was eating food without paying, was falling asleep, and was falling down in the store. She admitted that she was enrolled at the Victory Clinic for methadone treatment, and that while at the clinic she tested positive for marijuana and cocaine. She also admitted that she used other people's urine to pass drug screens. Respondent, who was pregnant at the time of the hearing, further admitted that she had used drugs until she found out that she was pregnant and that she had received very little prenatal care. Respondent also admitted that during a previous permanency planning conference she had stated that she was unable to take care of her children.

Respondent failed to appear at a subsequent contested dispositional hearing. A foster care caseworker testified that respondent did not participate with her inpatient services, had frustrated an attempt to schedule a psychological evaluation, and had spent time in jail after she was found sleeping in some bushes. He further testified that respondent still had substance abuse problems, was not cooperating with petitioner, and had not made any attempt to see her children.

The lower court found that respondent had a pervasive drug addiction but had failed to participate in any services to deal with the addiction, and noted the lack of an attempt to see her children. It concluded that there was clear and convincing evidence in favor of terminating respondent's parental rights, and that such termination was in the children's best interest.

II. ANALYSIS

Respondent points out that the lower court failed to advise that her plea of admission could be used against her in a proceeding for termination of parental rights and argues that this was plain error affecting her substantial rights. We disagree.

Under MCR 3.971(B)(4), before accepting a plea of admission, the court "must advise respondent on the record or in writing" of "the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent." The lower court failed to inform respondent that her plea of admission could later be used as evidence in a proceeding to terminate parental rights. While this omission was plainly an error, it is unpreserved error and accordingly, it is reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Generally, an error affects substantial rights if it affected the outcome of the lower court proceedings. *Id.* at 763.

Here, the error was not outcome determinative. As previously noted, respondent was to be monitored for a couple months after the bench trial. The lower court terminated respondent's parental rights due to her failure to make any progress during that time. Termination was not based on respondent's plea of admission but rather on respondent's failure to make any meaningful progress *following* her plea of admission. As such, the lower court's failure to advise respondent that her plea of admission could subsequently be used against her did not affect her substantial rights and does not warrant reversal.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan