STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 26, 2012

In the Matter of K. R. BROWN, Minor.

No. 307907
Macomb Circuit Court
Family Division
LC No. 2010-000519-NA

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Before: MURRAY, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondents A. Henson and D. Brown each appeal as of right from a circuit court order terminating their parental rights to the minor child. Although the trial court referred to termination under MCL 712A.19b(3)(c)(*i*), (g), and (j) of the Juvenile Code, the order terminating respondents' parental rights was entered after both respondents voluntarily released their parental rights under the Adoption Code. We affirm.

Petitioner filed a petition for temporary custody of the child in September 2010 because respondent Henson was unable to provide proper care and custody and because respondent Brown was incarcerated. In September 2011, petitioner filed a supplemental petition for permanent custody of the child, seeking termination of respondents' parental rights under §§ 19b(3)(c)(*i*), (g), and (j) of the Juvenile Code. On the date of the hearing, instead of proceeding with a contested hearing, respondents "stipulated" to the termination of their parental rights. They both executed voluntary releases of their parental rights after being advised of their rights, see MCL 710.29, but at the same time the trial court ordered termination under §§ 19b(3)(c)(*i*), (g), and (j) in accordance with the parties' stipulations. The court also found that termination of respondents' parental rights was in the child's best interests. MCL 712A.19b(5).

I. DOCKET NO. 307907

Respondent Henson first argues that her release was invalid because it was procured by fraud or coercion. Specifically, Henson contends that she was promised that if she released her

parental rights, the child would be placed with Henson's mother, but that promise was not fulfilled. This issue has not been preserved because respondent Henson did not seek revocation of the release in accordance with MCL 710.29(10) and MCL 710.64, *In re Baby Girl Fletcher*, 76 Mich App 219, 221; 256 NW2d 444 (1977), and did not otherwise raise the issue in the trial court, *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Therefore, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), aff'd 480 Mich 19 (2008).

A release "is valid if executed in accordance with the law at the time of execution." MCR 3.801(B). The release must be executed by the parent before a judge of the court or a referee. MCL 710.28(1)(a); MCL 710.29(1). However, the release may not be executed "until after the investigation the court considers proper and until after the judge" fully explains to the parent her legal rights and the fact that those rights will be relinquished permanently. MCL 710.29(6); *In re Blankenship*, 165 Mich App 706, 711-712; 418 NW2d 919 (1988). Upon the release by the parent, the court is to immediately enter an order terminating that parent's rights to the child. MCL 710.29(7). Once parental rights have been terminated, the parent may file a motion to revoke the release or request rehearing. MCL 710.29(10); MCL 710.64(1); MCR 3.806(A). A change of heart alone is not grounds to set aside a release that is otherwise knowingly and voluntarily made after proper advice of rights given by the court. *In re Burns*, 236 Mich App 291, 292-293; 599 NW2d 783 (1999); *In re Curran*, 196 Mich App 380, 385; 493 NW2d 454 (1992); *DeBoer v Child & Family Servs of Mich, Inc*, 76 Mich App 641, 645; 257 NW2d 200 (1977).

Respondent Henson does not take issue with the trial court's advice of rights regarding the release. The court's advice shows that the release was knowingly executed. The record shows that respondent acknowledged that she could not be forced to execute the release, that she had not been promised anything for the release, and that she had not been coerced or pressured to release her rights. "Normally, where a . . . [party] states on the record that no promises, inducements, coercion, or other undue influences have been offered to him or brought to bear upon him, he will be held to his record denial." *People v Weir*, 111 Mich App 360, 361; 314 NW2d 621 (1981) (regarding the advice of rights for a guilty plea). Respondent Henson acknowledged that she had reviewed the release with her attorney and had sufficient time to make a decision. Respondent said nothing when given an opportunity to raise any questions about the release. In addition, the record shows that respondent executed the necessary documents to effect a release. By signing the document entitled "Statement to Accompany Release," respondent acknowledged that "[t]he validity and finality of my release is not affected by any collateral or separate agreement between myself and the adoptive parent, nor between myself and the agency to whom the child is to be released." There is simply nothing in the record to support respondent Henson's claim that she was promised that the child would be placed with and adopted by her mother in exchange for the release. Thus, respondent Henson has not established a plain error affecting the validity of the release.

Respondent Henson also argues that she was denied her right to the effective assistance of counsel during the proceedings. Because respondent Henson did not raise an ineffective assistance of counsel issue in the trial court, this Court's review of that issue is limited to

mistakes apparent from the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002); *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

A respondent in child protective proceedings has a due process right to counsel. *In re EP*, 234 Mich App 582, 597-598; 595 NW2d 167 (1999), overruled on other grounds *In re Trejo Minors*, 462 Mich 341, 353 n 10; 612 NW2d 407 (2000). That includes the right to the effective assistance of counsel. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re EP*, 234 Mich App at 598. To establish ineffective assistance of counsel, respondent Henson must "show that (1) . . . [her] trial counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Horn*, 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008) (citation omitted). "Counsel is presumed to have provided effective assistance, and . . . [respondent Henson] must overcome a strong presumption that counsel's assistance was sound trial strategy." *Id*. Respondent Henson must also establish the factual predicate for her claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

The record shows that Randy Rodnick of the firm Rodnick, Unger & Kaner, P.C., was appointed to represent respondent Henson. Rodnick appeared at the preliminary hearing, the hearing to revoke unsupervised visitation, and at the release hearing. At other hearings, respondent was represented by one of Rodnick's partners, Jon Kaner or Rick Unger. Respondent raised no objection to Rodnick's absence from those hearings. While she argues on appeal that it was objectively unreasonable for Rodnick not to attend those hearings and that she was prejudiced by his absence, she does not claim that Kaner or Unger did not adequately represent her, she does not explain what Rodnick should have done differently than Kaner or Unger had he appeared, and she has not shown that had Rodnick appeared, the outcome of any of the hearings would have been different. Respondent Henson also asserts that Rodnick did not always return her telephone calls and that she was directed to discuss her concerns with Unger. There is nothing in the record to indicate a lack of communication with counsel. Further, while respondent complains about being directed to Unger, she does not claim that he did not speak with her or that he did not adequately address her concerns when they spoke, and she does not explain what would have been different if she had been able to speak to Rodnick. Therefore, respondent Henson has failed to establish her claim of ineffective assistance of counsel on these grounds.

Finally, respondent Henson takes issue with Rodnick's representation during the release proceedings. Respondent contends that Rodnick induced her to release her parental rights by promising that the child would be placed with respondent's mother. As we already concluded, there is nothing in the record to show that Rodnick made such a promise. To the contrary, respondent's representations to the court indicate that she was not promised anything for her release. Respondent also contends that Rodnick failed to advise her "of the ramifications the release would have should DHS decide not to place the child for adoption with her mother, as promised." However, respondent has not identified the "ramifications" of which she should have been advised. The record shows that the trial court advised respondent Henson of all the rights she would relinquish by signing the release, including the legally enforceable right to visit her

child, and that the release was final for the rest of her life and the child's life. Therefore, respondent has failed to establish her claim of ineffective assistance of counsel on this ground.

II. DOCKET NO. 307957

Respondent Brown argues that the trial court clearly erred in finding that §§ 19b(3)(c)(*i*), (g), and (j) were established by clear and convincing evidence, and that the trial court also erred in its determination of the child's best interests under MCL 712A.19b(5).

Regardless of any error by the trial court regarding termination under the Juvenile Code, we find no basis for relief. Respondent Brown released his parental right under the Adoption Code. He was advised of his rights, agreed to release them, and signed the requisite release form. Once a parent releases his parental rights, "the court immediately shall issue an order terminating the rights of that parent . . . to that child." MCL 710.29(7). The court is not required to determine whether the release is in the child's best interests unless the child is over the age of five. MCL 710.29(6). Here, the child was less than two years old when respondent released his parental rights and respondent Brown does not claim that his release was not knowingly and voluntarily made, or that the trial court's decision to accept his release was otherwise improper. Therefore, any error with respect to the trial court's decision under the Juvenile Code was harmless.

Affirmed.

/s/ Christopher M. Murray
/s/ William C. Whitbeck
/s/ Michael J. Riordan