

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 16, 2012

In the Matter of C. L. HUGLEY, Minor.

No. 308292

Muskegon Circuit Court

Family Division

LC No. 11-041013-NA

Before: MARKEY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother appeals by right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

Respondent does not challenge the substance of the court's decision to terminate her parental rights. In other words, she does not argue that the statutory grounds for termination were not met by clear and convincing evidence or that termination was not in the child's best interests. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCL 712A.19b(5). Instead, respondent argues her plea should be set aside on the basis of procedural errors under MCR 3.971(B). We disagree. Respondent did not move the trial court to withdraw her plea, accordingly, her claim is unpreserved, *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989), and reviewed for plain error affecting her substantial rights, *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

MCR 3.971(B) requires a trial court to inform respondent of her rights before accepting a plea of admission or a plea of no contest. However, the rights described in MCR 3.971(B) are those afforded to respondent during the adjudicative phase of the proceedings. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). In accepting respondent's plea to the allegations contained in the original complaint, we note that the trial court fully abided by the terms of MCR 3.971(B). However, because MCR 3.971(B) describes rights afforded during the adjudicative phase, strict compliance with MCR 3.971(B) is not possible during the dispositional phase when different rights apply. It is the court's adherence to MCR 3.971(B) during the dispositional phase of the proceedings that respondent challenges on appeal.

While the language of MCR 3.971(B) was not strictly followed, MCR 3.971(B) was appropriately tailored to inform respondent of her rights during the dispositional phase, including her right to a trial, her right to have the prosecution prove their case by clear and convincing evidence, and her right to have witnesses called and to cross examine those witnesses. During the proceedings, petitioner was represented by counsel and she acknowledged

she had reviewed her rights with counsel. Contrary to respondent's argument on appeal, the trial court was not required to reiterate the allegations from the original petition; instead, it was appropriate to tailor the notification requirements of MCR 3.971(B)(1) to ensure that respondent was informed of the basis of the termination. To this end, on the record the trial court reviewed the basis of the termination. Namely, the court informed respondent that termination was being sought under MCL 712A.19b(3)(g), which provided that respondent was unable to provide proper care and custody to the child and she was unlikely to be able to do so within a reasonable time. Respondent acknowledged that she understood the allegations and she agreed that termination as in the child's best interests. We also note that even under MCR 3.971(B)(2), the trial court was not required to inform respondent of her right to an attorney where respondent already had an attorney. MCR 3.971(B)(2) requires notice of the right to an attorney "if respondent is without an attorney." To the extent notice of an attorney was required or that notice of the specific right to subpoena witnesses was required, such notice was provided in the written Advice of Rights form signed by respondent during the proceedings. We also reject respondent's claim that the trial court, and not counsel, was required to read respondent's rights on the record. Under MCR 3.902(A), "[t]he rules are to be construed to secure fairness, flexibility, and simplicity" and "[t]he court shall proceed in a manner that safeguards the rights and proper interests of the parties." Here, the trial court acted to ensure that respondent understood her rights before accepting her plea. There was no error.

Even assuming some error in the information respondent received or the manner in which it was provided, respondent has not shown how she was prejudiced by the proceedings. After ceasing all contact with her child and stopping her participation in services, respondent voluntarily entered a plea to terminate her parental rights. She was adequately advised of her rights and of the consequences of termination. She acknowledged that she offered the plea willingly. She made her plea knowingly, understandingly, and voluntarily. MCR 3.971(C)(1). Respondent has not shown how any alleged error by the court would have altered her decision.

We affirm.

/s/ Jane E. Markey
/s/ Douglas B. Shapiro
/s/ Amy Ronayne Krause