STATE OF MICHIGAN

COURT OF APPEALS

FOR PUBLICATION
February 7, 2013
9:00 a.m.

In the Matter of HERNANDEZ/VERA, Minors.

No. 312136
Mason Circuit Court
Family Division
LC No. 11-000007-NA

Before: BECKERING, P.J., and STEPHENS and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from orders terminating her parental rights to her four children, challenging the validity of her releases of her parental rights. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Respondent's children were removed from respondent's care following an incident where she allegedly had sex with multiple men at the home of her boyfriend, a drug dealer, while her children were in the next room, abused substances, and was involved in a car accident with her children in the car. Over the next year, numerous services were provided to respondent. These included parenting classes, educational services, community mental health and psychiatric services, "wraparound," substance abuse therapy, random drug screens, parenting time, and financial assistance. She regularly missed appointments. She showed up for only half of a substance abuse evaluation, tested positive for substances three times, and was abusing her prescription medication. Moreover, she failed to consistently attend parenting classes and, after she missed eight of 15 scheduled visitations, parenting time was suspended on December 29, 2011 because the missed sessions were upsetting to the children. At one visitation, she tested positive for hydrocodone. She also had issues with compliance with medication and mental health treatment.

After two witnesses testified at the hearing on the petition to terminate, respondent indicated that she wanted to release her parental rights to the children. Her counsel stated that she and respondent had talked about it the previous day and in the past, and that she had reviewed the release forms with respondent and had "read them out loud to her." The court then asked respondent a series of questions to determine if her decision to release her parental rights was knowing and voluntary. Respondent indicated that she had mixed feelings about releasing her parental rights but acknowledged that no one had threatened or coerced her, no one had promised her anything in exchange for the releases, she had had time to ponder the decision, and

that her decision to release her parental rights was voluntary and knowing. Moreover, the written releases themselves recited that respondent's legal rights had been fully explained, that she did not have to sign the releases, that if she did so she would be voluntarily giving up permanently all of her parental rights to the children.

II. STANDARD OF REVIEW

Respondent now argues that her answers to questions regarding her decision to release her parental rights were equivocal, that the written releases were not knowingly and voluntarily executed, and that she was not competent to relinquish her parental rights or, at a minimum, that the trial court erred in failing to order a competency hearing. Because respondent did not challenge the efficacy of her releases below, review is for plain error affecting substantial rights. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

III. RESPONDENT'S DECISION TO RELEASE WAS KNOWING AND VOLUNTARY

The releases were executed in the course of proceedings under the Juvenile Code, MCL 712A.1 *et seq.*, not the Adoption Code, MCL 710.21 *et seq.* In *In re Toler*, 193 Mich App 474, 478; 484 NW2d 672 (1992), where the respondent executed a release during a termination of parental rights hearing, the Court stated:

> [T]he judge in this case did not suggest that respondent voluntarily release his parental rights. It was 3½ days into the trial that respondent agreed to the termination. He conceded in effect that the court would be able to find statutory authorization for the termination and that termination would be in the best interest of the children. Respondent's decision to consent to the termination of his parental rights does not transfer the proceeding from the juvenile code to the adoption code. . . . [Emphasis added.]

Accordingly, the releases did not have to comply with § 29 of the Adoption Code.

However, just as a release would have to be knowing and voluntary under the Adoption Code, *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999), we conclude that it would also have to be knowing and voluntary under the Juvenile Code. As noted above, the releases recite that an authorized person fully explained to respondent her legal rights as a parent. Her counsel represented that there had been repeated discussions relative to releasing her rights, and the written releases themselves recited that respondent did not have to sign and that she understood she was voluntarily and permanently giving up all of her parental rights. While respondent's comments to the judge indicated she had some reservations about releasing her rights, the colloquy established that she understood the gravity of her decision and that, despite mixed sentiments, she was nonetheless choosing to relinquish her parental rights. They do not suggest coercion or a lack of understanding. Thus, it cannot be said that there was a plain error affecting respondent's substantial rights.

IV. THE TRIAL COURT DID NOT ERR IN ACCEPTING RESPONDENT'S RELEASES AS COMPETENTLY GIVEN

Respondent also argues that she was not competent to relinquish her parental rights or that the lower court should have ordered a competency evaluation. No published opinions of this Court squarely address the issue of the standard of competency in termination hearings. However, we conclude that standards used to evaluate competency in criminal proceedings should also apply in termination of parental rights proceedings. In criminal proceedings, defendants are presumed competent, *People v Abraham*, 256 Mich App 265, 283; 662 NW2d 836 (2003), and the trial court has no duty to sua sponte order a competency hearing unless there are facts that raise "a bona fide doubt about . . . competency." *In re Carey*, 241 Mich App 222, 227-228; 615 NW2d 742 (2000).

Respondent points to a psychologist's observation that respondent "distorts reality" and suffers from depression and posttraumatic stress disorder (PTSD). However, the psychologist expressly stated that the distortions did not indicate psychosis, but rather that respondent "tends to see the world the way she wishes it were." There is no indication that the distortion rose to a level of incompetence or that the judge would have been alerted to a significant problem. Similarly, there is nothing on the record to indicate that respondent's issues with depression and PTSD impaired her competency. Respondent had been contemplating releasing her parental rights before the termination hearing commenced. The statements at the hearing itself indicate that she had misgivings about terminating her rights but not that she lacked the competency to understand what she was doing.

Affirmed.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Mark T. Boonstra