STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of J.R.W. and K.M.W., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

REBECCA WADE WELCH,

Respondent-Appellant,

and

DENNIS WELCH,

Appellee.

UNPUBLISHED
October 18, 2002

No. 234447
Ingham Circuit Court
Family Division
LC No. 00-033278-NA

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

PER CURIAM.

Respondent mother appeals as of right from the trial court's order terminating her parental rights to the minor children for failure to provide proper care, because there was a reasonable possibility that the children would be harmed if returned to her care, and because she abused the children by attempting to kill them. MCL 712A.19b(3)(g), (j), and (k)(vi) or (viii).[1] We affirm.

Respondent mother raises two issues. First, she argues that her right against self-incrimination was violated because she was ordered to submit to a psychological evaluation and

[1] Neither the petition, nor the prosecutor's closing argument, nor the trial court's opinion identifies which particular part of subsection (k) applies, other than to state that respondent attempted to kill the children. Because both subsection (k)(vi) and (k)(viii) refer to attempted murder, both have been considered.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

because she was compelled to testify in an attempt to avoid termination of her parental rights. This issue is not preserved for appellate review because respondent mother failed to raise it below. Reversal is therefore unwarranted unless respondent mother can show plain error affecting her substantial rights. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Child protective proceedings are not criminal in nature and, therefore, the right against self-incrimination does not directly apply. See *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993); see also US Const, Am V; Const 1963, art 1, § 17. Nevertheless, "[t]he privilege against self-incrimination applies to a civil proceeding at which evidence is sought which might subject the witness to criminal prosecution." *In re Stricklin*, 148 Mich App 659, 664; 384 NW2d 833 (1986). Here, however, the record shows that respondent understood her right against self-incrimination and made a free and deliberate choice to waive it in an effort to avoid the termination of her parental rights.[2] *People v Daoud*, 462 Mich 621, 633-637, 639; 614 NW2d 152 (2000). Therefore, her waiver was voluntary, knowing, and intelligent, and there was no plain error. *Id.* at 633.

Further, even without the challenged evidence, the children's testimony and the suicide letters showed that respondent had tried to kill herself and the children in order to hurt and punish the father during the couple's divorce proceeding. There was clear and convincing evidence of grounds for termination under subsections (j) and (k). MCR 5.974(I); *In re Miller*, 433 Mich 331, 337, 344-345; 445 NW2d 161 (1989). Thus, this alleged error had no effect on the outcome. Therefore, we conclude that there was no plain error affecting respondent mother's substantial rights and that this issue has been forfeited.

Next, respondent argues that she was deprived of due process by essentially being faced with a Hobson's choice. She argues that if she had asserted her right against self-incrimination, the trial court would have terminated her rights for failure to admit her mistakes; but, when she testified, the trial court terminated her rights because it would have taken too long to treat her personality disorder. Because this issue is also unpreserved, reversal is unwarranted unless the mother shows plain error affecting her substantial rights.

"Due process applies to any adjudication of important rights," including a termination of parental rights. *Brock*, *supra* at 110-111, quoting *In re LaFlure*, 48 Mich App 377, 385; 210 NW2d 482 (1973). Three factors are generally considered in determining what process is due: (1) "the private interest that will be affected," (2) "the risk of erroneous deprivation" and "the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Brock*, *supra* at 111, quoting *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976).

Here, the liberty interest at stake was respondent's parental rights. See *Brock*, *supra* at 111. However, the statute requires that grounds for termination be proven by clear and

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[2] Respondent's decision to testify was no more coerced than that of any criminal defendant who chooses to testify in an attempt to avoid being convicted. See *Stricklin*, *supra* at 665-666.

convincing evidence, thereby protecting respondent's interest from erroneous deprivation. See MCL 712A.19b(1); MCR 5.974(A), (F)(3); see also *In re Miller*, *supra* at 344-345. Additionally, the trial court had the option of not terminating respondent's rights if it found that termination would be clearly contrary to the children's best interests. MCL 712A.19b(5); MCR 5.974(E)(2); *In re Trejo Minors*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000). Thus, although an important interest was at stake, there were safeguards in place to protect respondent from erroneous deprivation. See *Brock*, *supra* at 111-112. Further, because respondent's statements in this case might have subjected her to prosecution, the right against self-incrimination already applied—it was not an additional safeguard that might have been required. See *Stricklin*, *supra* at 664; see also *Brock*, *supra* at 112. Lastly, full and "accurate testimony furthers the governmental interest in protecting the welfare of the child[ren]." *Id.* at 112-113.

In light of the above factors, we conclude that respondent was not deprived of due process and, therefore, there was no plain error. Respondent had a right against self-incrimination and chose to waive it in an effort to avert the termination of her parental rights. No different or additional process was due. Further, the suicide letters and the children's testimony established grounds for termination under subsections (j) and (k) without regard to respondent's mental health prognosis and, therefore, this alleged error had no effect on the outcome. Because there was no plain error affecting the mother's substantial rights, this issue has been forfeited.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Robert J. Danhof