STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CHASE LUKE BROOKMAN, Minor.

LEANN JOAN BROOKMAN,

Petitioner-Appellee,

and

ADOPTION ASSOCIATES,

Appellee,

v

JAMES VERNON BLEVINS II,

Respondent-Appellant.

UNPUBLISHED
April 7, 2009

No. 287131
Ottawa Circuit Court
Family Division
LC No. 08-002826-RB

Before: Sawyer, P.J., and Zahra and Shapiro, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child in a contested release proceeding initiated by petitioner under the Adoption Code, MCL 710.21 *et seq*. We affirm.

We note at the outset that respondent does not dispute that he did not establish a custodial or supportive relationship with the child, or provide support or care for the mother either during pregnancy or at any time during the 90 days preceding the initial notice of hearing. See MCL 710.39. Respondent also does not challenge the trial court's determination that he was unable to properly care for the child, or that granting him custody of the child would not be in the child's best interests. See MCL 710.22(g). Rather, respondent argues that the trial court violated his right to due process by not sua sponte adjourning or staying the adoption proceeding in favor of his paternity action. We disagree.

Although the general rule is that constitutional claims of due process violations are reviewed de novo, *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997), review of unpreserved issues is limited to plain error affecting substantial rights. *Kern v Blethen-Coluni*,

240 Mich App 333, 336; 612 NW2d 838 (2000). Because respondent never requested an adjournment of the June 10, 2008 contested release for adoption hearing until after the termination order was entered, the issue is unpreserved and subject to plain error analysis. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* quoting *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Here, we need look no further than the first requirement. Respondent has failed to show that an error occurred. Decisions regarding whether to adjourn or continue a proceeding are within the discretion of the trial court. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). Thus, for there to be any error, the trial court must have abused its discretion in failing to adjourn the proceedings. An abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Section 25 of the Adoption Code provides:

> (1) All proceedings under this chapter shall be considered to have the highest priority and shall be advanced on the court docket so as to provide for their earliest practicable disposition.
>
> (2) An adjournment or continuance of a proceeding under this chapter shall not be granted without a showing of good cause. [MCL 710.25.]

In light of the Legislature's express declaration that proceedings under the adoption code, such as the one at issue in the present case, are to be given "the highest priority" and that adjournments "shall not be granted without a showing of good cause," we can find no abuse of discretion in the trial court's failure to sua sponte declare an adjournment. This is particularly true when, given that there was no request made for an adjournment or continuance and, therefore, no good cause basis articulated for the court, we are unclear what would have constituted the "showing of good cause" on which the trial court could base its decision. The language of the statute is clear that without such a showing, the trial court is obligated *not* to adjourn or continue the proceedings. Because there was no abuse of discretion, there was no error.

Absent any error, there cannot be plain error. *Kern*, *supra*. Accordingly, respondent's claim must fail.[1]

[1] We note that respondent impliedly raises the question of whether proceedings under the Adoption Code take precedence over proceedings filed under the Paternity Act, MCL 722.711, *et seq.* We take no position on this issue, as it is unnecessary to the resolution of this case. In any event, this issue appears to us to be one of first impression. Given that respondent's issue is unpreserved, even if we were to conclude that the Paternity Act took precedence, respondent would not be entitled to any relief, as the error could not possibly considered "clear or obvious" since it has never been previously decided by this Court. Thus, there would still be no plain

(continued…)

Affirmed.

/s/ David H. Sawyer
/s/ Brian K. Zahra
/s/ Douglas B. Shapiro

(…continued)

error as required under *Kern*, *supra*. See also, *Moskalik v Dunn*, 392 Mich 583, 589; 221 NW2d 313 (1974) ("To reverse and order a new trial simply because the case involves an issue which, if the [Michigan Supreme] Court ignores the failure to preserve the issue, becomes one of first impression [is] disproportionate.").