STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BME and KMH, Minors.	UNPUBLISHED August 31, 2010 No. 295941 Wayne Circuit Court Family Division LC No. 09-487456-NA
In the Matter of BME and KMH, Minors.	No. 295942 Wayne Circuit Court Family Division LC No. 09-487456-NA

Before: M.J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals by right the trial court's order terminating her parental rights to her minor children, BME and KMH, pursuant to MCL 712A.19b(3)(b)(*i*), (g), and (j). Respondent father appeals by right from the same order terminating his parental rights to KMH on the same statutory grounds. We affirm.

The petition seeking to terminate respondents' parental rights alleged that the Department of Human Services received a complaint that three-month-old KMH had bruising under her eyes. At the time, respondents indicated that Blaine had thrown a sippy cup at KMH's face. However, when KMH was re-examined two weeks later, she had additional bruises on her face and back. KMH was transported to Children's Hospital in Detroit, where it was discovered that she had multiple healing fractures of different ages, as well as hemorrhaging behind both eyes. The petition alleged that the examining physician determined the injuries to be non-accidental. Respondents denied knowing what may have happened to KMH or how she may have sustained her injuries.

Because the mother was only 17 years old, the court appointed her a lawyer-guardian ad litem (LGAL).[1] Both respondents pleaded no contest to the allegations in the petition for

[1] Even though appointed counsel already represented the respondent mother, an LGAL was appointed for her without objection at the request of the assistant attorney general representing (continued…)

purposes of jurisdiction, statutory basis for termination, and best interests. The parties stipulated that an eight-page excerpt from Children's Hospital Medical Records would serve as the court's basis to accept the pleas. The reporting physician wrote:

> ASSESSMENT AND RECOMMENDATION: [KMH] is a 3-month-old baby who was admitted to Children's Hospital of Michigan due to concerns of child abuse, for further workup and management. Upon interviewing Ms. Hernandez, [KMH]'s mother, over the phone, there was no history of trauma given to explain any of the findings. **My diagnosis is child physical abuse and abusive head trauma.**
>
> [KMH] has 23 fractures, including 1 skull fracture, and she also has 18 rib fractures as well as a humerus fracture, bilateral femur fractures and a right tibia fracture. These fractures are not explained by normal play or normal care of the baby and are consistent with physical abuse.
>
> The fractured ribs are consistent with forceful shaking of the baby and forceful squeezing of the rib cage, and the lateral and anterior rib fractures are also consistent with either squeezing of the rib cage or with direct force or blow to the ribs.
>
> The fractures that she has of her upper extremities and her bilateral lower extremities, specifically the metaphyseal corner fractures, are consistent with flailing of the arms and legs as what happens when infants are shaken forcefully.
>
> Thus, she has evidence of rib fractures as well as extremity fractures as well as an abusive head injury in the form of a skull fracture and bilateral subdural hematomas.
>
> * * *
>
> Due to [KMH] having multiple rib fractures, all in different stages of healing, this implies that more than 1 episode of abuse contributes to that.

The trial court terminated respondents' parental rights based on their pleas and based on the medical records.

Respondent mother claims that the trial court clearly erred in accepting her no contest plea, but provides no case law or authority to support her position that the court could not lawfully accept a no contest plea from a minor parent. A party may not simply state her position and leave it to the Court to search for support of that position. *Badiee v Brighton Area Schools*,

(…continued)

the petitioner Department of Human Services. We note that the appointment of an LGAL is required for *the child* that is the subject of a neglect petition invoking the jurisdiction of the court under MCL 712A.2(b). See MCL 712A.13a(g); MCL 712A.17c(7). The seventeen-year-old respondent mother, however, was not the child that was the subject of the court's jurisdiction. Consequently, the appointment of an LGAL was not required.

265 Mich App 343, 357; 695 NW2d 521 (2005). Respondent mother appears to argue that her youth prevented her from making a knowing and voluntary plea. The adequacy of the advice of rights required for acceptance of a plea of admission in a proceeding in circuit court to terminate parental rights is reviewed on appeal under the same standard of review used to determine the adequacy of advice of right in proceedings involving a criminal guilty plea. *In re Waite*, 188 Mich App 189, 192; 468 NW2d 912 (1991). Respondent mother was represented by her court-appointed attorney as well as a court-appointed LGAL. She may have been a minor at the time of the plea, but that did not preclude a finding that her plea was knowingly and voluntarily made. The trial court complied with every aspect of MCR 3.971 and there was simply no evidence in the record to indicate that respondent mother did not have the legal capacity to enter the plea.

For his part, respondent father argues that he was denied the right to effective assistance of counsel where his counsel made no effort to defend the case or require the prosecution to present its proofs. The right to counsel guaranteed by the United States Constitution, US Const, Am VI, applies to child protective proceedings, and the principles of effective assistance of counsel developed in the context of criminal law apply by analogy in termination of parental rights proceedings. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). Where a party claims that counsel was ineffective during a plea process, the focus is on whether the plea was knowingly and voluntarily entered into. *People v Watkins*, 247 Mich App 14, 31; 634 NW2d 370 (2001), modified on other grounds 468 Mich 233 (2003). The question is not whether counsel was right or wrong in rendering advice, but whether the advice was within the range of competent advice. *People v Thew*, 201 Mich App 78, 89-90; 506 NW2d 547 (1993).

Both respondents faced criminal charges. While a voluntary release was supposed to be entered into at the scheduled bench trial, it was not because the worker failed to provide the proper paperwork for the court. After a brief discussion off the record, the court indicated its understanding that the parents would enter no contest pleas. Because there was no *Ginther*[2] hearing in the lower court, there is simply no record of what respondent father was advised. It was very likely, however, that the parties intended to voluntarily relinquish their parental rights and only failed to do so because of the improper paperwork. A no contest plea had the same result as a voluntary release and would not be admissible in future criminal proceedings. See MRE 410. The medical records detailing the numerous injuries the child suffered served as an adequate basis to accept respondents' pleas.

We affirm.

/s/ Michael J. Kelly
/s/ Jane E. Markey
/s/ Donald S. Owens

[2] *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973).