

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 10, 2011

In the Matter of WARD Minors.

No. 299685
Kalamazoo Circuit Court
Family Division
LC No. 2009-000144-NA

Before: MURPHY, C.J., and MURRAY and SHAPIRO, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court's order terminating her parental rights to her three minor children. Specifically, respondent argues that the prosecutor did not uphold the plea agreement that, according to respondent, was to withdraw the termination request in exchange for her plea regarding the allegations concerning her twins, and to give her a chance to come into compliance with her parent-agency treatment plan. Although the termination request was withdrawn, it was reinstated five weeks later and the case proceeded to termination of her rights.¹ We affirm.

We review for clear error a trial court's finding regarding compliance with a plea agreement. MCR 2.613(C); *People v Hannold*, 217 Mich App 382, 388; 551 NW2d 710 (1996). A decision is deemed clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Carrier Creek Drain Drainage Dist v Land One, LLC*, 269 Mich App 324, 329-330; 712 NW2d 168 (2005).

We cannot conclude that the trial court clearly erred in rejecting respondent's argument that petitioner broke its plea agreement promise. The record is insufficient to determine what exactly the terms of that agreement were, and why it was made. Additionally, the trial judge did not preside at that hearing, and so could place nothing on the record to clarify what had previously occurred. Nevertheless, the burden is on respondent to provide the transcript of the

¹ Respondent does not challenge the trial court's findings that statutory grounds for termination existed. However, she does suggest that the trial court did not make a finding that termination was in the children's best interest, though no *argument* on that point is made. In any event, the record shows that the trial court did make this finding on the record.

hearing, and this she failed to do. MCR 7.210(B)(1)(a); *In re Estate of Eggleston*, 266 Mich App 105, 109 n 2; 698 NW2d 892 (2005). Accordingly, respondent's argument is not properly preserved or presented.² The record only shows that petitioner agreed to withdraw the prayer for termination from the petition. This was done. From that standpoint, the trial court did not clearly err in finding petitioner had upheld the plea agreement.

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro

² In any event, the existing record seems to support the caseworker's assertion that the decision to withdraw the termination request was made to give the father extra time to comply with his case service plan. When he failed to make progress, the request to terminate both parents' rights was reinstated.