

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 10, 2011

In the Matter of HICKS/COBURN, Minors.

No. 299865

Oakland Circuit Court

Family Division

LC No. 10-768783-NA

Before: SAWYER, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the Coburn minors pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (j), (k)(ii), and (n)(i). We affirm.

Respondent pleaded no contest to a petition to terminate his parental rights. The petition alleged that respondent physically abused his children and sexually abused the children's sister, as a result of which he had been convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(b). The trial court accepted the plea, found that termination was in the children's best interests, and terminated respondent's parental rights.

Respondent first argues that the trial court erred in accepting his plea because the plea was not knowing, voluntary, and accurate. Respondent did not preserve this issue by raising it in an appropriate motion below. See *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989); see also *People v Nowicki*, 213 Mich App 383, 385; 539 NW2d 590 (1995). Because the issue is unpreserved, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), *aff'd* 480 Mich 19 (2008).

The record establishes that respondent's plea was understanding, voluntary, and accurate. MCR 3.971(C). The trial court advised respondent of the right to counsel, the right to a hearing on the petition, the allegations against respondent, petitioner's burden of proof for establishing both a statutory basis for jurisdiction and the statutory grounds for termination, the right to have witnesses appear and testify at a trial, the right to cross-examine witnesses, the right to have witnesses subpoenaed by the court, and the right to testify or remain silent. Respondent stated that he understood those rights. The court also advised respondent of the effect of a termination order, and respondent stated that he understood that as well. Respondent also repeatedly affirmed that it was his own choice to tender a plea. Although the trial court failed to "state why a plea of no contest is appropriate," MCR 3.971(C)(2), respondent has not shown that this omission affected his substantial rights. *Smith Trust*, 274 Mich App at 285.

The fact that respondent's counsel referred to relinquishment of parental rights as opposed to involuntary termination of parental rights does not support a finding that respondent did not understand the nature of the proceedings. Aside from the fact that the prosecutor corrected counsel's misstatement, the record clearly indicates that respondent understood that he was not contesting a request to terminate his parental rights. Further, there is "no appreciable difference between a voluntary and an involuntary termination insofar as the legal effect of the order is concerned. A parent's rights are no less terminated when the termination is voluntary rather than involuntary." *In re Beck*, 287 Mich App 400, 404; 788 NW2d 697 (2010), aff'd ___ Mich ___ (2010).

The fact that respondent questioned the validity of some of the allegations underlying the criminal charges against him does not support a finding that his plea to the termination petition was involuntary. Further, respondent does not dispute that he was convicted of two counts of first-degree criminal sexual conduct and does not contend that the criminal court lacked jurisdiction. Therefore, respondent's criminal convictions are not subject to collateral attack in this action. *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995); *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). For these reasons, there is no merit to respondent's argument that his plea was not properly accepted by the trial court.

Respondent next argues that the trial court erred in terminating his parental rights because it failed to make findings of fact and conclusions of law as required by MCR 3.977(I). However, there were no contested matters requiring findings and conclusions because respondent consented to termination of his parental rights. Thus, the trial court was not required to make any findings of fact and conclusions of law. See *In re Toler*, 193 Mich App 474, 476-477; 484 NW2d 672 (1992).

Finally, respondent argues that the trial court erred in terminating his parental rights because the statutory grounds for termination were not proven by clear and convincing evidence, and the evidence did not support a finding that termination of his parental rights was in the children's best interests. MCR 3.977(E)(3) and (4). Respondent pleaded no contest to the allegations in the petition, acknowledged that his plea could result in termination of his parental rights, and admitted that termination of his parental rights was in the children's best interests. Respondent's counsel acknowledged that respondent "is stipulating to the Court finding statutory basis to terminate his rights and stipulating to the Court finding that it is in the best interest of the children to do so." Given respondent's no contest plea and stipulation, respondent waived any claim that the evidence did not establish a statutory basis for termination of his parental rights, or that termination of his parental rights was not in the children's best interests. *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008); *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001).

Affirmed.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Karen M. Fort Hood