STATE OF MICHIGAN

COURT OF APPEALS

In re HINES/NEAL, Minors.

UNPUBLISHED
December 15, 2015

No. 326780
Macomb Circuit Court
Family Division
LC No. 2014-000137-NA

Before: JANSEN, P.J., and CAVANAGH and GLEICHER, JJ.

GLEICHER, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusions that the trial court erred by using respondent's no contest plea at the adjudicative phase to conclusively establish the statutory grounds for termination, and by permitting petitioner to introduce inadmissible hearsay evidence during the termination hearing. The majority orders that the trial court remedy these fundamental errors by redeciding the case based on admissible evidence after affording respondent's counsel an opportunity to raise evidentiary challenges to the evidence of record. My respectful disagreement with the majority concerns this remedy.

In a footnote, the majority observes that the referee who took respondent's no contest plea neglected to inform respondent that her plea could later be used as evidence in a termination proceeding. MCR 3.971(B)(4) requires the court taking a plea of admission or no contest to the original allegations in a petition to "advise the respondent on the record . . . of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent." The referee's failure to relay this critical information during the plea colloquy rendered the plea fatally defective. See *In re Wangler/Paschke*, __ Mich __; __ NW2d __ (Docket No. 149537, entered November 5, 2015); *In re Mitchell*, 485 Mich 922; 773 NW2d 663 (2009).

In my view, the proper remedy for this violation is a complete "do-over," beginning with a properly conducted adjudication. See *Wangler/Paschke*, __ Mich __. Respondent vigorously disputed petitioner's allegation that she had physically abused RJN or permitted someone else to abuse him. As matters stand, however, her defective no contest plea may be used against her despite that the referee failed to advise her of this crucial fact.

Alternatively, I would offer the parties the opportunity to proceed directly to a new dispositional hearing conducted pursuant to MCR 3.977(E), which permits termination of parental rights based on clear and convincing, legally admissible evidence. MCR 3.977(E)(3). That the evidence admitted by the trial court is riddled with inadmissible hearsay or evidence

subject to exclusion under other rules of evidence supports that an entirely new hearing is required, not just a reconsideration of the original proceeding. In my view, it is simply too difficult to pluck a few strands of admissible evidence that clearly and convincingly support termination from the tangled morass of inadmissible evidence presented during the termination hearing. In the interests of adhering to the court rules and protecting respondent's due process rights, I would reverse and remand for new proceedings.

/s/ Elizabeth L. Gleicher