

STATE OF MICHIGAN
COURT OF APPEALS

In re A. C. LESNESKIE, Minor.

UNPUBLISHED
April 25, 2017

No. 335185
Wayne Circuit Court
Family Division
LC No. 16-522719-NA

Before: MURPHY, P.J., and MURRAY and M. J. KELLY, JJ.

PER CURIAM.

Respondent father appeals as of right an order terminating his parental rights to his minor child (AL) pursuant to MCL 712A.19b(3)(a)(ii), (g), and (j). We affirm.

According to respondent father, the trial court accepted his no-contest plea in violation of MCR 3.971(C) because (1) his plea was not made voluntarily under MCR 3.971(C)(1), and (2) the trial court failed to establish a factual basis to ensure that a plea of no contest was appropriate under MCR 3.971(C)(2).

Respondent father did not object to the plea-related procedure in the lower court, including whether the plea was voluntary and supported by evidence that establishes a factual basis for terminating parental rights. Therefore, this issue is unpreserved. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). This Court reviews unpreserved arguments for plain error affecting substantial rights. *Id.* “[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *Id.* at 9, citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). “When plain error has occurred, ‘[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant *or* when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant’s innocence.’ ” *In re Utrera*, 281 Mich App at 9, quoting *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 606; 603 NW2d 824 (1999) (quotation marks and citations omitted; alteration in original).

A respondent may plead no contest to the original allegations in a petition to terminate parental rights. MCR 3.971(A). The trial court must advise the respondent of his rights listed

under MCR 3.971(B), before accepting a plea.¹ The issue in this case implicates the provisions under MCR 3.971(C), which require the trial court to ensure that the respondent's plea is both voluntary and accurate:

(1) *Voluntary Plea.* The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.

(2) *Accurate Plea.* The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate. [MCR 3.971(C)(1) and (2).]

If the trial court violates either of these provisions, then assumption of jurisdiction over the minor child based on the plea violates due process. *In re Wangler*, 498 Mich 911, 911 (2015).

With respect to the requirements under MCR 3.971(C)(1), the record indicates that the trial court satisfied itself that respondent father's plea was knowingly, understandingly, and voluntarily made. At the September 16, 2016 adjudication, the trial court indicated that it had the impression that respondent father would be pleading no contest to the allegations in the petition, allowing the trial court to exercise jurisdiction over AL. Specifically, respondent father would plead no contest to "criminal liability" involving the death of his girlfriend, Erica McFadden.² After the trial court established jurisdiction over AL, respondent father would then stipulate to the statutory grounds and to the best-interests determination, allowing the trial court to terminate respondent father's parental rights over AL. Respondent father indicated that he did wish to plead no contest.

On two occasions before establishing jurisdiction over AL, the trial court asked respondent father if he needed more time to speak with his attorney to ensure that he understood the consequences of his plea. Every time, respondent father declined to take more time to discuss the plea with his attorney. At one point, respondent father's attorney even requested to go off the record to talk with respondent father. Thereafter, the trial court advised respondent father, in detail, of his rights as listed in MCR 3.971(B). The trial court asked if respondent father understood he would be waiving his right to a trial, his right to have the statutory grounds

¹ Respondent father does not argue that the trial court failed to advise him of his rights pursuant to MCR 3.971(B).

² At the time of the adjudication, respondent father was incarcerated at the Oakland County Jail awaiting trial on charges for first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b.

proven by clear and convincing evidence, and, among others, his right to subpoena witnesses if he so desired. Finally, the trial court asked respondent father if he was threatened or coerced into entering the plea, to which respondent father said he was not. For these reasons, the record proves that respondent father's plea was voluntarily, understandingly, and knowingly made. Therefore, respondent father has not shown a plain error in the plea proceeding that affected his substantial rights under MCR 3.971(C)(1).

Respondent father also challenges his plea under MCR 3.971(C)(2), which involves the accuracy of a plea. In particular, respondent father claims that the trial court did not "obtain support for a finding that one or more of the statutory grounds alleged in the petition [were] true." MCR 3.971(C)(2). Respondent father directs this Court's attention to *In re SLH*, 277 Mich App 662, 672-673; 747 NW2d 547 (2008), where this Court determined that a plea by a nonrespondent mother did not meet the requirements of MCR 3.971(C)(2). In *In re SLH*, 277 Mich App at 664-665, the respondent father faced criminal charges for sexually assaulting his two daughters, and the nonrespondent mother agreed to plead to the allegations against respondent father in the petition. This Court held that the nonrespondent mother could not plead to the allegations in the petition because those allegations were not directed at her, but at the respondent father. *Id.* at 671-672. With that said, this Court also held that even if the nonrespondent mother could have pleaded to the allegations in the petition, her plea would have been insufficient under MCR 3.971(C)(2), as the trial court "failed to establish support for a finding that one or more of the statutory grounds alleged in the petition were true." *In re SLH*, 277 Mich App at 672-673. Instead, the trial court "merely read the first paragraph of the petition and asked the mother, 'do you admit that allegation?' to which the mother replied 'yes, I do.'" *Id.* at 673. This Court determined that such an "exchange was clearly insufficient to establish a factual basis for the plea." *Id.* Additionally, this Court determined that respondent mother was never advised of her rights under MCR 3.971(B). *Id.* at 672-673.

Unlike in *In re SLH*, respondent father's plea was based on more than just his own admission to the allegations in the petition. The trial court received a police report and autopsy report into evidence and then asked, "And the court is using these documents as the basis for the No Contest Plea?" The attorney for DHHS acknowledged that the two documents would establish the basis for the plea. While respondent father claims the trial court did not rely on any evidence to support its determination, the record proves that the trial court intended for the admitted reports to establish the factual basis for purposes of MCR 3.971(C)(2). The police report and autopsy report together indicated that respondent father was responsible for the death of his girlfriend after he shot her four times with a shotgun. By referring to these documents, which were admitted into the record without objection, the trial court relied on more than just the respondent's own admission to prove "that one or more of the statutory grounds alleged in the petition [were] true." MCR 3.971(C)(2).

Defendant also argues that pursuant to *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010), incarceration alone does not constitute grounds for termination, and the trial court provided no explanation of how the two admitted reports support the statutory grounds in the petition. To begin, respondent father has waived this argument on appeal because he expressly stipulated to the statutory bases for termination under MCL 712A.19b(3)(a)(ii), (g), and (j). A respondent cannot stipulate to a statutory basis for termination before the trial court and then claim error on appeal by arguing that the evidence was insufficient to establish that statutory

basis. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001).

Even if this argument was not waived, the trial court properly relied on the police report and autopsy report to establish a factual basis for the plea. According to those reports, respondent father confessed to murdering his girlfriend.

Moreover, this Court has held that, unlike pleading no contest to a statutory basis for jurisdiction, “a respondent can consent to termination of his parental rights under the juvenile code, in which case the judge need not announce a statutory basis for it.” *In re Toler*, 193 Mich App 474, 476-477; 484 NW2d 672 (1992). Here, respondent father consented to termination of his parental rights when he stipulated to the statutory grounds under subsections (a)(ii), (g), and (j), and to the fact that termination was in AL’s best interests under MCL 712A.19b(5). Therefore, the trial court’s acceptance of the no-contest plea for purposes of jurisdiction, and the stipulation to the statutory grounds and best-interests determination, did not amount to plain error affecting respondent father’s substantial rights under MCR 3.971(C)(2).

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Michael J. Kelly