

STATE OF MICHIGAN
COURT OF APPEALS

In re HENDRY/STREICHER, Minors.

UNPUBLISHED
July 24, 2018

No. 341864
Marquette Circuit Court
Family Division
LC No. 13-009669-NA

Before: HOEKSTRA, P.J., and MURPHY and MARKEY, JJ.

PER CURIAM.

Respondent-father appeals the family court's order terminating his parental rights to his three minor children, which order was entered on the basis of respondent's decision to voluntarily release his parental rights to the children under the Michigan Adoption Code (MAC), MCL 710.21 *et seq.*, after the Department of Health and Human Services (DHHS) had initiated a petition to terminate respondent's parental rights. Respondent pleaded no-contest to the allegations in DHHS's petition and then almost immediately chose to release his parental rights. Absent any attempt to withdraw the plea or revoke the release, respondent filed the instant appeal. We dismiss the appeal for lack of jurisdiction given that respondent is not an aggrieved party.

Respondent had been charged with multiple counts of criminal sexual conduct, first and second degree, arising out of the alleged sexual abuse of one of the children, and the termination petition in the family court was also based on those criminal charges, along with allegations that one of his other children was born as a result of criminal sexual conduct committed against the mother of that child. As part of a plea agreement with the county prosecutor, respondent agreed to enter a no-contest plea with respect to DHHS's petition relative to the adjudicative phase in the termination proceeding, allowing the family court to take jurisdiction. In exchange, the prosecutor agreed to respondent entering a no-contest plea to third-degree criminal sexual conduct in the criminal case, with respondent to be temporarily released on a personal recognizance bond. Respondent entered the no-contest plea in the termination proceeding, and, on the very same day, he decided to voluntarily release his parental rights to the children, which was accomplished after the family court fully advised him of his rights under the law. Three parental releases were executed under the MAC, and an order terminating respondent's parental rights was entered on the basis of those releases. Subsequently, in the criminal case, the circuit

court judge would not allow respondent's release on a personal recognizance bond, and respondent was apparently allowed to withdraw from the plea agreement or it otherwise fell apart.¹ However, respondent never sought to withdraw his plea in the termination proceeding, nor did he seek to revoke the releases of his parental rights. See MCL 710.29(10) (“[U]pon petition of the same person or persons who executed the release and of the department or child placing agency to which the child was released, the court with which the release was filed may grant a hearing to consider whether the release should be revoked.”).

The MAC provides that “[a] party *aggrieved* by an order that is entered by the court under this chapter, including an order entered after a rehearing, may appeal the order to the court of appeals as of right” MCL 710.65(1) (emphasis added). And, in general, this Court “has jurisdiction of an appeal of right filed by an *aggrieved party*” MCR 7.203(A) (emphasis added). Respondent is simply not an aggrieved party; the family court did just as he requested, i.e., it accepted the no-contest plea offered by respondent and then released him of his parental rights. See *Maxwell v Dep’t of Environmental Quality*, 264 Mich App 567, 571; 692 NW2d 68 (2005) (an aggrieved party is one whose legal rights are invaded by an act *complained of*); *Dep’t of Consumer & Industry Servs v Shah*, 236 Mich App 381, 385; 600 NW2d 406 (1999) (a party is not aggrieved if the order being appealed was in the party’s favor); *Reddam v Consumer Mtg Corp*, 182 Mich App 754, 757; 452 NW2d 908 (1990) (this Court only has jurisdiction over appeals filed by an aggrieved party, and the plaintiff, having accepted a mediation award, cannot be deemed an aggrieved party), overruled in part on other grounds *CAM Constr v Lake Edgewood Condo Ass’n*, 465 Mich 549; 640 NW2d 256 (2002). The voluntary releases are akin to consent judgments. And “one may not appeal from a consent judgment, order or decree[.]” *Dybata v Kistler*, 140 Mich App 65, 68; 362 NW2d 891 (1985), citing *Dora v Lesinski*, 351 Mich 579, 582; 88 NW2d 592 (1958) (“It is elementary that one cannot appeal from a consent judgment, order or decree.”).

Had respondent filed a motion to withdraw the plea or filed a motion to revoke the releases, and had the family court denied his request, then respondent would be an aggrieved party for purposes of an appeal to this Court. See *In re Draime Minor*, 356 Mich 368, 371; 97 NW2d 115 (1959) (“The petitioners for almost two years had in their possession the three-year-old boy, and the fact that they prosecute an appeal to this Court to retain that possession is some indication that they are aggrieved by the order denying them the right to adopt the minor child.”).

It is true that the court rules provide that a party has an appeal by right to this Court with respect to “an order of disposition placing a minor child under the supervision of the court” and

¹ The record is not enlightening with respect to what occurred in the criminal case, chiefly because nothing happened in the family court case after respondent voluntarily relinquished his parental rights. Had respondent moved to withdraw the plea or revoke the releases, a record would likely have been developed regarding actions in the criminal case. It does not appear that a plea was ever entered in the criminal case, ostensibly because the court would not agree to releasing respondent on a personal recognizance bond.

“an order terminating parental rights.” MCR 3.993(A)(1) and (2). However, necessarily implicit in this provision is that it covers orders where a family court exercised jurisdiction or terminated parental rights contrary to the arguments and wishes of a party, not orders requested by a party. Here, the trial court exercised jurisdiction pursuant to respondent’s voluntary no-contest plea and then terminated his parental rights on the basis of his voluntary release of his parental rights.

Dismissed for lack of jurisdiction.

/s/ Joel P. Hoekstra

/s/ William B. Murphy

/s/ Jane E. Markey