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STATE OF MICHIGAN

COURT OF APPEALS

In re LM, Minor.

UNPUBLISHED
October 29, 2020

No. 352360
Ogemaw Circuit Court
Family Division
LC No. 19-000969-AU

Before: STEPHENS, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights after release or consent to her minor child, LM, pursuant to MCL 710.29(7).[1] We affirm.

LM was adjudicated a court ward pursuant to MCL 712A.2(b) of the Juvenile Code, MCL 712A.1 *et seq*. A supplemental petition was later filed to terminate respondent's parental rights. At the termination of parental rights hearing on December 16, 2019, respondent elected to release her parental rights. Respondent signed a release along with a "Statement to Accompany Release" in accordance with MCL 710.29(6).

Respondent argues that the trial court erred by terminating her parental rights because it failed to ensure that her decision to release her parental rights was knowingly and voluntarily made and because there was no evidence to support the trial court's determination that the release was in LM's best interests. Because respondent failed to file a motion to revoke the release under MCL 710.29(11) or a motion to seek rehearing of the order terminating her parental rights under MCL 710.64(1), these issues are unpreserved. We review unpreserved issues for "plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

"A release or consent is valid if executed in accordance with the law at the time of execution." MCR 3.801(B). A parent may execute a release before either a judge of the court or a referee. MCL 710.29(1). A release must be accompanied by a verified statement containing

[1] LM's father also voluntarily relinquished his parental rights, but has not appealed the trial court's order and is not a party to this appeal.

certain information prescribed by statute and must be signed by the parent. MCL 710.29(6). MCL 710.29(7) provides, in relevant part, that the release may not be executed "until after the investigation the court considers proper and until after the judge . . . has fully explained to the parent or guardian the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the release voluntarily relinquishes permanently his or her rights to the child[.]" In other words, the release must be "knowingly and voluntarily made." *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). Further, if the child is over five years of age, the court must determine "that the child is best served by the release." MCL 710.29(7). Upon the execution of the release by the parent, the court must enter an order terminating the parent's rights to the child. MCL 710.29(8). A parent's change of heart alone is not a ground to set aside a release that is otherwise knowingly and voluntarily made after proper advice of rights is given by the court. *In re Burns*, 236 Mich App at 292-293; *In re Curran*, 196 Mich App 380, 385; 493 NW2d 454 (1992).

Contrary to respondent's assertion, there is nothing to indicate that the trial court failed to ensure that her release was knowingly and voluntarily made. The trial court advised respondent of the nature of her parental rights and informed her that by executing the release, she would be voluntarily and permanently relinquishing those rights. Respondent stated on the record that she understood the nature of the proceedings, that she wanted to "[r]elease [her] rights," and that she had an opportunity to speak with her attorney. The trial court specifically asked respondent whether she was signing the release knowingly and voluntarily and she clearly and unequivocally answered in the affirmative. We find no plain error in the trial court's determination that respondent's decision to release her parental rights was knowingly and voluntarily made. In sum, respondent executed the release before the judge pursuant to MCL 710.29(1) along with the Statement to Accompany Release pursuant to MCL 710.29(6). Therefore, respondent's release was valid because it was "executed in accordance with the law at the time of execution." MCR 3.801(B).

We agree with respondent that because LM was over five years old, the trial court was required to determine that "the child is best served by the release." MCL 710.29(7). Contrary to respondent's assertion however, the trial court complied with this requirement by specifically stating that the release was "in the best interest of the child at this time." Respondent has not identified any facts or circumstances indicating that the trial court's determination was incorrect.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Jane M. Beckering