STATE OF MICHIGAN

COURT OF APPEALS

In re MALLETT, Minors.

UNPUBLISHED
June 17, 2021

No. 354733
Wayne Circuit Court
Family Division
LC No. 2018-000963-NA

Before: RONAYNE KRAUSE, P.J., and RIORDAN and O'BRIEN, JJ.

RIORDAN, J. (*dissenting*).

I respectfully dissent. I would conclude that the trial court did not commit plain error by the manner in which it accepted respondent's plea and that none of her remaining arguments have merit. Accordingly, I would affirm.

MCR 3.971(C)(1) provided that a trial court may not accept a plea "without satisfying itself that the plea is knowingly, understandingly, and voluntarily made." Such a requirement is imposed by due process as well. See *In re Wangler*, 498 Mich 911, 911; 870 NW2d 923 (2015). Because respondent did not argue in the trial court that the manner in which her plea was accepted violated MCR 3.971(C)(1) or due process, her argument is reviewed for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In this case, I acknowledge that the trial court only inquired of respondent whether her plea was voluntary. It did not specifically inquire of respondent whether her plea was knowing and understanding. However, the trial court was initially informed by respondent's counsel that respondent was "prepared to plead no contest." In essence, counsel had "prepared" respondent to enter her plea by explaining the relevant ramifications. Thereafter, the trial court advised respondent of her rights in accordance with MCR 3.971(B) and inquired of respondent whether her plea was voluntary. The trial court was then informed by respondent's counsel that she was satisfied with the advice of rights, thus indicating that the trial court had taken the necessary steps to ensure that the plea was proper, both by itself and in conjunction with counsel herself outside of the courtroom.

These facts, taken together, establish no plain error under MCR 3.971(C)(1).[1] Specifically, while the trial court confirmed with respondent that the plea was voluntary, the trial court confirmed with respondent's counsel that the plea was knowing and understanding. That is, if respondent did not know or understand the ramifications of the plea, respondent's counsel would not have been in the position to inform the trial court that respondent was "prepared" to enter the plea and that she was "satisfied" with the advice of rights. The trial court was permitted to rely upon respondent's counsel in this manner under MCR 3.971(C)(1), which only required that the trial court "satisfy[] itself" that the plea was knowing, understanding, and voluntary, and did not specify that the trial court should do so by directly questioning the respondent. At a minimum, given these facts and the lack of an express requirement or suggestion in MCR 3.971(C)(1) that the trial court directly question the respondent,[2] any error here cannot be characterized as "clear or obvious." See *Carines*, 460 Mich at 763.

Moreover, the case on which respondent primarily relies, *In re Ferranti*, 504 Mich 1; 934 NW2d 610 (2019), is not controlling. In that case, "the court did not advise [the respondents] that they were waiving any rights. Nor did the court advise them of the consequences of their pleas, as required by our court rules." *Id.* at 9. This failure to advise, our Supreme Court held, amounted to plain error:

> Due process and our court rules require a trial court to advise respondents-parents of the rights that they will waive by their plea and the consequences that may flow from it. The court erred by failing to advise these respondents of the consequences of their pleas and the rights they were giving up; those errors were plain. [*Id*. at 30.]

Further, the Court held that the plain error "seriously affected the fairness, integrity, or public reputation of judicial proceedings" for the following reasons:

> The trial court did not advise the respondents that they were waiving any of the important rights identified in MCR 3.971(B)(3). And it failed to advise the respondents of the consequences of entering their pleas. MCR 3.971(B)(4). This failure resulted in the respondents' constitutionally defective pleas and undermined the foundation of the rest of the proceedings. The defective pleas allowed the state

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[1] Respondent frames her argument as also grounded in due process. However, if the trial court complied with MCR 3.971(C)(1), it necessarily follows that her due-process argument would fail as well. See *In re Wangler*, 498 Mich at 911 (addressing whether the trial court satisfied due process by assessing its compliance with MCR 3.971(C)(1)).

[2] I note that MCR 3.971(C)(2), which concerned "accurate pleas" (i.e., pleas where the statutory grounds for jurisdiction are true), provided that the trial court should confirm the plea accuracy "preferably by questioning the respondent." See also MCR 6.302(E) (providing that before accepting a criminal plea of guilty or no contest, the trial court must engage in a "colloquy with the defendant"). MCR 3.971(C)(1) included no such reference.

> to interfere with and then terminate the respondents' fundamental right to parent their child. . . . [*Id*. at 31.]

Thus, the defect *in In re Ferranti* was not the trial court's failure to confirm for itself that the respondents' plea was knowing, understanding, and voluntary as required by MCR 3.971(C)(1) and due process. Rather, the defect was the failure to render the plea knowing, understanding, and voluntary by *advising* the respondents as required by MCR 3.971(B) and due process.[3]

Accordingly, I would conclude that the trial court did not commit plain error by the manner in which it accepted respondent's plea.[4] Therefore, I would affirm.

/s/ Michael J. Riordan

[3] I acknowledge the obvious relevance of *In re Ferranti* in stating the due-process principles applicable to pleas in the adjudicatory phase. But respondent's failure to identify binding caselaw directly addressing similar circumstances as in the instant case weighs against a finding of plain error. Compare *People v Swenor*,___Mich App___;___NW2d___ (2021) (Docket No. 352786), slip op at 10 ("Regardless of the correctness of the trial court's holding that the search was invalid because police officers did not conduct it pursuant to a written policy, its decision was not plainly or obviously wrong because no binding caselaw has directly addressed whether a written policy was required.").

[4] I also would conclude that respondent's remaining arguments are meritless for generally the reasons set forth by petitioner on appeal. Further, I would not address *sua sponte* whether the trial court properly exercised jurisdiction over SLM.