

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* MCQUARTER, Minors.

UNPUBLISHED  
July 22, 2021

No. 356044  
Iosco Circuit Court  
Family Division  
LC No. 18-000674-NA

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Before: BORRELLO, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating his parental rights to the minor children, OM and LM, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist).<sup>1</sup> We affirm in part, vacate in part, and remand for further proceedings.

I. BACKGROUND

In December 2018, OM was removed from respondent’s care and placed in a licensed foster home. On April 8, 2019, respondent entered a plea of admission to several allegations in a petition for temporary wardship. Respondent admitted that in December 2018, he “refused and/or failed to benefit” from prior case services; that his December 2018 drug screen came back positive for amphetamine, methamphetamine, and THC; and that in December 2018, he was arrested and therefore unable able to provide proper care and custody of OM. On the basis of these admissions, the trial court exercised jurisdiction over OM. In April 2019, LM was born. LM was placed in the same licensed foster home as OM. On May 2, 2019, respondent admitted that he was unable to provide proper care and custody of LM because he was incarcerated, which allowed the trial court to exercise jurisdiction over LM.

In July 2020, DHHS filed a termination petition. The caseworker testified at the bench trial in December 2020 that respondent was incarcerated from March 2019 through January 2020, and from the end of October 2020 to the beginning of November 2020. Respondent had a

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<sup>1</sup> During the proceedings, the trial court also terminated the mother’s parental rights. She is not a party to this appeal.

probation violation hearing scheduled for January 2021. The caseworker testified that whenever respondent was not incarcerated, respondent rarely returned his messages, and that while respondent would express an interest in participating in services, “nothing ever materialized” and there was “very limited periods of compliance.” The trial court found that although respondent was unable to participate in services when he was incarcerated, he failed to avail himself when he was released. The trial court also found that it was in the children’s best interests to terminate respondent’s parental rights on the basis that they had a bond with their foster parents and that it would be “more detrimental” to remove them from their foster home than to return them to respondent. The trial court terminated respondent’s parental rights on December 8, 2020. This appeal followed.

## II. ANALYSIS

Respondent argues that at the April 9, 2019 pretrial hearing regarding OM, the trial court plainly erred by failing to advise him of the rights he was giving up by entering a plea and that this error affected his substantial rights. We agree.

As respondent admits, this issue is unpreserved. Therefore, we apply the plain-error standard set forth in *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999). See *In re Pederson*, 331 Mich App 445, 453; 951 NW2d 704 (2020). Under this standard, respondent may obtain relief if “1) error . . . occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *Carines*, 460 Mich at 763. Under the third prong, defendant must show that the error was prejudicial, meaning “the error affected the outcome of the lower court proceedings.” *Id.* Reversal on the basis of plain error is only warranted “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.” *Id.* (quotation marks and citation omitted; alteration in original).

“In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase.” *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). If the trial court authorizes the petition, the adjudication phase follows, in which the trial court determines whether it “can exercise jurisdiction over the child (and the respondents-parents) under MCL 712A.2(b) so that it can enter dispositional orders, including an order terminating parental rights.” *In re Ferranti*, 504 Mich 1, 15; 934 NW2d 610 (2019). Jurisdiction is established by accepting a parent’s plea or conducting a trial regarding the allegations in the petition. *In re Deng*, 314 Mich App 615, 623-624; 887 NW2d 445 (2016). “After the parent has been found unfit, the trial court assumes jurisdiction over the child and the dispositional phase of proceedings begins.” *Id.* at 624. “The purpose of the dispositional phase is to determine ‘what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult . . . .’” *In re Sanders*, 495 Mich at 406, quoting MCR 3.973(A) (ellipsis in original; emphasis omitted).

At the time of the April 8, 2019 pretrial hearing, MCR 3.971(B) provided,<sup>2</sup> in relevant part:

Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

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(3) that, if the court accepts the plea, the respondent will give up the rights to

(a) trial by a judge or trial by a jury,

(b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,

(c) have witnesses against the respondent appear and testify under oath at the trial,

(d) cross-examine witnesses, and

(e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;

(4) 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.

In *In re Ferranti*, 504 Mich at 9, at a preadjudication status conference, the respondents made certain admissions that allowed the trial court to exercise jurisdiction over the minor child. The trial court failed to advise the respondents that they were waiving “any” rights and also failed to advise them of the consequences of their pleas. *Id.* Later, the trial court terminated the respondents’ parental rights under MCL 712A.19b(3)(c)(i) and (g). *Id.* at 12.

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<sup>2</sup> Our Supreme Court subsequently amended MCR 3.971(B) to include additional rights of which a trial court must inform a parent at the time of his or her plea in order to comport with due process. See *In re Ferranti*, 504 Mich at 9 n 1. This includes the addition of subsection (B)(6), providing that the court must inform a parent that “appellate review is available to challenge a court’s initial order of disposition following adjudication, and such a challenge can include any issues leading to the disposition, including any errors in the adjudicatory process[.]” MCR 3.971, as amended June 12, 2019, 503 Mich cv (2019). MCR 3.971(B)(6) now provides that the trial court must inform a parent that “appellate review is available to challenge any errors in the adjudicatory process, which may be challenged in an appeal from the court’s initial order of disposition[.]” Respondent briefly asserts that after the April 8, 2019 pretrial hearing regarding OM, the trial court failed to advise him that he could appeal its decision to assume jurisdiction. However, MCR 3.971(B)(6) was not in effect at the time of adjudication for OM or LM.

Our Supreme Court concluded that the respondents were “deprived of their fundamental right to direct the care, custody, and control” of the minor child because of the invalid pleas, which “relieved [DHHS] of its burden to prove that the respondents were unfit at a jury trial, with all of its due-process protections.” *Id.* at 30. Our Supreme Court concluded, “These constitutional deprivations affected the very framework within which [the] respondents’ case proceeded. There was error, it was plain, and it affected the respondents’ substantial rights.” *Id.* at 30-31. Our Supreme Court further concluded that the trial court’s failure to comply with MCR 3.971(B)(3) and (B)(4) “seriously affected the fairness, integrity, or public reputation of judicial proceedings” on the basis that due process requires “either a plea hearing that comports with due process and the court rule or, if respondents choose, a trial.” *Id.* at 31.

In *In re Pederson*, 331 Mich App at 467-468, the trial court advised the respondents of most of the rights they were waiving under MCR 3.971(B)(3). The respondents challenged only the trial court’s failure to advise them of the consequences of their plea under MCR 3.971(B)(4). *Id.* at 467. The panel observed:

MCR 3.971(B)(4) relates to the dispositional phase of the proceedings—as opposed to the adjudicative phase—in that Subrule (B)(4) does not address the rights associated with an adjudication trial. Rather, MCR 3.971(B)(4) concerns how entering a plea at the adjudication stage could later be used against respondents during the dispositional phase. Thus, unlike in *In re Ferranti*, the adjudicative stage was not tainted by the trial court’s failure to advise respondents of their rights under MCR 3.971(B)(4). Rather, [the] respondents were aware that they were giving up the right to an adjudication trial before entering pleas. [*Id.* at 469.]

We conclude that this case is more akin to *In re Ferranti* than to *In Re Pederson*. As respondent admits, the trial court advised respondent of the consequences of his plea under MCR 3.971(B)(4). However, as in *In re Ferranti*, 504 Mich at 9, the trial court in this case failed to advise respondent of “any” of the rights he was waiving under MCR 3.971(B)(3). This tainted the adjudication stage of the proceeding. See *In re Pederson*, 331 Mich App at 469. Respondent was entitled to a trial or a plea hearing that comported with due process and MCR 3.971(B). See *In re Ferranti*, 504 Mich at 31. Therefore, we vacate the order of adjudication regarding OM along with the portion of the termination order pertaining to OM and remand for further proceedings. We affirm in all other respects.<sup>3</sup>

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<sup>3</sup> Because respondent appears to challenge only the trial court’s assumption of jurisdiction over OM, he has abandoned any argument with respect to the trial court’s assumption of LM. See *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998), overruled in part on other grounds by *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000) (“The failure to brief the merits of an allegation of error is deemed an abandonment of an issue.”). In any event, we conclude that the trial court fully complied not only with MCR 3.971(B)(3), but also (B)(4), when it assumed jurisdiction over LM.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello  
/s/ Deborah A. Servitto  
/s/ Cynthia Diane Stephens