STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
March 15, 2012

In the Matter of J. I. TRIPP, Minor.

No. 306249
Macomb Circuit Court
Family Division
LC No. 2010-000364-NA

Before: O'CONNELL, P.J., and SAWYER and TALBOT, JJ.

PER CURIAM.

Respondent L. Lyle appeals by right from a circuit court order terminating her parental rights to the minor child pursuant to her release of her parental rights. MCL 710.29(7). We affirm.

Respondent's child became a temporary court ward in June 2010. Respondent was offered reunification services but failed to make sufficient progress. In June 2011, the Department of Human Services filed a supplemental petition to terminate respondent's parental rights under MCL 712A.19b(3). Respondent then elected to release her parental rights. Respondent now contends that she was not competent to execute the release and that her decision was not knowing, understanding, and voluntary. Respondent did not file a motion in the trial court to raise this issue. Cf. MCL 710.29(10) and MCL 710.64(1).

A release "is valid if executed in accordance with the law at the time of execution." MCR 3.801(B). The release must be executed by the parent before a judge of the court or a referee. MCL 710.28(1)(a); MCL 710.29(1). The parent must also execute a verified statement containing certain information prescribed by statute. MCL 710.29(5). Specifically, the statement must indicate that the parent has received a list of support groups and has received adoption counseling or waived the same. MCL 710.29(5)(a) and (b). However, the release may not be executed "until after the investigation the court considers proper and until after the judge" or referee fully explains to the parent her legal rights and the fact that those rights will be relinquished permanently. MCL 710.29(6); see also *In re Blankenship*, 165 Mich App 706, 711-712; 418 NW2d 919 (1988). Upon the release by the parent, the court is to immediately enter an order terminating that parent's rights to the child. MCL 710.29(7). Once parental rights have been terminated, the parent may file a motion to revoke the release or request rehearing, MCL 710.29(10); MCL 710.64(1); MCR 3.806(A), but a change of heart alone is not grounds to set aside a release that is otherwise knowingly and voluntarily made after proper advice of rights

given by the court. *In re Burns*, 236 Mich App 291, 292-293; 599 NW2d 783 (1999); *In re Curran*, 196 Mich App 380, 385; 493 NW2d 454 (1992).

It is undisputed that the trial court properly advised respondent of the rights she would be giving up by executing the release, and thus, the release was knowingly made. The record shows that respondent executed the verified statement that contained the information required by MCL 710.29(5). Specifically, the statement provided, in pertinent part, "I waive counseling related to this adoption," and an "x" was marked in the box next to this statement. By signing the form, respondent acknowledged "that this statement has been examined by me and that its contents are true to the best of my information, knowledge, and belief." The transcript of the release proceeding shows that respondent was informed that she could not be forced to execute the release, and respondent stated that she had not been forced or pressured or promised anything to release her parental rights. She also indicated that she had sufficient time to consider her decision to release her parental rights and that she was acting of her own free will. Thus, the release was voluntarily executed. Although respondent claims that she did not "fully understand the concept of" releasing her parental rights, the effects were explained to her, and she advised the court that she understood them. In particular, the referee explained that the decision was "very serious," and that the referee was required to "be sure that you [respondent] understand exactly what it is that you're doing here today." The referee also asked respondent to explain her decision in her own words, to which respondent answered, "That basically I'm giving up everything towards my son, and, I don't know how to explain it. Any rights as a parent." In sum, the record demonstrates that respondent voluntarily and freely released her parental rights.

Respondent also argues that she was not competent to execute the release because she was not receiving proper medication for her mental health condition. In the criminal context, a defendant "must be competent in order to plead guilty." *People v Whyte*, 165 Mich App 409, 411; 418 NW2d 484 (1988). "[A] defendant is presumed competent to stand trial unless his mental condition prevents him from understanding the nature and object of the proceedings against him or the court determines he is unable to assist in his defense." *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). Where the defendant does not raise the issue of his competency, "the trial court ha[s] no duty to *sua sponte* order a competency hearing," *People v Inman*, 54 Mich App 5, 12; 220 NW2d 165 (1974), unless facts are brought to the trial court's "attention which raise a 'bona fide doubt' as to the defendant's competence." *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990). "A defendant is not considered incompetent to stand trial if he is or has been prescribed psychotropic drugs or other medication without which he might be incompetent to stand trial." *Mette*, 243 Mich App at 331.

Applying the same rules by analogy in adoption proceedings, the record from the child protective proceeding indicates that respondent had a mental health diagnosis for which she had once been prescribed medication. The record does not indicate whether respondent still required medication and, if so, whether she was taking the medication. The transcript of the release proceeding contains no indication that respondent was not competent to release her parental rights. She answered questions appropriately, she gave a rational explanation for her decision to execute the release, and she did not say anything to indicate that she was not of sound mind. The only expression of confusion regarding the proceeding appeared to be a simple misunderstanding. When the referee asked respondent if she had "adequate time" to consider her decision, respondent apparently thought the question related to reunification or to another matter.

Respondent's counsel and the referee clarified the nature of the question, and respondent then affirmed that she had enough time to consider her decision. There is nothing in the record to indicate that respondent was mentally incompetent, or to support her contention that she was incompetent.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael J. Talbot