

STATE OF MICHIGAN
COURT OF APPEALS

In re N. TAYLOR, Minor.

UNPUBLISHED
June 16, 2015

No. 325207
Kent Circuit Court
Family Division
LC No. 12-074209-NA

Before: HOEKSTRA, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Respondent appeals by right the order terminating his parental rights to his child based on MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and MCL 712A.19b(3)(g) (failure to provide proper care and custody). On appeal, respondent claims the trial court erred in terminating his rights under the Juvenile Code, MCL 712A.1 *et seq.*, rather than under the Adoption Code, MCL 710.21 *et seq.* For the reasons stated below, we affirm.

I. BACKGROUND

The minor child in this case, NT, is severely disabled, having sustained brain damage from seizures she suffered as an infant that rendered her unable to walk, talk, or feed herself. NT also has cerebral palsy. Although NT lived with her mother for a time (her parents never married and respondent was later married to another woman), as of January 2, 2013, neither of the child's parents was able to provide the 24-hour care she required. Respondent claimed this was due to his work obligations; NT's mother conceded that her substance abuse problems and incarceration were to blame. The mother additionally had attempted suicide once while NT was in her care.

The Department of Health and Human Services (DHHS) filed a petition of removal alleging these facts, and both parents entered pleas of admission to the petition as later amended. On March 6, 2013, the court took jurisdiction over the child based upon the mother's situation under MCL 712A.2(b)(2) (unfit home environment by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian). The court ordered NT to remain with foster parents, but permitted respondent and NT's mother unsupervised parenting time.

Over the next year and half, conditions for NT's care became increasingly complicated. NT's mother struggled with her employment and substance abuse problems. She was incarcerated again, while respondent continued with his parenting time requirements. On account of this and respondent's unwillingness to "provide placement for his daughter", DHHS

filed a petition to terminate parental rights on September 10, 2014. The petition alleged that NT's mother failed to substantially benefit from the many services she received as evidenced by her inability to maintain stable housing or employment, her continued drug use, and her incarceration. The petition alleged that respondent was unwilling or unable to provide proper care and custody for NT. The petition requested termination of parental rights under MCL 712A.19b(3)(c)(i) and (3)(g).

At the termination hearing, the court received testimony and initially concluded that termination of NT's mother's rights was proper for the reasons alleged in the petition. The mother did not contest this ruling. Respondent then requested that the court accept his voluntary release of parental rights under the Adoption Code. Respondent argued that while he had provided care for NT every other weekend and had made child support payments, NT's mother had sole legal and physical custody and it was her incarceration that triggered the filing of the termination petition. DHHS objected since the child protective proceeding was already pending under the Juvenile Code. The guardian ad litem likewise objected, noting that an investigation must first ensue. The court denied respondent's request and proceeded with the hearing.

Nothing was in dispute. Respondent acknowledged the applicability of MCL 712A.19b(3)(g) and conceded that termination was in NT's best interests. The caseworker agreed, noting that respondent had refused services and was unwilling to provide care and custody for NT. The court made findings consistent with this evidence, and noted respondent's concern that caring for NT would jeopardize his lifestyle.¹ Accordingly, the court concluded respondent's inability to provide full time care for NT's special needs established the statutory grounds alleged in the petition. The court also found termination to be in NT's best interests given the extensive care she required. On December 12, 2014, an order was entered terminating respondent's parental rights, and this appeal followed.

II. ANALYSIS

Despite consenting to termination under the Juvenile Code, respondent claims the trial court erred in declining to accept his release of parental rights under the Adoption Code. As a preliminary matter, respondent has arguably waived this issue. Indeed, the crux of his claim is that he had a right to proceed under the Adoption Code. It is for this reason that he claims the trial court erred in declining to accept his release. But in consenting to termination under the Juvenile Code without preserving the issue, he abandoned that alleged right, and in so doing, waived it. See *Acorn Investment Co v Mich Basic Prop Ins Ass'n*, 495 Mich 338, 357; 852 NW2d 22 (2014) ("waiver is the intentional relinquishment or abandonment of a known right") (citation omitted).

Even absent a waiver, however, respondent still cannot prevail. Although appeals under the Juvenile Code generally involve review of the trial court's findings and best interests determination for clear error, *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012), MCR 3.977(K), the sole issue before us is whether respondent's invocation of the

¹ Respondent was employed full time as a police officer and had a family.

Adoption Code trumped proceedings under the Juvenile Code. Issues of statutory interpretation, such as the applicability of the Adoption Code, present questions of law that we review de novo. *In re RFF*, 242 Mich App 188, 195; 617 NW2d 745 (2000). However, we review a trial court's decision to accept or reject a parental release of rights under the Adoption Code for an abuse of discretion. *In re Blankenship*, 165 Mich App 706, 712; 418 NW2d 919 (1988). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *In re MKK*, 286 Mich App 546, 564; 781 NW2d 132 (2009).

A court may terminate parents' rights to their minor children under either the Adoption Code or the Juvenile Code. The statutory proceedings under each are "completely separate" *In re Jones*, 286 Mich App 126, 128; 777 NW2d 728 (2009). The primary distinction is that under the Adoption Code, the parent voluntarily initiates the proceeding while under the Juvenile Code the state initiates. *In re Jackson*, 115 Mich App 40, 51; 320 NW2d 285 (1982). Nevertheless, although it is within the province of the state to bring actions under the Juvenile Code, parents may consent to the termination of their rights under that framework once the proceedings have commenced. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). Such consent does not transfer a proceeding from the Juvenile Code to the Adoption Code, however. *Id.*

A court may not accept a release under the Adoption Code until certain events occur, including an investigation deemed proper by the court. MCL 710.29(7). Absent this investigation, the release is invalid. *In re Buckingham*, 141 Mich App 828, 834-835; 368 NW2d 888 (1985). Respondent argues that the juvenile proceeding itself coupled with the caseworker's summary constituted a sufficient investigation. But it is the court which must deem the investigation proper, not the parent. *Id.* at 836-837. Not surprisingly, the court made no indication about the propriety of the investigation here since this case had proceeded entirely under the Juvenile Code from its inception. Consequently, the acceptance of the release at the termination hearing, without more, would have been improper. *Id.* at 837.

Regardless, even if the court had proceeded under the Adoption Code, its rejection of respondent's release was not an abuse of discretion. *In re Blankenship*, 165 Mich App at 834. Again, respondent waited until the termination hearing to make his request. That hearing was the culmination of a nearly two-year long juvenile proceeding. Yet, even though respondent allegedly raised the possibility of adoption with DHHS during its investigations, his formal request at the termination hearing was *the first time and only time* on this record that he sought a release—or any other action—from the court under the Adoption Code. Considering that respondent's circumstances did not materially change throughout the entirety of this proceeding, that he failed to appear at four review hearings, and that his cooperation with DHHS was meager at best, denying respondent's request at this juncture was not unreasonable.² The trial court did not err.

² While the Adoption Code certainly permits individuals to voluntarily release their parental rights, MCL 710.28; MCL 710.29, no provision in the Adoption Code requires a trial court to accept a release, let alone accept one during juvenile proceedings. Thus, respondent's reliance

Respondent maintains that a parent should be able to determine how his rights are terminated when that parent was not the underlying cause of the protective proceeding. He claims this would prevent the use of a voluntary termination as a basis for a future termination of rights to other children under MCL 712A.19b(3)(m) (providing for termination where the parent voluntarily terminated his rights to another child due to certain abusive behavior after proceedings were initiated under § 2(b) of the Juvenile Code). However, even if the court had terminated respondent's rights under the Adoption Code, this does not change that these proceedings originally commenced under § 2(b) of the Juvenile Code. In such a scenario, MCL 712A.19b(3)(m) could still apply in future termination proceedings. See *In re Jones*, 286 Mich App at 129 (a voluntary release for adoption does not preclude future application of MCL 712A.19b(3)(m) where the proceedings originally commenced under the Juvenile Code). In any event, since this case did not involve allegations of abuse as defined in MCL 712A.19b(3)(m),³ that subsection would not apply to respondent in the future as a result of his voluntary termination here.

Finally, respondent urges us to consider that a voluntary release of NT under the Adoption Code may have relieved his obligation to pay child support. See *Bradley v Fulgham*, 200 Mich App 156, 159; 503 NW2d 714 (1993) (voluntary release of parental rights under the Adoption Code generally extinguishes child support obligations); but see *Evink v Evink*, 214 Mich App 172, 175-176; 542 NW2d 172 (1995) (voluntary release of parental rights under the Adoption Code does not extinguish child support obligations if custody remains with the other on *In re Buckingham*, 141 Mich App at 828, is not helpful. There, although the trial court accepted the respondent's release under the Adoption Code in the midst of juvenile proceedings, *id.* at 836, nothing required the trial court to do so.

³ Abusive behavior under MCL 712A.19b(3)(m) includes:

- (i) Abandonment of a young child.
- (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
- (iii) Battering, torture, or other severe physical abuse.
- (iv) Loss or serious impairment of an organ or limb.
- (v) Life-threatening injury.
- (vi) Murder or attempted murder.
- (vii) Voluntary manslaughter.
- (viii) Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.
- (ix) Sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

biological parent). Irrespective of a voluntary release's impact on respondent's child support obligations, however, respondent does not explain why this potential windfall would render the trial court's decision erroneous. Notwithstanding, respondent's position appears contrary to the policy of this state, considering that

[f]rom a policy standpoint, this Court has taken a dim view of agreements purporting to sign away the rights of a child, particularly when the result of such an agreement may be that the child becomes a public charge [*Evink*, 214 Mich App at 176, quoting *Van Laar v Rozema*, 94 Mich App 619, 624; 288 NW2d 667 (1980) (alterations in original).]

The financial ramifications of the trial court's decision to respondent simply do not undermine its ruling.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

/s/ Christopher M. Murray