STATE OF MICHIGAN

COURT OF APPEALS

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In re PETTIFORD, Minors.

Nos. 374027; 374884
Charlevoix Circuit Court
Family Division
LC No. 24-007240-NA

Before: CAMERON, P.J., and KOROBKIN and BAZZI, JJ.

PER CURIAM.

These are consolidated appeals[1] in which the respondents are the parents of three children who were removed from their care. In Docket No. 374027, respondent-mother appeals by right the trial court's November 26, 2024 adjudication and December 4, 2024 initial order of disposition. In Docket No. 374884, respondent-father appeals by right the trial court's February 4, 2025 adjudication. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND AND FACTS

On June 12, 2024, the trial court entered an ex parte order placing the children in protective custody with the Department of Health and Human Services (DHHS) because respondent-mother had been arrested for child abuse and domestic violence against the middle child and because respondent-father was already incarcerated and unable to care for the children. The next day, DHHS filed a petition for removal premised on physical abuse by both respondents as well as the concern that respondent-mother would not protect the children against respondent-father. DHHS alleged that on June 11, 2024, respondent-mother's grandmother saw respondent-mother strike the middle child several times early in the morning when the child woke up and refused to go back to sleep. Respondent-mother had since been released from jail and denied these allegations. Additionally, DHHS alleged that in July and August 2023, witnesses saw bruising around the

[1] *In re Pettiford*, unpublished order of the Court of Appeals, entered April 7, 2025 (Docket Nos. 374027 and 374884).

middle child's eye, a bite mark on his back, bruising on the oldest child's arm, and a bite mark on his arm. Consequently, the children were removed from respondents' care, respondent-father pleaded no contest to fourth-degree child abuse, and he was incarcerated in Florida.

Respondents had separate adjudication trials. At respondent-mother's bench trial, she indicated that respondent-father was incarcerated because he had violated his probation for a sex offense committed in Florida. About a year after his release, respondent-father violated his probation again because of the fourth-degree child abuse conviction in Michigan related to the August 2023 injuries found on the oldest child and middle child. Respondent-father also had a prior conviction for brandishing a firearm in public and had been arrested for aggravated assault.

Respondent-mother's aunt testified that on July 4, 2023, she saw bruises as well as bite marks larger than those of a toddler on the oldest child and middle child. The middle child's bruises were on his face, stomach, and back. The grandmother testified similarly, and she and the aunt took photographs of the injuries, which were admitted into evidence. At the trial, respondent-mother denied there being any abnormal bruising, and she claimed to have not seen any bite marks. Trooper Joseph Duff investigated a complaint for child abuse in August 2023, and he testified that he saw a bite mark on the oldest child's left arm, bruises above one of the middle child's eyes, and a bite mark on the middle child's back. He took photographs, which were admitted into evidence. The aunt and grandmother both testified similarly, and the grandmother and the mother of respondent-mother likewise took photographs of the injuries.

Danielle Mutschler, a DHHS worker, investigated the complaint. She testified that she saw and photographed the injuries and that she took the children to the emergency room. Respondents had told Mutschler that the bruises to the middle child had come from falling off a bed and onto a "tote" and that respondent-mother had been at work at the time this occurred. However, medical personnel told Mutschler that this explanation was inconsistent with the injuries and that the injuries were not accidental. When Mutschler informed respondent-mother about this, respondent-mother chose to believe respondent-father's explanation and had no concerns with him being around the children. The children were initially removed from respondent-mother's care but returned shortly after. Although that prior case was ultimately closed in January 2024, DHHS had opposed dismissal. At trial, respondent-mother gave the same explanation for the August 2023 injuries to the middle child, and she testified that she did not believe that respondent-father had caused the injuries. Respondent-mother also testified that nothing about respondent-father's behavior had led her to believe that he would harm herself or the children.

Additionally, the grandmother testified that on June 11, 2024, respondent-mother and the children were living with the grandmother. At approximately 5:00 a.m., the grandmother woke up for work, and the middle child refused to go back to sleep. The grandmother testified that, after she told respondent-mother about the middle child being awake and the grandmother's need to leave for work, she saw respondent-mother wrap the middle child in a blanket, swear at him, and strike him multiple times. The grandmother reported the incident to law enforcement, and Officer Brandon Huff interviewed the grandmother regarding this incident. He testified that the grandmother's description was detailed, but Officer Huff did not see any injuries to the middle child nor did the middle child appear to be overly upset. When he confronted respondent-mother, she denied striking the middle child and explained that the middle child had likely fallen off a coffee table. When asked at trial if she had struck the middle child, respondent-mother exercised

her Fifth Amendment right against self-incrimination because of her pending criminal case. She did testify that she was still married to respondent-father and was open to the possibility of him being around the children if he stopped drinking, demonstrated that he could be with the children alone, and was able to remain out of prison. She indicated that she still did not believe that respondent-father had physically abused any of the children. The trial court found that jurisdiction was proper under MCL 712A.2(b)(1) and (2) because of the injuries to the middle child and the oldest child in July and August 2023 as well as on respondent-mother's actions toward the middle child in June 2024.

The record shows that an initial service plan was created in July 2024 and that an updated plan was created in October 2024. Moreover, in August 2024, respondent-mother completed a psychological evaluation as requested by DHHS. During the initial dispositional hearing, Nicole Archer, the DHHS foster care caseworker for the family, testified about various requirements of the October 2024 case service plan, which she had reviewed with respondent-mother and which respondent-mother had signed. Archer further testified about the various services that had been offered to respondent-mother and that respondent-mother's counselor had informed Archer that respondent-mother was regularly attending and making progress. Similarly, the guardian ad litem and respondent-mother's counsel both stated that respondent-mother had been making progress in addressing some of her barriers to reunification. The trial court adopted the case service plan with slight modifications, such as requesting more one-on-one parenting time with the children.

After respondent-mother's disposition, the trial court conducted an adjudication jury trial for respondent-father. During the trial, the court read the petition aloud to the jury without objection from respondent-father. Also during the trial, testimony was elicited about respondent-father's no-contest plea to fourth-degree child abuse related to the August 2023 incident. The jury found that jurisdiction was proper under MCL 712A.2(b)(1) and (2).

These appeals followed.

II. MOTHER'S APPEAL (DOCKET NO. 374027)

A. TIMELINESS

Respondent-mother first argues that the trial court failed to hold a timely adjudication trial. We disagree.

Given that respondent-mother failed to raise this issue in the trial court, we review it for plain error affecting substantial rights. *In re Sanborn*, 337 Mich App 252, 258; 976 NW2d 44 (2021). A party must meet three requirements to avoid forfeiture under the plain error rule: "1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. (cleaned up). Typically, if an error affected the outcome of a proceeding, it affected substantial rights. *Id*.

We conclude that respondent-mother has failed to identify an error, much less a plain error affecting substantial rights, by the trial court. MCR 3.972(A) provides that "[i]f the child is in placement, the trial must commence as soon as possible, but not later than 63 days after the child is removed from the home unless the trial is postponed[.]" Postponement can occur "on stipulation

of the parties for good cause," "because process cannot be completed," or "because the court finds that the testimony of a presently unavailable witness is needed." MCR 3.972(A)(1)-(3). See also MCR 3.923(G). This Court reviews de novo the interpretation and application of court rules. *Kuebler v Kuebler*, 346 Mich App 633, 653; 13 NW3d 339 (2023).

Here, it is undisputed that the adjudication trial was held more than 63 days after the children's placement with DHHS. However, contrary to respondent-mother's contentions, the record demonstrates that she explicitly waived this requirement on multiple occasions. "A waiver is a voluntary and intentional abandonment of a known right." *LeFever v Matthews*, 336 Mich App 651, 670 n 3; 971 NW2d 672 (2021) (cleaned up). As our Supreme Court has explained:

> "A party who waives a right is precluded from seeking appellate review based on a denial of that right because waiver eliminates any error." To allow a party to assign error on appeal to something that he or she deemed proper in the lower court would be to permit that party to harbor error as an appellate parachute. [*Id*. (citation omitted).]

In the present case, pretrial summaries from July 10, 2024, August 2, 2024, September 11, 2024, October 9, 2024, November 13, 2024, and November 27, 2024, all contain a provision that the parties agreed to waive the 63-day rule. Respondent-mother fails to offer any challenge to these waivers being deficient.

B. REASONABLE EFFORTS

Next, respondent-mother argues that DHHS did not make reasonable efforts at reunification before the trial. This issue is also unpreserved, so we review it under the plain-error standard. *Sanborn*, 337 Mich App at 258. Upon review of the record, we detect no error warranting relief.

"[W]hen a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *Id.* (cleaned up). Petitioner must create this service plan, which "outlin[es] the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *Id*. at 259 (cleaned up).

Here, the record is replete with examples showing that DHHS made reasonable efforts at reunification before the trial. DHHS created both an initial service plan and case service plan in July 2024, which listed respondent-mother's needs, the requirements for each need, and the services that would be provided to facilitate reunification. These services included assistance with developing parenting skills, having supervised visitation, and providing transportation. DHHS updated these plans in October 2024, and these plans continued to list respondent-mother's needs, requirements, and the offered services. A review of the case service plan shows that DHHS workers contacted respondent-mother on numerous occasions and discussed services, family team meetings, and other matters with her. Testimony at the adjudication trial similarly shows that DHHS offered respondent-mother numerous services. DHHS also followed the recommendations from respondent-mother's psychological evaluation by referring her for a substance abuse

assessment and offering counseling, therapy, and supervised visitation. Therefore, we detect no plain error with regard to the reasonable-efforts requirement.

C. ADJUDICATION

Next, respondent-mother argues that the trial court clearly erred by exercising jurisdiction. We disagree.

There are two primary phases in a child protective proceeding: the adjudication phase and the dispositional phase. See *In re Ferranti*, 504 Mich 1, 15-16; 934 NW2d 610 (2019). During the adjudication phase, the trial court determines whether to take jurisdiction over the children and respondent-parents. *Id*. at 15. This can be accomplished via plea or trial. *Id*. If the respondent-parent chooses a trial, "petitioner has the burden of proving by a preponderance of the evidence one or more of the statutory grounds for jurisdiction alleged in the petition." *Id*. (cleaned up).

This Court then reviews "for clear error in light of the court's finding of fact" the trial court's decision on jurisdiction. *In re Miller*, 347 Mich App 420, 425; 15 NW3d 287 (2023) (cleaned up). Clear error occurs when this Court is left with "a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id*. (cleaned up).

Petitioner sought jurisdiction under MCL 712A.2(b)(1) and (2). This Court reviews de novo the interpretation and application of statutes. *Kuebler*, 346 Mich App at 653. The statutory provisions at issue provide, in pertinent part, for jurisdiction over a child:

> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .
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> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

Additionally, under the anticipatory neglect doctrine, a court may assume jurisdiction in cases with multiple children, recognizing that "how a parent treats one child is certainly probative of how that parent may treat other children." *In re Sluiter*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 368266); slip op at 15 (cleaned up).

Here, the trial court found by a preponderance of the evidence that respondent-mother failed to protect the children from respondent-father's physical abuse and that respondent-mother herself physically abused the middle child. The court highlighted the bruising and bite marks in July and August 2023, respondent-mother's claim that she did not notice these injuries, and the

concern that these injuries were nonaccidental. The court also was persuaded by the grandmother's testimony regarding the June 2024 incident, and it held against respondent-mother her decision to invoke her Fifth Amendment right against self-incrimination.

The evidence amply supported these findings. Multiple witnesses testified that they saw bruising and bite marks on the middle child and the oldest child in July and August 2023, and photographs of the injuries were admitted at trial. Medical personnel were unpersuaded by respondents' explanation for the August 2023 injuries, and respondent-mother continued to assert the same explanation at trial. There were no explanations for the July 2023 injuries. At trial, respondent-mother downplayed the bruising and bite marks and did not believe respondent-father had caused any of the injuries. Furthermore, there was testimony about the June 2024 incident and how respondent-mother struck the middle child multiple times, and the court was permitted to draw a negative inference from respondent-mother's decision to invoke her right against self-incrimination. See *Phillips v Deihm*, 213 Mich App 389, 400; 541 NW2d 566 (1995). Accordingly, there was ample evidence for the court to conclude that respondent-mother subjected the children to a substantial risk of harm to their mental wellbeing and to an unfit home environment by reason of neglect, criminality, and cruelty. See MCL 712A.2(b)(1) and (2). There was no clear error in the trial court's decision to exercise jurisdiction.

D. DISPOSITION

Finally, respondent-mother makes several arguments involving her disposition, none of which we find persuasive. Because she failed to raise these in the trial court, we review them for plain error affecting substantial rights. *Sanborn*, 337 Mich App at 258.

First, respondent-mother argues that the trial court failed to adequately specify the requirements for reunification at the initial disposition hearing. We disagree.

The dispositional phase gives the trial court "broad authority to enter orders that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained." *Ferranti*, 504 Mich at 16 (cleaned up). The court holds a dispositional hearing "to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult . . . ." MCR 3.973(A). Before the hearing, DHHS "shall prepare a case service plan that shall be available to the court and all the parties to the proceeding." MCL 712A.18f(2). MCL 712A.18f(3) provides a non-exhaustive list of requirements for the case plan to include, such as what the respondent-parent must to do be reunited with the children. See MCL 712A.18f(3)(a)-(g). Before entering an order of disposition, the court must review this plan as well as "any other evidence offered[.]" MCL 712A.18f(4).

Here, the record shows that the trial court and DHHS took ample steps to both describe and make respondent-mother aware of the reunification requirements. DHHS created an updated plan in October 2024, which listed respondent-mother's needs, requirements, and offered services. Archer went through various aspects of this plan in her testimony at the hearing. Moreover, Archer testified that she had reviewed the plan with respondent-mother and that respondent-mother had signed it. A review of the plan shows that respondent-mother checked the boxes providing that she had participated in and agreed with the plan. And Archer explained that the plan would be

updated within 30 to 34 days, and the record shows that an updated plan was created in early January 2025.

Next, respondent-mother argues that the trial court erred by beginning the hearing before she was present. We disagree. MCR 3.973(D)(3) permits the court to "proceed in the absence of parties provided that proper notice has been given." Here, the record shows that proper notice of the hearing was provided to respondent-mother, and she raises no challenge to this notice being deficient. The hearing was scheduled to begin at 10:00 a.m., and the court waited nearly 30 minutes before conducting the proceedings. Moreover, although she may not have been present when the hearing began, the transcript shows that she was eventually present and was given the opportunity to make any statements or requests.

Lastly, respondent-mother argues and that the trial court failed to find that DHHS was making reasonable efforts at reunification. We disagree. The court must include "a statement in the order of disposition as to whether reasonable efforts were made" either "to prevent the child's removal from home" or else "to rectify the conditions that caused the child to be removed from the child's home." MCR 3.973(F)(3)(a)-(b). Here, the record shows that the court's initial order of disposition explicitly found that DHHS had made reasonable efforts to prevent removal of the children and that DHHS should make reasonable efforts to reunify the family. Moreover, as previously discussed, the record is replete with examples of how DHHS made reasonable efforts at reunification.

III. FATHER'S APPEAL (DOCKET NO. 374884)

A. READING THE PETITION AT TRIAL

In respondent-father's appeal, he argues that the trial court erred by reading the petition to the jury at the adjudication trial without providing him the opportunity to waive its reading. We disagree. Respondent-father failed to raise this issue in the trial court, so we review it for plain error affecting substantial rights. *Sanborn*, 337 Mich App at 258.

MCR 3.972(B)(2) provides: "The court *shall* read the allegations in the petition, *unless* waived." (Emphasis added.) This Court reviews de novo the interpretation and application of court rules. *Kuebler*, 346 Mich App at 653. Contrary to respondent-father's contentions, there was no inherent error in the court's reading of the petition to the jury because the court rules require this. Nor is there any indication that respondent-father sought to waive the petition's reading or was otherwise denied the opportunity to do so. He did not object at the trial or otherwise make known any desire to waive the petition's reading. Nothing about MCR 3.972(B)(2) suggests that the court must actively elicit whether a respondent-parent wishes to waive the petition's reading. Rather, the language suggests that reading is the default unless the reading is explicitly waived. Therefore, the trial court did not commit plain error.

B. ADMISSION OF NO-CONTEST PLEA

Respondent-father also argues that the trial court erred by allowing the jury to consider his no-contest plea to fourth-degree child abuse. We disagree. Respondent-father failed to raise this

issue in the trial court as well, so we review it for plain error affecting substantial rights. *Sanborn*, 337 Mich App at 258.

The purpose of a plea of no contest is primarily "to avoid potential future repercussions which would be caused by the admission of liability, particularly the repercussions in potential future civil litigation." *Lichon v American Universal Ins Co*, 435 Mich 408, 417; 459 NW2d 288 (1990). A plea of no contest "does not admit guilt, it merely communicates to the court that the criminal defendant does not wish to contest the state's accusations and will acquiesce in the imposition of punishment." *Id*.

Relevant to this appeal, MRE 410(a)(2) generally prohibits the admission of a no-contest plea as evidence against a defendant who entered the plea. The majority rule for no-contest pleas allows for "the collateral use of the fact of conviction" at another proceeding, such as for "multiple offender law" or for double jeopardy, but does not allow for the "collateral use of the plea as an admission of misconduct." *In re Lewis*, 389 Mich 668, 679-680; 209 NW2d 203 (1973) (quotation marks and citations omitted). Our Supreme Court adopted this majority rule as it relates to attorney discipline. *Id*. at 680-681.

This Court has applied this majority rule to a termination of parental rights. See *In re Andino*, 163 Mich App 764, 768, 773; 415 NW2d 306 (1987). At the adjudication trial, the rules of evidence generally apply. *Ferranti*, 504 Mich at 15. In *Andino*, this Court determined that MRE 410's effect was "to declare evidence of a nolo contendere plea incompetent as proof that the defendant committed the acts forming the basis for the charge to which he entered his plea." *Andino*, 163 Mich App at 770. Accordingly, this Court held that "evidence of a nolo contendere plea would be inadmissible for this purpose at the adjudicative phase of termination proceedings, but would be admissible at the dispositional phase if relevant and material." *Id*. (emphasis added). Looking to *Lewis* and finding its reasoning persuasive in the context of termination proceedings, this Court held that

> [w]here, as in this case, there was independent proof of the misconduct leading to the charge respondent pled to, we see no reason why the admissibility of evidence of a conviction based on a plea of nolo contendere should be distinguished from evidence of any other type of conviction for purposes of establishing the fact of conviction. [*Id*. at 773.]

Here, there was independent proof of the misconduct that led to the no-contest plea. Respondent-father's plea was for fourth-degree child abuse stemming from the injuries observed on the middle child and the oldest child in August 2023 while under his care. Mutschler, Trooper Duff, and the grandmother provided extensive testimony about the August 2023 incident, which included a description of the children's injuries, medical diagnosis, and photographs. Furthermore, respondent-father's conviction for fourth-degree child abuse was material and relevant. It led to his incarceration in Florida that prevented him from providing proper care and custody of the children. One of DHHS's primary concerns was respondent-father's extensive criminal history, which involved violent offenses against his partners, children, and relatives. But this was not a situation in which the no-contest plea was used to establish wrongdoing.

Respondent-father suggests that DHHS was required to submit a certified copy of his conviction and that the trial court was required to instruct the jury about the limited use of the no-contest plea, but he provides no authority to support these assertions. Moreover, we are unpersuaded that the lack of a limiting instruction affected his substantial rights because there was ample testimony and photographic evidence of the misconduct that led to the plea. Therefore, there was no plain error in allowing the jury to consider his no-contest plea.

Affirmed.

/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin
/s/ Mariam S. Bazzi