**STATE OF MICHIGAN**

**COURT OF APPEALS**

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*In re* UC, Minor.

No. 379061
Lenawee Circuit Court
Family Division
LC No. 23-000168-NA

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Before: CAMERON, P.J., and MALDONADO and WALLACE, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor child, UC. The trial court found statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(a)(*ii*) (desertion of child for 91 or more days without seeking custody during that period), (c)(*i*) (conditions leading to adjudication continue to exist and no reasonable likelihood conditions will be rectified), and (j) (rights to siblings were terminated due to physical or sexual abuse and parent failed to rectify conditions).[1] On appeal, respondent argues the trial court failed to advise her of her appellate rights after the removal and adjudication stages of the child-protective proceedings, requiring reversal of the termination order. We affirm the trial court's order of termination.

## I. BACKGROUND

From 2021 to 2023, respondent reportedly lived in approximately 10 different states, had no reliable employment or housing, and, while seeking inpatient medical care, reportedly left UC in unsuitable housing for two weeks. At the beginning of these child protective proceedings, respondent lived at the Catherine Cobb domestic violence shelter in Adrian, Michigan. The Department of Health and Human Services (DHHS) began investigating and providing services to respondent in June 2023. After repeated concerns and complaints, shelter staff asked respondent

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[1] Respondent has two other children who live with their respective fathers and are not involved in this case.

and UC to leave the shelter. Then on September 1, 2023, an emergency petition was filed by the DHHS seeking to remove UC. The primary basis for the emergency petition was concerns of neglect due to respondent's unstable housing and online messages between respondent and an individual, reportedly a family friend, in Canada that discussed allowing them to take UC from respondent's care to live with them. That same day, the trial court entered an emergency order authorizing UC's removal.

Over several preliminary hearings, it was confirmed that UC was an Indian child[2] under the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, and the Michigan Indian Family Preservation Act (MIFPA), MCL 712B.1 *et seq*. In support of UC's removal from respondent, the DHHS cited its concern that respondent intended to give UC to her friend in Canada, who claimed to be a social worker. The DHHS believed that respondent was receiving misleading advice about how to care for UC and that there was a possibility that this friend was trying to trick respondent. The friend had told respondent that she was coming to the Detroit Airport, and that respondent could drop UC off and she would take UC back to Canada with her. The friend also claimed that she could provide necessary services to UC, had clothes for her, kittens, and a room for UC. However, the DHHS could not confirm this friend's identity or that she had documentation to care for UC as she claimed. The DHHS believed that UC was at substantial risk of harm because respondent was "dead set" on sending UC to live with this family friend.

In addition to the concerns that UC would be sent to a foreign country with an unknown person, the DHHS also cited respondent's behavior at the housing shelter, which led her to be asked to leave. Respondent would yell at UC, which was disruptive to other residents and made them uncomfortable. The DHHS believed this behavior was emotionally harmful to UC because respondent would yell at UC in front of other residents and tell UC that the staff would take her away. The DHHS also had concerns of physical neglect because respondent had been asked to leave and had lived in so many places over the years. As further support for respondent's transience, during the course of the four preliminary hearings, respondent moved from Michigan, to a campground in Kentucky, and then to Seattle, Washington. Further, the DHHS noted there was a prior substantiated case of neglect in Washington, in which UC was removed from respondent's care because respondent did not have UC's medication available when she needed it.

During the several preliminary hearings, representatives from UC's Tribe, the Native Village of Buckland (the Tribe), were present. These representatives included the President of the Tribe, the ICWA coordinator, and the Tribal Administrator. Notably, at the final hearing, the President of the Tribe testified that he believed active efforts were made to prevent the breakup of the family and that those efforts were culturally appropriate. Ultimately, he testified that those efforts were unsuccessful and that removal was necessary because of possible neglect if UC was

[2] Under 25 USC 1903(4), "Indian child" is an unmarried tribal member, or unmarried individual eligible for tribal membership and biological child of a tribal member, who is under 18 years old. MIFPA's definition of "Indian child" is the same, except it does not include a requirement that a nontribal member eligible for membership be a biological child of a tribal member. MCL 712B.3(k).

in the care of respondent. The Tribe did not have any foster homes that would be appropriate for UC and supported her current placement.

At the conclusion of the preliminary hearing, the trial court stated that it had explored at length whether there were any other services or arrangements other than removal to ensure UC's safety, but those efforts were unsuccessful. The trial court noted that possible relative placements were being considered, but at that time they were not available. The trial court authorized the petition for removal and determined that the DHHS had fulfilled its obligation to make active efforts and to ensure compliance with ICWA and MIFPA. The trial court failed to advise respondent of her right to appeal the removal of UC from her care.

At the adjudication hearing, respondent pleaded no contest to the factual allegations establishing jurisdiction. The basis for the no-contest plea was possible criminal liability due to the allegations of physical abuse. Specifically, the DHHS alleged that there was an incident in which shelter staff heard respondent trying to calm UC down in their living space, followed by a noise in the room and what sounded like kicking on the walls. When staff checked on respondent and UC, UC had a red mark on her thigh.

At the conclusion of the adjudication hearing and upon respondent's plea, the trial court found that there was a risk of harm to UC if she remained with respondent, that the statutory grounds for adjudication had been met, and that jurisdiction was appropriate. The trial court advised respondent of the rights that she was waiving by pleading no contest, including her right to a trial, the right to have petitioner prove the allegations in the petition, the right to have witnesses against her testify under oath, and the right to have the court subpoena any witnesses she believed could give testimony in her favor. However, the trial court again did not advise respondent of any of her appellate rights.

From December 2024 through April 2025, respondent was absent and stopped attending parenting times. The trial court requested that the DHHS file a petition to terminate parental rights due to respondent's "very open decision to abandon efforts towards reunification . . . ." In May 2025, a termination hearing was held, and respondent was present. Respondent reported she was living in Alaska and admitted she had not seen UC for more than 90 days. She attributed her absence to housing, employment, and health struggles. After several hearings, the DHHS, UC's lawyer-guardian ad litem (L-GAL), and the Tribe recommended respondent's parental rights be terminated. The trial court entered an order terminating respondent's parental rights to UC, and this appeal followed.

## II. ANALYSIS

Respondent argues that the trial court erred when it failed to advise her of her appellate rights at the removal and adjudication stages, justifying reversal of the order terminating her parental rights. Because the trial court's failure to advise respondent of her appellate rights did not affect her substantial rights, we affirm.

### A. PRESERVATION AND STANDARD OF REVIEW

Generally, when a party challenges a trial court's advice of rights after a removal or entering a plea to facts establishing jurisdiction, the party must move to withdraw the plea or make an objection at the trial court for the issue to be preserved. *In re Pederson*, 331 Mich App 445, 462; 951 NW2d 704 (2020). Respondent did not object to the trial court's failure to inform her of her appellate rights at any point during the lower court proceedings. Respondent also did not object to the advice of rights provided after her plea of no contest at the adjudication hearing, which did not include any reference to respondent's right to appeal. Therefore, this issue is unpreserved.

Unpreserved claims of error in child-protective proceedings are reviewed for plain error, *id*., as are "adjudication errors raised after the trial court has terminated parental rights," *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019). To establish plain error, a party must show: "(1) error occurred; (2) the error was "plain," i.e., clear or obvious; and (3) the plain error affected their substantial rights." *Id*. To establish that an error affected substantial rights, it "must have seriously affected the fairness, integrity or public reputation of judicial proceedings . . . ." *Id*. (quotation marks, brackets, and citation omitted).

## B. STATUTORY FRAMEWORK

Child-protective proceedings begin when a petition seeking the removal of a child from their home is filed at the trial court. *In re McCarrick/Lamoreaux*, 307 Mich App 436, 447-448; 861 NW2d 303 (2014). When a child is removed on an emergency basis, the DHHS must immediately contact a judge or referee to seek an ex parte placement order and, unless adjournment is necessary to secure the attendance of all necessary parties, the trial court must hold a hearing within 24 hours. *Id*. At a preliminary hearing, a trial court is required to determine whether the child should stay in their home, return home, or be placed in foster care. *Id*. at 448; see also MCR 3.965(B)(11). Generally, "[i]f the trial court orders placement of the child in foster care, it must make explicit findings that it is contrary to the welfare of the child to remain at home, and reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required[.]" *In re Benavides*, 334 Mich App 162, 168; 964 NW2d 108 (2020) (citations and quotation marks omitted).

However, a heightened standard applies in cases seeking the removal of an Indian child. MCR 3.967(D) provides:

> An Indian child may be removed from a parent or Indian custodian . . . only upon *clear and convincing evidence* that *active efforts* as defined in MCR 3.002 have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that these efforts have proved unsuccessful, and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. The evidence must include the testimony of at least 1 qualified expert witness, who has knowledge of the child rearing practices of the Indian child's tribe, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. [Emphasis added. See also MCL 712B.15(2).]

As defined in the MIFPA, active efforts include, but are not limited to, doing or addressing *all* of the following:

> (*i*) Engaging the Indian child, child's parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child's Indian tribes and Indian social services agencies.
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> (*ii*) Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.
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> (*iii*) Conducting or causing to be conducted a diligent search for extended family members for placement.
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> (*iv*) Requesting representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practice within the tribal community to evaluate the circumstances of the Indian child's family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional customary support, actions, and services to address those circumstances.
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> (*v*) Completing a comprehensive assessment of the situation of the Indian child's family, including a determination of the likelihood of protecting the Indian child's health, safety, and welfare effectively in the Indian child's home.
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> (*vi*) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe's advice throughout the proceeding.
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> (*vii*) Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian Child.
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> (*viii*) Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the Indian child's permanency plan, including, when requested by the tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction.
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> (*ix*) Offering and employing all available family preservation strategies and requesting the involvement of the Indian child's tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child's tribe.

> (*x*) Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs, and providing information about those resources to the Indian child's family, and actively assisting the Indian child's family or offering active assistance in accessing those resources.
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> (*xi*) Monitoring client progress and client participation in services.
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> (*xii*) Providing a consideration of alternative ways of addressing the needs of the Indian child's family, if services do not exist or if existing services are not available to the family. [MCL 712B.3(a). See also MCR 3.002.]

This Court has recognized that, " '[a]ctive efforts' require affirmative, as opposed to passive, efforts," and "more than the standard 'reasonable efforts' approach." *In re Beers*, 325 Mich App 653, 680; 926 NW2d 832 (2018).

After the court authorizes the petition for removal, "child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). In the adjudicative phase, the trial court determines whether it can exercise jurisdiction over the child and the respondent under MCL 712A.2(b). *Id*. For Indian children, a trial court's exercise of jurisdiction must be supported by clear and convincing evidence. *In re Jacobs*, 433 Mich 24, 39-40; 444 NW2d 789 (1989). When a party enters a plea of admission or no contest, the trial court can exercise jurisdiction over the child. *In re Ferranti*, 504 Mich at 15. "Once the trial court's jurisdiction is established, the case moves to the dispositional phase." *Id*. at 16. "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. The court has broad authority in effectuating dispositional orders. *Id*.

Upon the filing of a termination petition, a termination hearing is held at which the trial court acts as the fact-finder and determines whether one or more statutory grounds for termination exist and whether termination is in the child's best interests. MCR 3.977. When termination proceedings involve an Indian child, there is a "dual burden of proof." *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 58; 874 NW2d 205 (2015). In addition to finding that statutory grounds for termination exist by clear and convincing evidence, the trial court must ensure that the protections of the MIFPA and the ICWA are complied with.[3] See *id*. With regard to MIFPA, MCL 712B.15 provides in relevant part as follows:

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[3] Our Supreme Court succinctly explained the relationship between ICWA and MIFPA in *In re Williams*, 501 Mich 289, 294; 915 NW2d 328 (2018), as follows:

> ICWA sets a floor, establishing the minimum national standards that must be met before an Indian child may be removed from his or her family in the context of child protective proceedings. 25 USC 1902. MIFPA similarly provides special

> (3) A party seeking termination of parental rights to an Indian child under state law must demonstrate to the court's satisfaction that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the active efforts were unsuccessful
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> (4) No termination of parental rights may be ordered in a proceeding described in this section without a determination, supported by evidence beyond a reasonable doubt, including testimony of at least 1 qualified expert witness as described in [MCL 712B.17], that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. [See also MCR 3.977(G)(2).]

Upon making the required findings, "the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5).

## C. APPLICATION

In the present case, we must determine whether the trial court made a clear or obvious error by failing to advise respondent of her appellate rights after UC's removal and after respondent's plea of no contest at the adjudication phase. If it is determined the trial court erred, the error "must have seriously affected the fairness, integrity or public reputation of judicial proceedings" to warrant reversal. *In re Ferranti*, 504 Mich at 29 (quotation marks, brackets, and citation omitted).

We conclude that the trial court committed clear and obvious error when it failed to advise respondent of her right to appeal, first at the removal stage, and later at the adjudication stage. When a party's child is removed from their care at a preliminary hearing, the trial court is required under MCR 3.965(B)(15) to advise the party of their appellate rights. *In re Barber/Espinoza*, ___ Mich ___, ___ NW3d ___ (2025) (Docket No. 369359); slip op at 7. Specifically, MCR 3.965(B)(15) states: "If the court orders removal of the child from a parent's care or custody, the court shall advise the parent, guardian, or legal custodian of the right to appeal that action." Recently, our Supreme Court confirmed that a trial court commits clear or obvious error when it fails to do so. *Id.* at ___; slip op at 7. A trial court is similarly required to advise a party of their appellate rights when entering a plea of no contest at the adjudication phase under MCR 3.971(B)(6) through (8).

In this case, the trial court again failed to advise respondent of her appellate rights after her no-contest plea. Approximately one year after her no-contest plea, the trial court acknowledged this error and attempted to retroactively remedy it by reading respondent's appellate rights on the record. Nevertheless, the trial court's failure to provide respondent advice of her appellate rights before entering her plea of no contest, as required under MCR 3.971(B)(6) through (8), amounts

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protections when an Indian child is involved in certain proceedings in Michigan courts. Sometimes the protections afforded under MIFPA are greater than those provided under ICWA.

to clear or obvious error. Consequently, we must determine whether either of these instances of error affected respondent's substantial rights under the plain error standard.

Respondent contends, had she been advised of her right to appeal UC's removal from her care, that she would have done so and prevailed because UC's removal was based on insufficient and speculative facts. Respondent specifically argues: (a) she had stable housing at the time of removal; (b) she was participating in counseling services; (c) no evidence could establish UC was subject to any physical or emotional abuse; and (d) the DHHS's concerns that respondent was going to relinquish care to a family friend in Canada were purely speculative.

As described above, MCR 3.967(D) requires clear and convincing evidence of active efforts before removing an Indian child from a parent and a showing that continued custody would result in "serious emotional or physical damage to the child." Here, the trial court held several preliminary hearings, at which the DHHS's concerns of potential emotional or physical harm leading to UC's removal were discussed. At the initial hearing on September 1, 2023, the DHHS expressed concern regarding allegations from the shelter where respondent was staying that she was being uncooperative with staff. The DHHS also provided evidence showing respondent intended to give UC to a family friend in Canada. Meanwhile, over the multiple preliminary hearings, respondent's transience was apparent, as the DHHS reported that she moved from Michigan to a campground in Kentucky, and then to Seattle.

The trial court did not err when it authorized the removal of UC from respondent based on the DHHS's allegations. We generally review the trial court's findings of fact for clear error and a finding is only clearly erroneous if this Court "is left with a definite and firm conviction that a mistake has been made." *In re Benavides*, 334 Mich App at 167, citing *In re Diehl*, 329 Mich App 671, 687; 944 NW2d 180 (2019).

First, the trial court considered significant evidence that UC could be subject to future harm under the care of respondent, including respondent's earlier failure to carry UC's medication, and her lack of stable housing and employment. But the most critical fact was that UC was subject to imminent and substantial risk of harm because respondent repeatedly expressed an intent to send UC to live with a friend in a foreign country. The risk to UC was imminent because online messages indicated that this individual was flying to Detroit in the next several days and asked that respondent drop UC off at the airport. Although this individual claimed to own a family support services business in Edmonton, Canada, the DHHS could not confirm this information. The individual also sent a picture of the room for UC, which, upon investigation, was determined to be a photo taken from the internet. Although respondent contests DHHS's description of the facts, it cannot be said the trial court erred by relying on DHHS's description of the facts instead of respondent's. Accordingly, had respondent been read her appellate rights and appealed on the basis that the DHHS was relying on speculative facts, she likely would not have succeeded. Therefore, the failure to read respondent her appellate rights when UC was removed did not affect respondent's substantial rights. See *In re Ferranti*, 504 Mich at 29.

Second, the trial court made sufficient findings on the record regarding the DHHS's active efforts. The trial court stated on the record that the DHHS had fulfilled its "obligation to offer active efforts and to ensure the ICWA and MIFPA statutes are being followed . . . ." The trial court arrived at that conclusion based on its earlier stated findings regarding the DHHS's efforts in preventing removal. Respondent suggests the trial court failed to make any findings on the record that active efforts were made, without providing any authority that would require a trial court to state explicitly which efforts were considered active efforts. The trial court clearly made findings regarding the DHHS's efforts and later concluded that those active efforts complied with ICWA and MIFPA. MCR 3.967(D) only requires the trial court make the relevant findings under its heightened requirements for Indian children; it does not require the trial court to state its findings in a particular way or sequence. Accordingly, UC's removal was adequately supported by the trial court's active efforts findings. It cannot be said the trial court's actions affected respondent's substantial rights because respondent's allegations regarding the trial court's active-efforts findings do not amount to error.[4]

Finally, despite the trial court's failure to advise respondent of her appellate rights, any challenge to the assumption of jurisdiction under MCR 3.971(C) lacks merit because respondent cannot show the error was outcome-determinative. The trial court stated respondent's no-contest plea was the basis for its assumption of jurisdiction.

Although MCR 3.971(C) affords respondent the ability to challenge the trial court's assumption of jurisdiction because of the trial court's error, respondent is unable to establish any such challenge would result in a favorable outcome. The trial court cited allegations of respondent's child abuse, respondent's housing and employment instability, and her lack of parenting skills as the factual basis for her no-contest plea. On appeal, respondent fails to provide this Court with any reason why these allegations would not be sufficient in the event respondent opted for a trial instead of a plea. See *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008) ("In order to find that a child comes within the court's jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, either at trial or by plea.").

Respondent was alleged to have physically and emotionally abused UC at the shelter, and the trial court noted respondent's transience, lack of employment, and lack of parenting abilities when accepting her plea of no contest. If respondent had opted against pleading no contest in favor of a trial, the allegations against her would be substantial and sufficient to meet the clear and convincing standard required at that stage. See *In re Jacobs*, 433 Mich at 39-40. This Court gives significant deference to a trial court's findings of fact when reviewing for clear error. *People v*

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[4] Respondent generally argues that the trial court ordered UC's removal "with no findings on the record of 'active efforts' let alone proof by clear and convincing evidence of active efforts." However, this is the extent of respondent's argument. Respondent does not discuss the efforts that were made by the DHHS to provide her services, including housing assistance; reach out to extended family members; or contact the Tribe. Nor does respondent identify what additional efforts she believes were necessary to fulfill the DHHS obligation to make active efforts to prevent removal. "A party cannot simply assert an error or announce a position and then leave it to this Court to discover and rationalize the basis for [her] claims, or unravel and elaborate [her] argument, and then search for authority either to sustain or reject [her] position." *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014), citing *Mitchell v Mitchell*, 296 Mich App 513, 524; 823 NW2d 153 (2012). Therefore, we decline to address whether the DHHS made active efforts any further.

*McSwain*, 259 Mich App 654, 683; 676 NW2d 236 (2003). Because respondent cannot demonstrate the trial court's error was outcome-determinative, this argument fails. See *In re Barber/Espinoza*, ___ Mich at ___; slip op at 8 (finding the trial court did not commit plain error because respondent could not show there would be a different outcome had the trial court advised her of her appellate rights).

## III. CONCLUSION

The trial court's error of failing to advise respondent of her appellate rights at the removal and adjudication stages does not amount to error necessitating reversal.

Affirmed.

/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado
/s/ Randy J. Wallace