

STATE OF MICHIGAN
COURT OF APPEALS

ETOY POPLAR, next of friend of A.C.,

Plaintiff-Appellant,

v

AUBURN COPELAND,

Defendant-Appellee.

UNPUBLISHED

October 02, 2026

11:15 AM

No. 374739

Genesee Circuit Court

LC No. 2023-119366-CZ

Before: KOROBKIN, P.J., and RIORDAN and MARIANI, JJ.

PER CURIAM.

Plaintiff, as next of friend of her minor daughter, AC, filed the instant lawsuit against defendant, AC’s father, raising claims of assault, battery, and intentional infliction of emotional distress (IIED) based on defendant’s alleged sexual abuse of AC. That alleged abuse had also given rise to criminal and child-protective proceedings against defendant, which ended in defendant entering a plea of nolo contendere to fourth-degree criminal sexual conduct (CSC-IV), MCL 750.520e, and agreeing to the termination of his parental rights to AC. Before trial in the instant case, plaintiff moved to introduce, as relevant here, evidence of defendant’s CSC-IV conviction, his corresponding registration under the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, and the termination of his parental rights to AC. Defendant moved to exclude the same. The trial court agreed with defendant’s position and ruled that the offered evidence was inadmissible under MRE 410. Following trial, the jury found defendant not liable on all claims. Plaintiff now appeals the trial court’s evidentiary ruling. We affirm.

I. BACKGROUND

Plaintiff alleges that defendant sexually assaulted then-ten-year-old AC on more than one occasion between September 2020 and January 2021. According to plaintiff, AC disclosed this abuse to her in January 2021, at which point plaintiff reported the allegations to law enforcement and the Department of Health and Human Services (DHHS). Police and DHHS investigations ensued, resulting in criminal and child-protective proceedings. Defendant was charged with one count of second-degree CSC, MCL 750.520c(1)(a), and one count of CSC-IV. Although he consistently denied molesting AC, defendant ultimately pleaded nolo contendere to one count of

CSC-IV.¹ As a result of that conviction, defendant was required to, and did, register as a Tier III sex offender under SORA. See MCL 28.723(1)(a); MCL 28.722(i), (u)(ii) & (v)(vi). Approximately two months after defendant's entry of his nolo contendere plea, the court presiding over the child-protective proceedings entered an Order Following Hearing to Terminate Parental Rights (termination order) stating that it found "by clear and convincing evidence [that] the parental rights of [defendant were] hereby terminated," that defendant "voluntarily consented to the termination," and that "the court did announce a statutory basis for termination"—namely, MCL 712A.19b(3)(m).²

Plaintiff subsequently filed the instant lawsuit on behalf of AC, seeking damages in tort from defendant for assault, battery, and IIED, based on the same alleged abuse that had served as the basis for the criminal and child-protective proceedings against him. As noted, shortly before trial, plaintiff filed a "Motion in Limine to Include Evidence of Criminal Sexual Conduct." Plaintiff identified MRE 401 and 402 as the basis for the motion and, through it, plaintiff sought the admission of, among other things: a partially redacted³ copy of defendant's judgment of sentence in the criminal proceedings, a copy of defendant's registration on the Michigan Sex Offender Registry, and a copy of the termination order. According to plaintiff's motion, "[t]he fact that a criminal Judgment of Sentence was entered against [d]efendant . . . for criminal sexual conduct against his daughter, [AC], has a strong tendency to make the existence of the fact that he molested his daughter more probable." Likewise, "[t]he fact that [d]efendant is on the Michigan Sex Offender Registry for committing criminal sexual conduct against his daughter, [AC], has a strong tendency to make the existence of the fact that he molested his daughter more probable." And as for the termination order, the motion explained that "[d]efendant's sexual molestation of his daughter was the premise of that court action" and "[t]he fact that [d]efendant's parental rights were terminated . . . for having sexually molested his daughter, [AC], has a strong tendency to make the existence of the fact that he molested his daughter more probable."

Defendant opposed plaintiff's motion and filed his own motion in limine to "exclud[e] evidence that he was charged with a crime, that he pleaded no contest to a crime, and that his parental rights were terminated[.]" According to defendant, such evidence would be irrelevant under MRE 402, unfairly prejudicial under MRE 403, and inadmissible under MRE 410. The trial court heard arguments on the parties' competing motions immediately before the start of trial. Relying primarily on MRE 410, the trial court determined that plaintiff's offered evidence was inadmissible because it was inextricably linked to defendant's nolo contendere plea. The court,

¹ According to defendant, he entered this plea "upon the advice of counsel to avoid further attorney fees, to avoid jail time, and to avoid putting my daughter through a trial."

² MCL 712A.19b(3)(m)(i) provides that a "court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence," that "[t]he parent is convicted of 1 or more of" certain offenses, including CSC-IV, "and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child."

³ The only offered redaction to the judgment of sentence was to black out the entry on the judgment designating what type of plea defendant entered as to CSC-IV.

however, concluded that plaintiff could still present some evidence and testimony, including from police and DHHS personnel, about the investigation into plaintiff's allegations.

The ensuing jury trial spanned two days. As AC testified at trial, the alleged abuse involved three instances of defendant touching AC's private areas "over [her] clothes"—namely, her "chest" and "[b]etween [her] legs in the front." Defendant denied the allegations and his theory of defense was that plaintiff and AC had fabricated them—plaintiff, out of a desire to extract money from him, and AC, out of anger at him for disciplining her. With no physical evidence of the alleged abuse, the parties' proofs focused on credibility. Plaintiff presented testimony from herself and AC; police and DHHS personnel involved in the investigation into the allegations of abuse; and a sexual trauma therapist who had interviewed AC following her disclosure of the alleged abuse and had provided counseling to her thereafter. After recalling AC as a witness, defendant presented testimony from himself. Ultimately, the jury found defendant not liable on all claims. This appeal followed.

II. STANDARDS OF REVIEW

"We review the circuit court's decision to exclude evidence for an abuse of discretion." *Elher v Misra*, 499 Mich 11, 21; 878 NW2d 790 (2016). "A trial judge abuses his or her discretion when the judge selects an outcome that is outside the range of principled outcomes." *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 153-154; 908 NW2d 319 (2017). "We review de novo questions of law underlying evidentiary rulings, including the interpretation of statutes and court rules." *Elher*, 499 Mich at 21. A trial court necessarily abuses its discretion when it excludes evidence "because of an erroneous interpretation of law." *Id.*

When interpreting the Michigan Rules of Evidence, we look to "the legal principles that govern the construction and application of statutes." *Craig v Oakwood Hosp*, 471 Mich 67, 78; 684 NW2d 296 (2004) (cleaned up). Accordingly, when an evidentiary rule's language is unambiguous, "we apply the plain meaning of the text without further judicial construction or interpretation." *Id.* (cleaned up).

"[A]n evidentiary error is not ordinarily grounds for appellate relief, and such relief is appropriate only when the error results in substantial prejudice that denies a fair trial to the aggrieved party." *Mitchell*, 321 Mich App at 157-158, citing MCR 2.613(A); see also MRE 103(a). "A trial court's error is harmless if, based on review of the entire record, it is more probable than not that the error was not outcome determinative; if the probability runs in the other direction, then it is reversible error." *Nahshal v Fremont Ins Co*, 324 Mich App 696, 717; 922 NW2d 662 (2018).

III. ANALYSIS

Plaintiff argues that the trial court erred by excluding evidence regarding defendant's CSC conviction, SORA registration, and termination of parental rights to AC under MRE 410, and the jury's judgment in defendant's favor must be vacated as a result. We disagree.

As pertinent here, MRE 410(a)(2) provides:

(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

* * *

(2) a *nolo contendere* plea—except that, to the extent that evidence of a guilty plea would be admissible, evidence of a *nolo contendere* plea to a criminal charge may be admitted in a civil proceeding to defend against a claim asserted by the person who entered the plea.^[4]

Because MRE 410(a)(2)’s expressly stated exception to this general prohibition does not apply in this case,⁵ the relevant question on appeal is whether plaintiff’s offered evidence of defendant’s CSC conviction, SORA registration, and termination of his parental rights amounted to “evidence of” his “*nolo contendere* plea.” If so, then MRE 410 precluded the admission of such evidence at trial.

As our Supreme Court has explained, “[t]he primary purpose of a plea of *nolo contendere* is 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).⁶ To that end, a *nolo contendere* plea “does not admit guilt” and “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.* “To the extent a *nolo contendere* plea is an implicit admission of guilt, it is such an admission only for the purposes of the criminal proceeding in which the plea is entered.” *Id.* at 417-418.

The “primary purpose” and fundamental characteristics of this type of plea serve as the animating principle behind MRE 410’s prohibition: “by allowing a criminal defendant to enter a plea that is not admissible against him in a future criminal or civil action, [MRE 410] facilitate[s] plea bargaining and the concomitant speedy resolution of criminal cases.” *Id.* at 420. Accordingly, “the effect of MRE 410 is 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.” *In re Andino*, 163 Mich App 764, 770; 415 NW2d 306 (1987).

⁴ Correspondingly, MRE 803(22)(A)’s hearsay exception for the admission of “[e]vidence of a final judgment of conviction” does not apply when the conviction is “entered after . . . a *nolo contendere* plea unless allowed by MRE 410.”

⁵ The exception applies when “a person who entered a *nolo contendere* plea to a criminal charge then files a civil lawsuit.” *Masrur v Regents of Univ of Mich*, 344 Mich App 102, 114; 999 NW2d 55 (2022). In such circumstances (which are undisputedly not present here), “the defendant in the civil suit may use the evidence of the now-plaintiff’s *nolo contendere* plea as a defense.” *Id.*

⁶ Although the 1991 amendment to MRE 410 partially abrogated *Lichon*, it “d[id] not change the character or purpose of the plea, as discussed by the *Lichon* Court.” *Akyan v Auto Club Ins Ass’n (On Rehearing)*, 208 Mich App 271, 276; 527 NW2d 63 (1994).

That evidentiary prohibition, however, does not categorically require all evidence of a *nolo contendere* plea to be excluded under MRE 410. Our Supreme Court, for instance, has recognized that the conviction resulting from a *nolo contendere* plea may be admissible in certain circumstances to show “the fact of conviction” where that fact in itself is a legally salient issue—for instance, “to apply multiple offender law, to deny or revoke [a] license because of conviction, [or] to claim double jeopardy in subsequent prosecution.” *State Bar Grievance Administrator v Lewis*, 389 Mich 668, 679-680; 209 NW2d 203 (1973) (quotation marks and citation omitted). The *Lewis* Court therefore permitted such use of a conviction where State Bar Rules permitted the suspension of an attorney’s ability to practice following his conviction for certain crimes. See *id.* at 681 (“Rule 16.17 permits the State Bar Grievance Administrator to take expedited action against an attorney convicted of a serious crime. It does not require independent proof of misconduct; *the fact of conviction alone establishes the Administrator’s case.*”) (emphasis added). See also *In re Andino*, 163 Mich App at 770-773 (concluding that, during the dispositional phase of termination proceedings where the full rules of evidence do not apply, the conviction resulting from a *nolo contendere* plea could be admitted to establish the fact of conviction when the termination of parental rights is predicated on the parent’s conviction of certain felonies). A conviction following a *nolo contendere* plea may also be admissible as impeachment evidence pursuant to MRE 609(a), if the conviction falls within the ambit of that rule. See *Shuler v Mich Physicians Mut Liability Co*, 260 Mich App 492, 511; 679 NW2d 106 (2004). None of this authority, however, countenances use of the conviction or other evidence of a *nolo contendere* plea “as an admission of misconduct.” *Lewis*, 389 Mich at 680; see also *Lichon*, 435 Mich at 422 (“In any subsequent action, whether arising out of the same facts or not, neither the *nolo* plea nor the conviction based on the plea may be admitted as either an admission or proof of guilt.”) (quotation marks and citation omitted).

Applying this authority to the instant case, we see no reversible error in the trial court’s ruling on plaintiff’s motion in limine. As detailed above, that motion made clear that plaintiff sought to admit defendant’s conviction, his SORA registration, and the order terminating his parental rights as proof that defendant sexually molested AC. This amounted to the impermissible collateral use of defendant’s plea as an admission of misconduct, which MRE 410 prohibits.

Start with defendant’s CSC-IV conviction. As discussed, that conviction could conceivably be admissible if the mere fact of the conviction itself were legally salient, see *Lewis*, 389 Mich at 679-680—but at no point has plaintiff advanced such an argument, nor do we see grounds for one here. As is clear from her motion in limine, plaintiff sought to admit defendant’s conviction to prove that defendant did, in fact, molest his daughter; the conviction was relevant, she posited, because it had “a strong tendency to make the existence of the fact that [defendant] molested his daughter more probable.” This is plainly an impermissible attempt to use defendant’s plea and conviction as “an admission or proof of guilt.” *Lichon*, 435 Mich at 422 (quotation marks and citation omitted).

On appeal, plaintiff suggests that defendant’s conviction could be used as impeachment evidence to rebut his denials of sexual abuse. Plaintiff, however, did not raise this argument below, thereby waiving appellate review of it. See *Tolas Oil & Gas Exploration Co v Bach Srvs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023) (explaining that, under the “raise or waive” rule of appellate review for civil cases, “the party asserting error . . . must show that the same basis for the error claimed on appeal was brought to the trial court’s attention” and “[i]f a litigant does

not raise an issue in the trial court, this Court has no obligation to consider [it]”). And in any event, while this Court has recognized that MRE 410 does not preclude the use of a conviction from a nolo contendere plea as impeachment evidence under MRE 609, see *Shuler*, 260 Mich App at 511, plaintiff wholly fails to explain how defendant’s conviction might fall within the scope of that evidentiary rule—which requires, among other things, that the crime underlying the conviction “contain[] an element of dishonesty or false statement” or “an element of theft.” MRE 609(a)(1)-(2). Plaintiff does not argue, and there is nothing to suggest, that defendant’s CSC-IV conviction would fit that bill.

The conclusion is the same regarding defendant’s SORA registration. As with defendant’s conviction, plaintiff moved to introduce this evidence as proof that defendant sexually abused AC; according to plaintiff’s motion, defendant’s SORA registration was admissible because it had “a strong tendency to make the existence of the fact that he molested his daughter more probable.” And indeed, defendant’s registration as a Tier III offender was an automatic and inherent consequence of his pleaded-to conviction of CSC-IV. See MCL 28.723(1)(a); MCL 28.722(i), (u)(ii) & (v)(vi); see also *People v Fonville*, 291 Mich App 363, 391-392; 804 NW2d 878 (2011). If admitted as plaintiff intended, defendant’s SORA registration would thus serve as evidence of his underlying conviction and plea, impermissibly offered and used as proof of an admission to the conduct underlying the plea.

On appeal, plaintiff relies on MCL 768.27a(1) to argue that the Michigan Legislature enacted a policy of protecting minors which, according to plaintiff, “favors the use of evidence obtained as a product of [defendant’s] no contest plea, including his registration with SORA.” Once again, however, plaintiff did not raise this argument below, and in any event, we do not find it persuasive. MCL 768.27a(1) states that, “*in a criminal case* in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible . . .” (Emphasis added.) This provision, according to our Supreme Court, “reflects a substantive legislative determination that juries should be privy to a defendant’s behavioral history in cases charging the defendant with sexual misconduct against a minor.” *People v Watkins*, 491 Mich 450, 476; 818 NW2d 296 (2012). As MCL 768.27a expressly provides, however, its rule and underlying policy judgment apply to criminal cases; there is nothing to indicate that either has any bearing on the admissibility question before us in this civil matter.

Finally, as with the evidence of defendant’s conviction and SORA registration, plaintiff sought to admit the order reflecting that defendant voluntarily terminated his parental rights to AC as substantive proof that he molested his daughter. Per plaintiff’s motion in limine, “[d]efendant’s sexual molestation of his daughter was the premise of that court action” and “[t]he fact that [d]efendant’s parental rights were terminated . . . for having sexually molested his daughter, [AC], has a strong tendency to make the existence of the fact that he molested his daughter more probable.” The termination order plaintiff sought to admit expressly identified MCL 712A.19b(3)(m) as the statutory basis for termination. As noted, that statutory provision permits the court to terminate parental rights if “[t]he parent is convicted” of one or more of the crimes listed in that provision, including CSC-IV. MCL 712A.19b(3)(m)(i). Thus, similar to his SORA registration, defendant’s conviction—and therefore his plea—inheres in the statutory basis for termination identified in the order, and plaintiff sought admission of that order to prove that defendant admitted to the conduct underlying the plea and conviction that provided the order’s

basis. Plaintiff does not grapple with these particulars of the termination order, or explain why it was admissible under MRE 410 despite them.

At bottom, plaintiff sought to present defendant's conviction, his SORA registration, and the order terminating his parental rights as proof of an admission that he sexually molested his daughter. For the reasons discussed, these proofs constituted "evidence of" defendant's nolo contendere plea whose offered relevance and proposed use at trial were impermissible under MRE 410. Plaintiff has failed to show that the trial court abused its discretion when it excluded this evidence under that court rule.

Plaintiff's principal arguments to the contrary are unavailing. Plaintiff relies heavily on this Court's decision in *People v Cowhy*, 330 Mich App 452; 948 NW2d 632 (2019), but *Cowhy* is plainly inapposite. That case involved an analysis of MRE 410(a)(4), which pertains to "statement[s] made during plea discussions with an attorney for the prosecuting authority," and this Court explicitly acknowledged that the other subsections of MRE 410, including MRE 410(a)(2), were not at issue. *Cowhy*, 330 Mich App at 462-463. Plaintiff argues that "[t]he clear import of *Cowhy* is that the trial court should not expand the restrictions of MRE 410." This is accurate insofar as *Cowhy* recognized and applied the basic interpretive principle that this Court "cannot read into a court rule a provision not written by the Supreme Court." *Id.* (quotation marks and citation omitted). But nothing in *Cowhy* supports the notion that the trial court violated that principle in this case. To the contrary, for the reasons discussed, plaintiff has failed to show that the trial court abused its discretion in concluding that the evidence offered by plaintiff's motion in limine constituted inadmissible "evidence of" defendant's nolo contendere plea under MRE 410, given the particular nature of that evidence and the arguments for its admission that plaintiff advanced.

Furthermore, to the extent plaintiff suggests that she could have, at trial, presented evidence of defendant's conviction, his SORA registration, and/or the termination of his parental rights without mentioning or implicating his plea, she has failed to develop a meaningful substantive argument to that effect. Plaintiff, for instance, has not explained how the bare fact that defendant was convicted of CSC-IV and registered as a sex offender, with nothing more, would be admissible under not only MRE 410 but also MRE 401, 403, and 404(b), given how it would leave the jury to speculate that the conviction and registration were due to defendant's (admitted or proven) guilt of sexually molesting AC,⁷ or his guilt of some other sexual offense(s) not at issue in this case. Similarly, as to defendant's voluntary termination of his parental rights, plaintiff has not addressed in any detail how much "probative value" there would be in the fact that defendant, having been accused of sexual abuse by his daughter and her mother, would allow his rights in that broken relationship to be terminated—or why such probative value would not be "substantially outweighed" by the danger of "unfair prejudice" to defendant, who would be put to the choice of either (1) leaving the jury to speculate that the voluntary termination comprised an admission of

⁷ Indeed, as noted, the manner in which plaintiff proposed redacting defendant's judgment of sentence below would have simply blacked out the entry indicating that his plea to CSC-IV was nolo contendere—which would have served to permit, if not practically invite, speculation that he had pleaded guilty instead.

guilt, or (2) divulging information about his plea (despite MRE 410's protections) so as to show otherwise. MRE 403.⁸ Plaintiff acknowledges that such questions would need to be answered before any such evidence could be admitted, but she does not substantively engage with why those answers would be in her favor. See, e.g., *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (“An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.”) (citations omitted).

Nor has plaintiff made a meaningful argument regarding harmlessness. See *Mitchell*, 321 Mich App at 157-158; MRE 103(a). As noted, the jury in this case heard from AC and plaintiff about the alleged abuse and AC's disclosure thereof, as well as from AC's therapist, who testified to AC's post-disclosure behaviors and their consistency with the behaviors of sexual-abuse victims. The jury also heard from defendant, and while it did not hear about defendant's nolo contendere plea and the related resolutions of the criminal and child-protective proceedings against him, it did hear evidence that AC's allegations led to police and DHHS involvement. Plaintiff has not attempted to demonstrate in any depth how—even if some further evidence regarding the criminal and/or child-protective proceedings could have been duly sanitized of defendant's plea and otherwise properly admitted—that evidence would more likely than not have led to a different outcome in this case, given the evidence's limited scope and the other evidence already presented to the jury. See *Nahshal*, 324 Mich App at 717; see also *Houghton*, 256 Mich App at 339. Accordingly, to the extent the trial court may have erred at all in its handling of this evidentiary matter, plaintiff has failed demonstrate that relief from the jury's verdict would be warranted as a result.

Affirmed.

/s/ Daniel S. Korobkin

/s/ Michael J. Riordan

/s/ Philip P. Mariani

⁸ See, e.g., *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008) (explaining that evidence can be unfairly prejudicial if “there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence”); *People v McFarlane*, 325 Mich App 507, 530; 926 NW2d 339 (2018) (reasoning that certain “evidence was likely inadmissible under MRE 403” given how “it invited speculation by the jury”).