

**STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT**

In re Pawloski, Minors.

Supreme Court no. 168651
Court of Appeals no. 372145
Kent County Circuit Court –
Family Division nos.
22-052477-NA, 22-052478-NA

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**AMICUS CURIAE BRIEF OF THE
CHILDREN'S LAW SECTION OF THE STATE BAR OF MICHIGAN**

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Children’s Law Section (“the Section” or “CLS”) is a recognized section of the State Bar of Michigan, with over 400 members who are attorneys and judges working in Michigan’s juvenile court system. The Section works to advance the rights and protect the interests of children and families who become involved in matters before the Probate Courts and Family Divisions of the Circuit Courts, in the State of Michigan. The Section strives to improve the courts and agencies serving children and their families, through regular meetings among peers, organizing and attending relevant training events, and active engagement by members on multi-disciplinary task forces convened by the Section itself, as well as by the Michigan Department of Health and Human Services (“DHHS”), the State Court Administrative Office (“SCAO”), Michigan Courts, and others. The Section provides services to its membership in the form of educational seminars and advocating for and commenting on proposed legislation relating to child welfare law topics. The Section also files amicus curiae briefs in selected children’s law cases with the potential for widespread impact in the field of children’s law, such as the one before this Court.

STATEMENT OF QUESTION PRESENTED

On September 26, 2025, this Honorable Court entered an order directing that this matter be scheduled for oral argument on the Respondent-Mother's application for leave to appeal. Within that order, this Honorable Court indicated a single question to be answered, to wit:

- I. Did the Court of Appeals err in holding that the Respondent-Mother's release of her parental rights was knowing and voluntary?

Amicus curiae Children's Law Section makes no answer to this question but provides information to help guide this Honorable Court in answering it.

STATEMENT OF FACTS

Amicus curiae Children's Law Section relies upon the Statement of Facts as set forth by the parties in their supplemental briefs.

ARGUMENT

I. As opposed to a release of parental rights under the Adoption Code, there are no specific statutes or court rules delineating procedures for a consent to termination of parental rights under the Juvenile Code.

The authors of the pleadings in this case, including the Court of Appeals, have consistently referred to a release of parental rights. The Adoption Code (MCL 710.21 *et seq*) does allow for a release of parental rights. MCL 710.29. The proceedings in the case at bar, though, appear to have been limited to those under the Juvenile Code (MCL 712A.1 *et seq*), which does not contemplate a “release” of parental rights. Instead, this case appears to have been a consent to termination of parental rights in Juvenile Code proceedings. Unlike an Adoption Code release, there are no codified rules or statutes which dictate the procedures a trial court must follow when accepting a consent under the Juvenile Code.

Adoption proceedings are dictated by the Adoption Code. The Adoption Code includes provisions specific to release of parental rights. A release is defined within MCL 710.22(u) as “a document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency.” The release requires a verified statement from the releasing parent, an itemized statement of money promised or received, and other documentation. MCL 710.29(6). While a release must generally be done before a judge or referee, under limited circumstances, the release can be executed before “an individual authorized by law to administer oaths.” MCL 710.29(1)-(2).

What happens if the release is not performed under the Adoption Code? Neither the Legislature nor the courts necessarily answer that question. In *In re Toler*, 193 Mich App 474 (1992), the Court of Appeals held that “a respondent can consent to termination of his parental rights under the juvenile code, in which case the judge need not announce a statutory basis for it.” Consent to termination of parental rights, while often conflated with a release of parental rights, has become an accepted part of child protective proceedings, as many parents do make the difficult and loving decision to forgo a contested hearing regarding termination. But the authority under which such a consent proceeds is practically, and legislatively, non-existent. The Court of Appeals opinion in this matter is the only published opinion which has cited *Toler* since it was released over 30 years ago, and the Juvenile Code, unlike the Adoption Code, itself does not delineate any specific procedures which must be followed for a trial court to accept a consent to the termination of parental rights.

An important distinction exists between termination of parental rights under the Adoption Code and under the Juvenile Code. Under the Adoption Code, a termination of parental rights is done specifically for the purpose of allowing the child to be adopted, which requires the termination of both parents’ rights. “If the rights of *both parents*, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the child placing agency or department

to which the release is given. MCL 710.29(8) (emphasis added).¹ Absent the termination of both parents' rights, the child is not free to be adopted, thus negating the purpose of adoption procedures, and, by extension, the application of the Adoption Code. In Juvenile Code proceedings, a termination of parental rights is accomplished specifically for the best interests of the child *regardless* of whether both parents' rights are terminated. A trial court may terminate the rights to one parent despite the other parent being a non-respondent and even having sole custody of the child. See, e.g., *In re Barber/Espinoza*, __ Mich __ (2025) (Docket No 167745). This difference emphasizes that the procedures for an Adoption Code release are not directly applicable to a Juvenile Code consent.

II. In the absence of codified procedures, this Court should adopt procedures to be utilized by trial courts when a parent consents to termination of parental rights under the Juvenile Code.

As stated in the above section, there are specific procedures which a trial court must follow when accepting a release of parental rights under the Adoption Code. There are also specific procedures which a trial court must follow when accepting a plea of admission or no contest for jurisdiction in child protective proceedings. MCR 3.971(B) and (D). The lack of procedures within the Juvenile Code and Michigan Court Rules when a parent consents to termination of parental rights creates a procedural and constitutional blind spot. Given these constitutional concerns, this

¹ See also MCL 710.21a(C): “The general purposes of this chapter are...[t]o provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.”

Court can and should delineate the procedures which a trial court must follow when accepting such a consent.

The procedures of MCR 3.971 are established to ensure that due process is met when the court interferes with a parent's constitutional rights. The protections at the adjudication stage do not deprive parents of all their constitutional rights for the remainder of the proceedings, though. "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky v Kramer*, 455 US 745, 753 (1982). Likewise, this Court has stated that "[t]here is no reason to conclude that a parent has a diminished constitutional right to his child merely because he does not have physical custody of that child." *In re Rood*, 483 Mich 73, 121 (2009). A parent has no less constitutional interest in the care and custody of their child at the termination of parental rights stage than at the adjudication stage, and due process would seem to require specific procedures for respecting those constitutional interests.

The advice of rights which a trial court must provide to a parent at an adjudicatory plea includes a list of the rights which a parent would be giving up by entering a plea. Beyond the explanation of rights, a trial court must ensure that the plea was knowingly, understandingly, and voluntarily made. MCR 3.971(D)(1). Similarly, MCL 710.29(7) requires a court to explain "the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the release voluntarily

relinquishes permanently his or her rights to the child” for a release of parental rights under the Adoption Code.

Based on the existing requirements for accepting an adjudicatory plea under the Juvenile Code and releasing parental rights under the Adoption Code, the Section recommends that this Court hold that trial courts must take the following steps before accepting a consent to termination of parental rights under the Juvenile Code:

A. Advise the parent of their legal rights as a parent;

B. Advise the parent that, by consenting to termination of their parental rights, they would be permanently and irrevocably waiving all of those rights and that the court will be entering an order terminating their parental rights;

C. Advise the parent that the obligation to support the child would continue despite the termination of parental rights;²

D. Determine that the consent is knowingly, understandingly, and voluntarily made; and

E. Advise the parent that they may appeal the termination of parental rights but only to the extent that the consent was invalid.

The Section believes that these advisements satisfy the necessary due process requirements for a trial court to accept a consent to termination of parental rights. They neither require more than the advisements before an adjudicatory plea nor provide less protection than those plea advisements.

² See *In re Beck*, 488 Mich 6 (2010).

III. Because termination of parental rights implicates the permanent and irrevocable severance of fundamental liberty interests, due process requires strict adherence to those procedures, not substantial compliance.

The Respondent-Mother, whether explicitly or implicitly, appears to be requesting that this Court require trial courts to strictly adhere to certain procedures when a parent consents to the termination of their parental rights. Without taking a position on whether the trial court in this case so complied, the Section agrees with the Respondent-Mother. The liberty interests implicated by a termination of parental rights (the right to direct the care and custody of one’s children) are so significant that due process requires trial courts to strictly adhere to the procedures for accepting a consent to termination of parental rights.

As explained by Chief Justice Cavanagh in her dissenting opinion in *In re Bates*, there is a reason that, in Michigan, a termination of parental rights “could be properly characterized as ‘tantamount to imposition of a civil death penalty.’” *In re Bates*, 514 Mich 862, 871 n 9 (2024) (Cavanagh, J³. dissenting). A termination of parental rights under Michigan law is permanent, as Michigan, unlike other states, has no process for the reinstatement of parental rights once they have been terminated. *Id.* The permanent nature of a termination, as well as the need for heightened due process protections at the termination stage, was also recognized by the United States Supreme Court in *Santosky*: “Even when blood relationships are

³ This opinion was issued prior to Chief Justice Cavanagh’s appointment to the position of Chief Justice.

strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs.” *Santosky*, 455 US at 753.

Although in scenarios such as the one presented by the case at bar the parent is voluntarily consenting to termination, the only reason a parent would even have the opportunity to do so would be because the State has forced their hand by filing a petition for termination (i.e. the parent is facing the forced and permanent severance of a fundamental right) and the State has (very likely) halted efforts towards reunification. See MCL 712A.19(13)-(14); see also, e.g., MCL 712A.19b(4) (allowing a court to suspend parenting time if a termination petition has been filed). Thus, even in scenarios where the parent ultimately consents to the termination of their parental rights, the fact that they are in that situation is, on its face, enough to require full procedural protection. *Santosky*, 455 US at 753. Given the permanent nature of a termination of parental rights, *Bates*, 514 Mich at 871 n 9, as well as the critical need for procedural protection, *Santosky*, 455 US at 753, requiring strict adherence to the procedures outlined above for accepting a consent to termination is appropriate and also not inconsistent with current case law in other, similar areas.

Michigan courts have been somewhat unclear on whether there is a strict adherence rule for adjudicatory plea procedures in child protective proceedings. On one hand, the Court of Appeals has held that a respondent’s plea of admission or no contest is defective if the trial court fails to provide them with the advice of rights

and possible dispositions before accepting the plea. *In re SLH*, 277 Mich App 662, 672-73 (2008). This can be interpreted as adopting a strict adherence test for plea procedures. Likewise, this Court has held that a respondent's due process rights are violated when a trial court fails to advise the respondent that they are waiving rights by entering a plea, and the adjudication must be vacated based on that violation. *In re Ferranti*, 504 Mich 1 (2019). On the other hand, in *In re Pederson*, 331 Mich App 445 (2020), the Court of Appeals held that, while failing to advise a respondent at the time of the plea that the plea could be used against them in a future hearing to terminate parental rights was error, that error did not affect substantial rights, and there was not plain error requiring reversal. The *Pederson* Court distinguished the failure in that case from the failure in *Ferranti* because the trial court in *Pederson* did advise the respondent of most of their rights. This implies, but does not state, that the Court utilized a substantial compliance test.

While not strictly comparable, a consent to termination of parental rights does bear some resemblance to a guilty plea in a criminal proceeding. Both procedures are based on a person consensually abdicating a constitutional right and waiving the requirement that the government prove to a trial court that the court should deprive a person of fundamental liberty interests. For criminal proceedings, the Michigan Court Rules delineate the procedures which a trial court must follow at a plea hearing. These rules are designed to comply with the Due Process Clause of the Fourteenth Amendment. *People v Guyton*, 511 Mich 291, 301 (2023). For a plea to satisfy the Court Rules and the Due Process Clause, it must be understanding,

voluntary, and accurate. MCR 6.302(A). An understanding plea requires the trial court to advise a defendant of “the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law....” MCR 6.302(B)(2). “[O]ur rules are very clear that the failure of a court to advise a defendant of a minimum and maximum penalty for their offense renders a plea unknowing.” *Guyton*, 511 Mich at 302.

For more than half a century, Michigan courts have required strict adherence to certain rules during guilty plea proceedings. In *People v Shekoski*, 393 Mich 134 (1974), this Court held that “[t]he requirements for a valid guilty plea after June 1, 1973 are set forth specifically in GCR 1963 785.7.⁴ The bench and bar are hereby advised that *strict adherence to those requirements is mandatory* and neither substantial compliance nor the absence of prejudicial error will be deemed sufficient.” *Id* at 134 (emphasis added). The requirement of strict adherence to plea procedures was not ambiguous.

The next year, though, this Court partially abrogated *Shekoski* in *In re Guilty Plea Cases*, 395 Mich 96 (1975). In *Guilty Plea Cases*, this Court issued a memorandum opinion (with five concurrences in whole or in part) concerning guilty pleas in 24 individual cases. This Court created a substantial compliance rule for some procedures in guilty pleas, such as failing to properly inform a person of the general nature of the charges against them and fully advising a person of the trial rights they would be waiving by entering a guilty plea. As to the maximum possible

⁴ This is the predecessor rule to MCR 6.302.

sentence, though, this Court continued to require strict adherence. Rule 785.7(1)(b) required a trial court to advise a defendant of “the maximum sentence and the mandatory minimum, if any, for the offense to which the plea is offered.” The Court stated that “[a] failure to impart the information so required by this subsection (b) will continue to require reversal.” *Guilty Plea Cases*, 395 Mich at 118. This Court exempted the maximum sentence advisement portion of the court rule from the substantial compliance test.

This Court expanded on the substantial compliance rule in *People v Saffold*, 465 Mich 268 (2001), when it held that failing to advise a person that pleading guilty waives their right to be presumed innocent does not require automatic reversal. *Saffold* did not discuss a situation in which the trial court failed to advise of the maximum or minimum sentence, and its holding does not create a substantial compliance rule for that circumstance. In fact, in *People v Brown*, 492 Mich 684 (2012), the Court expressly *rejected* the substantial compliance rule as to advice about the minimum and maximum sentences. “We continue to recognize the distinction we drew in *Guilty Plea Cases* between information about a defendant’s trial right and information about a defendant’s sentence.” *Id.* at 698.

Our appellate courts have meticulously applied the strict adherence rule to cases in which trial courts have failed to properly advise defendants of their maximum or minimum possible sentence, including failing to advise of lifetime electronic monitoring (*People v Cole*, 491 Mich 325 (2012)), a maximum sentence with a habitual offender enhancement (*People v Brown*, 492 Mich 684 (2012)),

discretionary consecutive sentencing (*People v Warren*, 505 Mich 196 (2020)), and mandatory consecutive sentencing (*People v White*, 337 Mich App 558 (2021)). An entire plea can be rendered involuntary when the trial court does not provide proper advice regarding the consequences of a single charge despite a defendant pleading to a plethora of charges (*see, e.g., People v Blanton*, 317 Mich App 107 (2016) and *People v Pointer-Bey*, 321 Mich App 609 (2017)).

The difference between substantial compliance and strict adherence in the criminal plea context appears to bifurcate advisement of trial rights from advisement of consequences regarding liberty interests. The former are subject to substantial compliance while the latter are subject to strict adherence. The liberty interests at stake in a consent to termination of parental rights are no less critical than those which a criminal defendant relinquishes, and the advisement the Section advocated for in part II of this brief are directed toward the consequences as it relates to those liberty interests as opposed to advisement of trial rights. It follows that the same advisement principles would mandate that trial courts strictly comply with their requirement to properly advise a respondent parent of the consequences of a consent to termination of parental rights.

RELIEF REQUESTED

The Children's Law Section of the State Bar of Michigan takes no position on whether this Honorable Court should grant relief to the Respondent-Mother. Instead, the Section urges this Court to adopt the procedures laid out within this brief for trial courts regarding a consent to termination of parental rights.

Respectfully submitted,

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Pursuant to MCRs 7.312(H)(3), 7.312(A), and 7.212(B)(1), this brief contains 2,905 countable words.