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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
September 14, 2026
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In re C. L. MILLER-BIRD, Minor.

No. 380152
Kalamazoo Circuit Court
Juvenile Division
LC No. 2026-000030-NA

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

Respondent[1] appeals by right the trial court's February 10, 2026 order after preliminary hearing, which continued the removal of her minor child, CMB, from her care and custody. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Respondent and CMB came to the attention of petitioner, the Department of Health and Human Services (DHHS), in September 2025 after law enforcement executed a search warrant of respondent's home that revealed the presence of methamphetamine. DHHS alleged that the officers found methamphetamine on the living room table where CMB could reach it. Although respondent was on probation, she continued to test positive for methamphetamine in October 2025 and January 2026.

DHHS caseworker Erica Harvey testified that she attempted to offer respondent material support and referrals for substance-abuse services, therapy services, and random drug screenings. While respondent initially seemed receptive, she ultimately did not engage with these services.

[1] Although CMB's mother and father were both named as respondents in the underlying case, we use the term "respondent" to refer only to CMB's mother because the father is not a party to this appeal.

Harvey visited respondent's home on at least two occasions and was concerned by the amount of smoke inside the home and the number of unknown people who came and went from the home.

On February 3, 2026, Harvey attempted to visit respondent and CMB. Although respondent was home, she did not answer the door. Harvey spoke with respondent by telephone on February 5, 2026, to inform her that DHHS was considering filing a petition to begin child-protective proceedings and to schedule a meeting for the following morning. Respondent did not attend the meeting, and efforts by DHHS to locate her proved unsuccessful. Respondent's probation officer reported to Harvey that respondent said she would "catch[] a charge" if DHHS tried to remove CMB from her care.

DHHS filed a petition for removal on February 6, 2026, and a preliminary hearing commenced that afternoon. Respondent was not present at the hearing, and DHHS acknowledged that she had not received notice of the hearing or a copy of the petition. DHHS nonetheless sought emergency removal of CMB from respondent's care and custody. Respondent's trial counsel was present at the hearing but did not take a position regarding removal given respondent's absence. The trial court issued an order removing CMB pursuant to MCR 3.963(B) and placing him under the care and supervision of DHHS. Because respondent lacked notice of the hearing, the trial court adjourned the proceedings. Later that same day, CMB was found safe and placed with his maternal grandmother.

The preliminary hearing continued on February 9, 2026. Respondent was present and represented by trial counsel. Respondent waived a reading of the petition and stipulated to probable cause, with trial counsel noting, "Even though [respondent] doesn't agree with all the allegations, we're prepared to stipulate to probable cause at this time." Harvey maintained it was still necessary for CMB to remain under the protective custody of DHHS. Trial counsel asked questions regarding CMB's placement with his maternal grandmother, including whether respondent could "provide [Harvey] with alternative placements . . . to consider[.]" In addition to CMB's continued placement with DHHS, Harvey also recommended supervised parenting time for respondent and trauma counseling for CMB. Trial counsel stated, "I think the recommendations are appropriate at this time, and I'd ask the Court to adopt them." The trial court therefore authorized the petition and continued CMB's placement with DHHS, noting that the removal order "continue[d] to be appropriate based on the recommendation today, and the court's prior ruling, as well as the petition itself." The court entered a consistent order the following day.

On March 3, 2026, respondent filed a request for the appointment of appellate counsel with the intent to appeal the February 10, 2026 order. Then, on March 12, 2026, the trial court held a pretrial hearing and trial counsel indicated that respondent was prepared to plead to the allegations in the petition. After the court advised respondent of her rights and asked if she understood them, respondent stated that she did not understand "a lot of" the court's explanation and requested to speak with her counsel. Respondent and trial counsel spoke off the record, and when they returned, the following exchange occurred:

> *The Court*: Okay, we are back on the record. [Respondent] and her attorney have joined us again.

[Trial counsel], were you able to have the opportunity to speak with mom regarding any questions she might have at this juncture as far as her advice of rights?

[*Respondent's counsel*]: Yes, your Honor, I did.

My client is—is certainly a mother. She wants her child back. She is, as a mother, very emotional about this.

We had a discussion. I explained what, again, about the advice of rights, and I think the main issue was the question about appealing or objecting. We talked about that, and . . . the significance of the timeframes, and that if there were objections, they had to be timely filed. Otherwise, she would lose that ability, or waive that ability to do that.

The Court: Okay, thank you.

[Respondent], were you able to speak with your attorney, and do you feel comfortable proceeding at this point in time?

[*Respondent*]: Oh, yes.

Respondent affirmed that she understood what was occurring after speaking with trial counsel again and proceeded to enter her plea. As part of her plea, respondent acknowledged that she "continue[d] to struggle with substance use, which negatively affects [her] ability to parent." The trial court accepted respondent's plea, entered an order of adjudication, and took jurisdiction over CMB pursuant to MCL 712A.2(b)(1) (failure to provide necessary care) and (2) (unfit home by reason of neglect). Respondent's claim of appeal from the February 10, 2026 order was entered thereafter, commencing the instant appeal.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent argues that she was denied the effective assistance of counsel because trial counsel usurped her right of autonomy by conceding CMB's removal when it was unsupported by the evidence. We disagree.

A claim of ineffective assistance of counsel presents a mixed question of law and fact. *In re Casto*, 344 Mich App 590, 610; 2 NW3d 102 (2022). "We review for clear error a trial court's factual findings, and questions of constitutional law are reviewed de novo." *Id*. "Clear error exists if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *Id*. (quotation marks and citation omitted). When, as in this case, a claim of ineffective

assistance of counsel is not preserved, "[our] review is limited to mistakes apparent on the record." *In re Lovitt*, 351 Mich App 237, 243; 34 NW3d 645 (2024) (quotation marks and citation omitted).[2]

Respondent contends that "trial counsel was ineffective when conceding the issue of removal" at the continued preliminary hearing, which usurped her right of autonomy and decision making as expressed in *McCoy v Louisiana*, 584 US 414; 138 S Ct 1500; 200 L Ed 2d 821 (2018). In *People v Klungle*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket Nos. 168010 and 168011); slip op at 1, the Michigan Supreme Court described the scope of a criminal defendant's "Sixth Amendment right of autonomy to maintain innocence as the objective of the defense . . . ." It explained:

> The Sixth Amendment of the United States Constitution guarantees a criminal defendant the Assistance of Counsel for his defence, and the Fourteenth Amendment incorporates the right to counsel in state prosecutions. When represented by counsel, a defendant generally relinquishes control over [t]rial management, including tactical decisions like what objections to make and which lines of questioning to pursue, as that is the lawyer's province. But the accused retains complete autonomy over certain fundamental choices, including whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal. At issue here is another aspect of the representation reserved for the client: the [a]utonomy to decide that the objective of the defense is to assert innocence. [*Id*. at ___; slip op at 6 (quotation marks and citations omitted; alterations in original).]

Though respondent invokes this right, she does not establish whether it is applicable in child-protective proceedings. While "[t]he principles applicable to claims of ineffective assistance of counsel in the arena of criminal law also apply by analogy in child protective proceedings," *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016), our Supreme Court has clarified that "ineffective-assistance-of-counsel jurisprudence [does] not apply" to Sixth Amendment right-of-autonomy claims, *Klungle*, ___ Mich at ___; slip op at 7. We discern no published caselaw extending the Sixth Amendment right of autonomy in child-protective proceedings. Respondent does not identify her right-of-autonomy claim as distinct from her ineffective-assistance claim, nor does she address whether an extension of the right is warranted. Absent any such argument, we decline to decide the issue.[3]

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[2] Respondent asserts that the "plain error" standard of review applies to her ineffective-assistance claim. While unpreserved issues in child-protective proceedings are generally reviewed for plain error affecting substantial rights, *In re MJC*, 349 Mich App 42, 47; 27 NW3d 122 (2023), "[t]he standards for plain error review and ineffective assistance of counsel are distinct, and therefore, a defendant can obtain relief for ineffective assistance of counsel even if he or she cannot demonstrate plain error," *id*. at 59 (quotation marks and citations omitted).

[3] We also question respondent's assertions regarding the scope of this right. Respondent asserts that she was denied "the autonomy to decide the objective of the defense . . . ." However, this broad characterization ignores that the right recognized in *Klungle* was the "right of autonomy *to*

Further, *Klungle* suggests that the right of autonomy is not implicated where a defendant does not assert their desired objective. See *id*. at ___; slip op at 8. See also *McCoy*, 584 US at 423 (holding that "[w]hen a client expressly asserts that the objective of '*his* defence' is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt") (citation omitted). Absent such an assertion, the traditional ineffective-assistance framework would apply. *Klungle*, ___ Mich at ___; slip op at 8.

In this case, there is no evidentiary basis to conclude that trial counsel overrode any defense objective expressed by respondent. When the preliminary hearing commenced on February 6, 2026, respondent's whereabouts were unknown. Because she was not present, trial counsel declined to take a position on whether emergency removal was warranted, and the trial court ultimately determined that it was. CMB was removed from respondent later that evening and placed with his maternal grandmother. With respondent present at the continued preliminary hearing on February 9, 2026, trial counsel confirmed that he conferred with respondent before stipulating to probable cause. Further, when trial counsel was questioning Harvey, he inquired about whether respondent could provide DHHS with alternative placements to consider, suggesting that they discussed the circumstances of CMB's removal and placement. While trial counsel did acquiesce to DHHS's recommendations—including that removal remained necessary—there is no indication that respondent expressed any desire to challenge CMB's removal at that point in time. Respondent's desire to contest removal was not asserted until after the February 10, 2026 order, with respondent filing a request for the appointment of appellate counsel on March 3, 2026, and trial counsel's statements that respondent "want[ed] her child back," and was informed of her appellate rights during the March 12, 2026 pretrial hearing.

In the absence of any express objective asserted by respondent before trial counsel's concession, the traditional ineffective-assistance analysis applies:

> To establish ineffective assistance of counsel, it must be shown that (1) counsel's performance was deficient, falling below an objective standard of reasonableness, and that (2) the deficient performance prejudiced the respondent. The effective assistance of counsel is presumed, and a party claiming ineffective assistance bears a heavy burden of proving otherwise. The Court cannot substitute its judgment for that of counsel's on matters of litigation strategy, and counsel's performance must be judged based on the knowledge, expertise, and information reasonably available when counsel formulated and implemented the litigation strategy. To establish prejudice, a party claiming ineffective assistance must show that but for counsel's deficient performance, a different result would have been reasonably probable. [*Lovitt*, 351 Mich App at 251 (quotation marks and citations omitted).]

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maintain innocence as the objective of the defense . . . ." *Klungle*, ___ Mich at ___; slip op at 1 (emphasis added). Respondent does not explain how the right of an accused to maintain innocence against criminal charges would be analogous in child-protective proceedings. Particularly where, as here, respondent pleaded to allegations underlying the petition.

Reviewing the issue for errors apparent on the record, we cannot conclude that trial counsel's agreement to the continued removal of CMB constituted deficient performance. As stated above, respondent was not present at the February 6, 2026 hearing. Under these circumstances, trial counsel's decision to not take a position on removal did not fall below an objective standard of reasonableness. By the time the continued hearing took place, CMB had already been removed from respondent and placed with his maternal grandmother. At the continued hearing, the trial court explained to respondent that it would be addressing CMB's placement if it found probable cause to authorize the petition, and respondent thereafter stipulated to probable cause. Trial counsel's statements on the record indicate that respondent was aware of the circumstances regarding CMB's placement and wished to provide alternative placement options while CMB remained in the care and custody of DHHS. The record also reflects that respondent was willing to participate in the ongoing proceedings and engage in services.

Given CMB's removal, respondent's engagement in the proceedings, and the absence of any overt objections to CMB's removal, trial counsel was not deficient for asking the court to adopt DHHS's recommendations at the end of the preliminary hearing. Nor is there any indication that trial counsel attempted to obstruct respondent's right to appeal when it became apparent that she wished to contest removal. Instead, the record reflects that counsel informed respondent of her appellate rights, which she affirmed she understood before timely filing her claim of appeal.

Even assuming that trial counsel was deficient for conceding to CMB's continued removal, respondent cannot establish any resulting prejudice. MCR 3.963(B) governs proceedings involving emergency removal.[4] It states, in relevant part:

> (1) Order to Take Child into Protective Custody. The court may issue a written order, electronically or otherwise, authorizing a child protective services worker, an officer, or other person deemed suitable by the court to immediately take a child into protective custody when, after presentment of a petition or affidavit of facts to the court, the court has reasonable cause to believe that all the following conditions exist, together with specific findings of fact:
>
> (a) The child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal from those surroundings is necessary to protect the child's health and safety. . . .
>
> (b) The circumstances warrant issuing an order pending a hearing in accordance with:
>
> (*i*) MCR 3.965 for a child who is not yet under the jurisdiction of the court[.]

[4] Respondent argues that CMB's removal was controlled by MCR 3.965(C). While MCR 3.965 governs preliminary hearing proceedings including pretrial removal and placement, because this case involved a request for emergency removal pending continuation of the preliminary hearing, MCR 3.963 is the proper statute for evaluating CMB's removal.

* * *

(c) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.

(d) No remedy other than protective custody is reasonably available to protect the child.

(e) Continuing to reside in the home is contrary to the child's welfare.

The trial court's emergency removal order to take CMB into protective custody made each of the required findings under MCR 3.963(B). Respondent specifically challenges the evidentiary basis for the trial court's finding that CMB was at risk of harm. However, this finding was supported by the record. Harvey testified that CMB was at a substantial risk of harm because of respondent's continued use of methamphetamine; her failure to report a sober caregiver; and her living environment, which was frequented by unknown adults who had access to CMB. Further, despite Harvey's efforts to contact respondent and provide her with services in the days leading up to the filing of the petition, respondent refused to cooperate and could not be located at her home. Respondent also made a statement to her parole officer indicating that she would "catch[] a charge" if DHHS attempted to remove CMB. In light of this testimony, the trial court properly found that CMB was at substantial risk of harm under MCR 3.963(B)(1)(a), and that the remaining factors were also supported by reasonable cause.

Even if trial counsel objected to CMB's continued removal at the February 9, 2026 hearing, it is not reasonably probable that the outcome of the proceedings would have been different. The trial court properly ordered the emergency removal of CMB at the February 6, 2026 hearing and respondent subsequently stipulated to probable cause at the February 9, 2026 hearing. Given the trial court's prior findings in support of removal and respondent's stipulation to probable cause, any objection lodged by trial counsel likely would have been futile. See *People v Isrow*, 339 Mich App 522, 532; 984 NW2d 528 (2021) ("Failure to raise a futile objection or advance a meritless argument does not constitute ineffective assistance of counsel."). Accordingly, respondent cannot establish that she was denied the effective assistance of counsel.

Affirmed.

/s/ Mariam S. Bazzi
/s/ Sima G. Patel
/s/ Matthew S. Ackerman