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SUPREME COURT

STATE OF WISCONSIN
S U P R E M E C O U R T

Case Nos. 21AP739-742

**In re the Termination of Parental Rights to
C.T., M.T., T.T., and A.T., Persons Under the Age of 18:**

STATE OF WISCONSIN,
Petitioner-Respondent-Respondent,

v.

T.T.,
Respondent-Appellant-Petitioner.

**GUARDIAN AD LITEM'S
RESPONSE TO PETITION FOR REVIEW**

**THE LEGAL AID SOCIETY OF
MILWAUKEE, INC.**

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Guardian ad Litem for above children

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ISSUES PRESENTED

- I. The Petition for Review fails to demonstrate a need for clarification of the law or a situation that is likely to reoccur and instead asks for review of a case that is factual in nature and involves the application of well-settled legal principles.
- II. Did the trial court erroneously exercise its discretion when it found T.T. to be an unfit parent?

Court of Appeals and Trial Court Treatment:
In a trial to the court, the trial court found that the evidence presented was sufficient for its findings of unfitness. The Court of Appeals affirmed the trial court finding.

- III. Did the trial court erroneously exercise its discretion when it found that termination of T.T.'s parental rights was in the best interest of his children?

Court of Appeals and Trial Court Treatment:
In ordering the termination of T.T.'s parental rights to his children, the trial court found that the evidence presented at the disposition hearing was sufficient for its findings. The Court of Appeals affirmed the trial court finding.

CRITERIA FOR REVIEW

Under Wisconsin Statute § 809.62(1r)(c), this Court has the judicial discretion to grant a Petition for Review “only when special and important reasons are presented.” Additionally, this Court considers if granting the Petition for review will

Help develop, clarify or harmonize the law, and

- (1) The case calls for a new doctrine rather than merely the application of well-settled principles to the factual situation; or
- (2) The question presented is a novel one, the resolution of which will have a statewide impact; or
- (3) The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the Supreme Court.

Wis. Stat. § 809.62(1r)(c) (emphasis added).

STATEMENT OF THE CASE AND FACTS

T.T. shares four children with C.P., his stepdaughter. R. at 94:5-6. He was in a relationship and residing with C.P. when DMPCS removed the children from the home. *Id.* at 11. C.P. has cognitive delays. R. at 78:2. The children were removed from the home because they were exposed to active domestic violence between their parents and both parents lacked the skills, knowledge, and motivation necessary to meet their basic needs. *Id.* at 3. T.T. was repeatedly physically violent toward C.P. in front of the children. R. at 94:40-41. He hit her in the face. *Id.* at 75. T.T. often left C.P. alone with the children despite her clear inability to parent effectively on her own. R. at 78:3. T.T. admitted that he knew C.P. could not handle the children alone because she did not have the ability to care for their needs such as bathing them and washing their clothes. R. at 94:46.

T.T. denied paternity of the oldest three children despite being in a sexual relationship with C.P. since 2010 and living in her home. *Id.* at 7-9. He offered to babysit the children in exchange for somewhere to live. *Id.* at 9, 91. He also allowed two of his other adult children to live in C.P.'s home without her consent. *Id.* at 91. T.T. was financially dependent upon

C.P. and expected her to act as the primary parent, putting his needs before the needs of the children. R. at 78:3. He delegated tasks to her and expected her to complete them. R. at 95:47. T.T. also testified that the only item in the home he cared for was the coffee pot because C.P. took care of him, the children, and the household in general. *Id.* at 182. Despite the presence of cockroaches and bed bugs, he claimed C.P. kept a “spic and span” home. *Id.* at 177. Unable to rely on T.T., C.P. relied on their 5-year-old daughter, C.T., to help with the three younger children. R. at 78:2-3. The children were reportedly left in soiled diapers until C.T. brought them a new one. *Id.* They were left to change themselves. *Id.*

On November 6, 2017, the Honorable J.D. Watts of the Milwaukee County Circuit Court, Children's Division found C.T., M.T., T.P.-T., and A.T. to be children in need of protection or services. R. at 1:1. Based upon that finding, Judge Watts entered a dispositional order placing the children outside of the home on April 6, 2018. *Id.* The children have been living outside of the home since they were detained by DMCPs on Sept. 21, 2017. *Id.* at 2. They were removed from the home due to the present danger of domestic violence, and the impending danger of the lack of knowledge and skills. R. at 94:49-50. The removal took place after the protective plan failed in home. R. at 76:5.

T.T. was required to complete AODA, parenting classes, couples counseling with a domestic violence component, and supervised visitations. R. at 95:78-80. He found an AODA treatment provider on his own. R. at 94:15. His case manager set up visitation, coordinated parenting assistance for visits, and referred him to couple's counseling and parenting classes. *Id.* at 16-17. T.T. and C.P. participated in the couple's counseling but refused to acknowledge the domestic violence in their relationship and were not able to make progress in that service. R. at 95:41. Except for a written apology to his daughter, T.T. does not recognize that his behavior led to the removal of his children from his home. R. at 96:31. T.T. was taken into custody in June 2019 for violating probation after physically assaulting C.P. R. at 94:21. He

continued to violate the no-contact order with C.P. during his incarceration. *Id.* at 22. T.T. will be incarcerated until July 2022. *Id.* at 23.

On August 28, 2019, the State of Wisconsin filed a Petition for the Termination of Parental Rights in the interest of C.T., M.T., T.P.-T., and A.T., on the grounds that T.T. failed to assume parental responsibility and the children were in continuing need of protection or services. R. at 1. On October 28, 2020, Judge Murray found clear and convincing evidence that DMCPs made reasonable efforts to provide T.T. with services in effort to safely reunite him with his children. R. at 96:36. Because T.T. did not take advantage of the services and make the necessary changes to promote his children's safety, Judge Murray found that the State met its burden to prove that C.T., M.T., T.P.-T., and A.T. are children in continuing need of protection or services. *Id.* at 37.

The trial court also found that there was clear and convincing evidence that T.T. failed to assume his parental responsibility. *Id.* at 33. Although he started a casual sexual relationship with C.P. when she turned 18, he did not believe he was the father of C.T., M.T., or T.P.-T. because they were conceived before he began a formal relationship with C.P. in 2015. R. at 94:7-10. Testimony revealed that T.T. refused to change diapers during home visits. *Id.* at 45. He smoked four to seven blunts a day. *Id.* at 15. The trial court found T.T.'s admission that he only cared for the coffee pot a clear indication of the level of care he provided his children. R. at 96:33. Judge Murray concluded T.T. agreed to stay home with the children while C.P. worked in exchange for housing, but he did not assume parental responsibility. *Id.* at 33-34.

The dispositional phase to determine the children's best interest took place on January 15, 2021, R. at 97. Both foster mothers are adoptive resources and testified. *Id.* at 22-43. The foster mother of M.T., T.P.-T., and A.T. testified that she wants to adopt the three siblings in her care. *Id.* at 24-25. She also shared that she is in contact with C.T.'s foster mother and adoptive resource. *Id.* at 29. T.T. also testified and continued

to deny domestic violence in his home. *Id.* at 61. He admitted that it is in the children's best interest to stay in their current placements while he is incarcerated *Id.* at 59.

Judge Murray found that T.T. does not have a substantial relationship with his children. *Id.* at 76. The children were separated from their parents for over 3 years and T.T. has many tasks to address when he gets out of prison including finding housing, a job, and completing anger management and domestic violence counseling. *Id.* at 77. Judge Murray found that the children will be able to enter more stable and permanent family relationships in their current placements. *Id.* at 78. Without terminating T.T.'s parental rights, they are likely to remain in foster care until the age of 18. *Id.* For the reasons stated above, the Judge Murray terminated T.T.'s parental rights. *Id.* at 79.

The Court of Appeals affirmed the trial court's decision, consistent with other unpublished decisions on July 23, 2021. T.T. argued that the trial court erred when it found both grounds alleged in the petition and that the trial court erroneously exercised its discretion in weighing the factors during the dispositional phase of the proceedings. *State v. T.T.*, No. 2021AP739-742 (Wis. Ct. App. July 23, 2021). The court of appeals concluded that the trial court did not erroneously exercise its discretion in terminating T.T.'s parental rights given the number of factors that weigh in favor of termination. *Id.*

ARGUMENT

- I. **THERE ARE NO REAL AND SIGNIFICANT QUESTIONS NEEDING CLARIFICATION IN THE PETITION. THIS COURT SHOULD DENY T.T.'s PETITION FOR REVIEW BECAUSE THE BASIS FOR THE REQUEST DOES NOT MEET THE CRITERIA SET FORTH IN WISCONSIN STATUTE § 809.62(1r).**

T.T.'s Petition for Review does not meet the criteria set forth for discretionary review by this Court. T.T.'s Petition fails to demonstrate a need for clarification of the law, and the questions presented are not novel, but instead ask for a review of the factual record in the case and the application of well-settled legal principles to that record.

Additionally, Wisconsin Statute § 809.62(1r)(c) requires more than a showing that a decision by this Court would clarify the law, but also that one of the following is applicable: (1) "[t]he case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation;" or (2) "[t]he question presented is a novel one, the resolution of which will have a statewide impact; or (3) "[t]he question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the supreme court." Wis. Stat. § 809.62(1r)(c)(1)-(3). T.T. fails to show that a decision by this Court would clarify or develop the law and T.T. fails to show aside from mere assertion that any of the above three criteria are met. The decisions made in this case were routine, well-settled law and do not require Supreme Court review.

II. THE COURT APPROPRIATELY USED ITS DISCRETION WHEN IT FOUND THERE WERE GROUNDS TO TERMINATE THE PARENTAL RIGHTS OF T.T.

A. Standard of Review

This was a routine review of the factual record in the case on erroneous exercise of discretion standards. In reviewing a discretionary determination, the record is examined "to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach." *Brandon Apparel Group v. Pearson Properties, Ltd.*, 247 Wis. 2d 521, 530, 634 N.W.2d 544 (Ct. App. 2001). This is well settled law which needs no clarification.

B. The Court Did Not Abuse Its Discretion When Determining to Terminate the Parental Rights of T.T.

In order to overturn a discretionary decision, T.T. must demonstrate that the court failed to (1) logically interpret the facts, (2) apply the proper legal standard, and (3) use a demonstrated, rational process to reach the conclusion of a reasonable judge. *Brandon Apparel Group*, 247 Wis. 2d 521.

In the underlying appeal, T.T. only contested the second element of the continuing CHIPS ground. Appellant's Br. 11-12.) According to T.T., the agency did not make reasonable efforts to provide court-ordered services. *Id.* The trial court found that the State met its burden of demonstrating reasonable efforts to provide services in light of T.T.'s refusal to take advantage of the assistance. R. at 96:37.

In *State v. Raymond C. (In the Interest of Torrance P.)*, 187 Wis. 2d 10, 12, 522 N.W.2d 243, 244 (Ct. App. 1994) the appellant also claimed that the agency did not make the required effort to provide him with services given his limitations, which included his inability to read. However, the appellate court clarified that the purpose of appellate review is to determine whether the county met its burden of demonstrating a reasonable effort to provide court-ordered services. *Id.* at 15. A disability must be considered in determining whether the agency made reasonable efforts, but it does not change the State's burden of proof under § 48.415(2). *Id.* Ultimately, the court found that the county's efforts were reasonable and also found that the agency's inability to facilitate service completion was attributable to the appellant's failure to keep appointments and relay his updated contact information. *Id.* at 16-17.

Here, T.T. was provided with access and opportunities to complete all of his required services, yet he squandered the opportunities to address the issues in his household and make positive changes when he refused to acknowledge the domestic violence in his relationship and take the advice of his parent aide. (R. at 95:41, 65.) Based on the evidence provided in the

fact-finding hearing, the trial court appropriately exercised its discretion when it found that:

"[T]he Department has made reasonable efforts to provide services to Mr. Turner so that [the] children could be returned to his care safely, but as the result of him not taking advantage of the services and doing what he needed to do to make sure that the children could be returned to his home safely, that the State has met its burden for continuing need of protection and services." *Id.*

T.T. did not meet the third element of the Continuing CHIPS ground. The court did not erroneously exercise discretion but simply found based on the evidence that T.T. had not met the conditions of return. The Judge merely applied the well settled principals of the law regarding the Continuing CHIPS ground.

The trial court also found grounds to terminate parental rights because T.T. failed to assume parental responsibility for his children. (R. at 96:33-34.) In order to terminate T.T.'s parental rights on these grounds, the State must show by clear and convincing evidence that T.T. does not have a substantial relationship with C.T., M.T., T.P.-T., and A.T. Wis. Stat. § 48.415(6)(a) (2019-2020). A substantial relationship requires the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. Wis. Stat. § 48.415(6)(b) (2019-2020).

The State provided the trial court with ample evidence to support its finding that T.T. failed to assume parental responsibility. R. at 96:33. However, T.T. claims that he has a substantial relationship with the children because he was in the children's lives since they were born, acted as a stay-at-home parent before he was adjudged to be the biological father, and cared for them by changing diapers and playing games. Appellant's Br. 15-16.

The trial court appropriately concluded that T.T.'s relationship with his children was far from substantial. *Id.* at 36. As the factfinder, it is the trial court's duty to determine the weight of each testimony and resolve factual disputes. *Tourtillott v. Ormson Corp.*, 190 Wis. 2d 291, 295, 526 N.W.2d 515, 517 (Ct. App. 1994). The clear weight of the evidence indicated that T.T. has done nothing but share a roof with his children, and it was "on the back of [C.P.] to care for these children, to bring in food and clothing for these children, put a roof over their heads." (R. at 96:34.) Therefore, the trial court appropriately exercised its discretion when it found other testimony more credible than T.T.'s and concluded that T.T. does not have a substantial relationship with his children. Therefore, the trial court exercised its discretion appropriately, which the Court of Appeals reviewed in its decision when they looked at this issue. Thus, review by the Supreme Court of this issue is unnecessary because it's just another attempt for a second kick of the can by T.T.

T.T.'s arguments regarding the Trial Court's use of discretion do not meet the any of the three criteria for review by the Wisconsin Supreme Court.

III. THE TRIAL COURT APPROPRIATELY EXERCISED ITS DISCRETION IN FINDING THAT TERMINATION OF T.T.'S PARENTAL RIGHTS IS IN THE BEST INTEREST OF HIS CHILDREN.

A. Standard of Review.

The decision to terminate parental rights is left to the discretion of the trial court. *In Interest of K.K.*, 162 Wis. 2d 431, 441, 469 N.W.2d 881, 885 (Ct. App. 1991). The trial court's decision should be upheld if the appellate court finds proper use of discretion. *State v. Margaret H. (In re Darryl T.-H.)*, 2000 WI 42, 234 Wis. 2d 606, 611, 610 N.W.2d 475, 477. A trial court exercises proper use of discretion when it applies

the correct standard of law to the facts of the case. *Id.* During a dispositional hearing, the correct standard is the best interests of the child. Wis. Stat. § 48.426(2) (2019-2020). This is well settled law which needs no clarification.

B. After Considering the Enumerated Factors under Wis. Stat. § 48.426, the Trial Court Properly Utilized its Discretion in Terminating T.T.'s Parental Rights.

The factors the trial court must consider when determining if termination of parental rights is in the child's best interest are as follows:

- (a) The likelihood of the child's adoption after termination;
- (b) the age and health of the child, both at the time of the disposition and if applicable, at the time the child was removed from the home;
- (c) whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;
- (d) the wishes of the child;
- (e) the duration of the separation of the parent from the child; and
- (f) whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements, and the results of prior placements. Wis. Stat. § 42.426(3).

T.T. claims that the trial court erroneously weighed the factors when it terminated his parental rights. (Appellant's Br. 22.) He believes that the court gave his incarceration and the age difference between himself and C.P. too much weight. *Id.* However, he does not allege that taking those factors into

account affected the trial court's ability to make a decision in the children's best interest, nor does he allege that the trial court's findings were erroneous because they were not in the children's best interest.

T.T.'s disagreement with the ruling does not make it unreasonable. The trial court considered the facts presented at the dispositional hearing, properly utilized its discretion in determining the credibility of witnesses and applied the appropriate standards to the factors under Wis. Stat. § 48.426(3). The trial court had a right to also consider other relevant factors such as T.T.'s incarceration, but there is no evidence to suggest it did not consider the mandatory factors. (R. at 97:74-78.) Because the trial court clearly utilized proper discretion in finding that terminating T.T.'s parental rights is in the best interest of C.T., M.T., T.P.-T., and A.T., the Court of Appeals decision should be upheld.

CONCLUSION

For all of the above reasons, the Guardian ad Litem for C.T., M.T., T.T., and A.T. respectfully requests this Court deny T.T.'s Petition for review as T.T. fails to meet any of the criteria for review by the Supreme Court and affirm the Court of Appeals and Trial Court's judgment terminating T.T.'s parental rights to C.T., M.T., T.T., and A.T.

Dated at Milwaukee, Wisconsin, this 2nd day of September, 2021.

Respectfully submitted,

THE LEGAL AID SOCIETY OF MILWAUKEE, INC.

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**CERTIFICATE OF COMPLIANCE WITH RULE
809.19(8g)(a) AS TO FORM/LENGTH**

I hereby certify that this brief conforms to the rules contained in Wis. Stats. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 3,680 words.

Dated at Milwaukee, Wisconsin, this 2nd day of September, 2021.

Signed:

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