STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I
Case Nos. 21AP1278, 21AP1279, 21AP1280

In re the Termination of Parental Rights to
P.G., J.G. and J.G., Persons Under the Age of 18:

STATE OF WISCONSIN,
Petitioner-Respondent,
v.
S.T.,
Respondent-Appellant.

ON APPEAL FROM AN ORDER TERMINATING PARENTAL RIGHTS ENTERED IN THE MILWAUKEE COUNTY CIRCUIT COURT, THE HON. MARSHALL B. MURRAY, PRESIDING

BRIEF OF GUARDIAN AD LITEM

THE LEGAL AID SOCIETY OF MILWAUKEE, INC.

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Guardian ad Litem for above children

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STATEMENT OF THE ISSUE

Whether the trial court committed reversible error in its finding that grounds existed under Wisconsin Statutes §§ 48.415(2) and 48.415(6)?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Guardian ad Litem does not request oral argument. The issues can be fully argued in the briefs and should be resolved by applying controlling legal precedent to facts of the case. Publication is not necessary.

STATEMENT OF THE CASE

The Guardian ad Litem adopts the Statement of the Case provided in the State of Wisconsin's reply brief.

STATEMENT OF FACTS

The Guardian ad Litem adopts the Statement of Facts provided in the State of Wisconsin's reply brief.

ARGUMENT

I. STANDARD OF REVIEW.

A termination of parental rights action is a two-part process. *Sheboygan County DHHS v. Julie A.B.*, 2002 WI 95, ¶ 24, 255 Wis. 2d 170, 648 N.W.2d 402. The first phase involves the determination as to whether there are reasons to

terminate a person's parental rights to a child. *Id.* The second part, the dispositional phase, requires the trial court to decide whether the termination of parental rights is in a child's best interests. Wis. Stat. § 48.426(2); *Steven V. v. Kelley H.*, 2004 WI 47, ¶ 27, 271 Wis. 2d 1, 678 N.W.2d 856.

The ultimate determination of whether to terminate parental rights is discretionary with the circuit court. *Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993). A decision by the trial court will be upheld if there is a proper exercise of discretion. *State v. Margaret H.*, 2000 WI 42, ¶ 27, 234 Wis. 2d 606, 610 N.W.2d 475. If a trial court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process to reach a conclusion that a reasonable judge could reach, a trial court will be found to have properly exercised its discretion. *Dane Cty. DHS v. Mable K.*, 2013 WI 28 ¶ 39, 346 Wis. 2d 396, 828 N.W.2d 198. *See also: Sheboygan County DHHS v. Julie A.B.*, 2002 WI 95 ¶ 30, 255 Wis. 2d 170, 648 N.W.2d 402.

II. THE TRIAL COURT CITED TO CLEAR, SATISFACTORY AND CONVINCING EVIDENCE IN MAKING ITS RULING ON THE TWO GROUNDS ALLEGED: WISCONSIN STATUTES § 48.415(2) AND § 48.415(6).

The Petitions in this case alleged Wisconsin Statutes § 48.415(2) ("Continuing CHIPS Ground") and § 48.415(6) ("Failure to Assume Parental Responsibility Ground").[1] The Appellant argues that a brief exchange during testimony

[1] Appellant's Brief and the accompanying appendix include the statutes and associated jury instructions, so the GAL's Brief will not reproduce them for ease of reading.

involving the case manager admitted over objection by S.T.'s trial counsel amounted to reversible error. App. Brief p. 6-9. However, this court should not reverse the trial court's decision because: (1) the excerpt cited by the Appellant related to the trial court's reasonable efforts finding and did not address the element as to the failure to meet conditions; (2) even if the trial court erred in admitting the testimony and even if the trial court erred in considering the testimony for the Continuing CHIPS Ground, the trial court cited to other clear, satisfactory and convincing evidence to support a finding under this ground; and (3) even if the trial court's finding is found by this court to be reversible for the Continuing CHIPS Ground, the error was harmless since the State met its burden under the Failure to Assume Parental Responsibility Ground.

The Appellant accurately summarizes the purportedly irrelevant and purportedly inadmissible line of questioning. App. Brief p. 6-9. There may be some merit to the argument that the some of the testimony could have been excluded under Wis. Stats. §§ 904.01, 904.02, 904.03 and *Tammy W.-G. v. Jacob T.*, 333 Wis. 2d 273, 797 N.W.2d 854, 2011 WI 30. Under *Tammy W.-G.*, some of the testimony could be determined to not be relevant under the totality-of-the-circumstances standard because the events occurred before the lives of P.G., Jh. G. and Jn. G. It should be noted that the Appellant does not cite to this case to support its argument, but it is being included for the purpose of completeness.

Ultimately, the Appellant fails to provide context for the comments by the trial court that makes clear that the information about S.T.'s other kids related to the reasonable efforts finding. Directly before the excerpt provided by the Appellant, the trial court stated, "I find that their efforts are reasonable because I think they tried to meet [S.T. where she was]." (R. 88:11). The doctor referenced in Appellant's

excerpt authored a report on S.T.'s cognitive limitations, and the trial court summarized pertinent parts of the report in addressing those cognitive limitations. (R. 88:12-16). After summarizing this information, the trial court made the reasonable efforts finding. (R. 88:16). The cited passages in Appellant's brief were part of the reasonable efforts finds, which Appellant does not challenge, and so further analysis will not be provided in this brief.

The trial court did go on to cite other evidence that S.T. failed to meet conditions. In particular, the trial court commented that S.T. was never able to progress to even partially supervised visits, that S.T. required one and at times two supervisors present during the visits and that S.T. needed prompting to do even the most basic things for the children. (R. 88:17). In reading the full findings by the trial court, it is clear that mention of S.T.'s other children and past CHIPS and TPR cases was not used to impermissibly hold that against S.T. in regard to P.G., Jh. G. and Jn. G. Rather, it was meant to understand the struggles that S.T. has faced in the past, the case manager's knowledge of that information and the implementation of that information so that reasonable efforts would be made.

Even if it is found that mention of S.T.'s other children and prior CHIPS and TPR cases was impermissibly used for the Continuing CHIPS Ground, the error is harmless since the trial court found grounds under the Failure to Assume Parental Responsibility Ground.

State v. C.L.K. is a recent Wisconsin Supreme Court case that thoroughly discusses the harmless error doctrine in the context of a termination of parental rights proceeding. 2019 WI 14, 385 Wis. 2d 418, 922 N.W.2d 807. The Court ultimately held that the trial error in that case rose to the level

of a structural error. *State v. C.L.K.*, 2019 WI 14, ¶ 16. The dissent in particular summarizes the harmless error doctrine in terms of case law and statute. The State has the burden of proving harmless error, a termination of parental rights proceeding is civil, the doctrine has been codified and is applicable to civil and criminal cases. *State v. C.L.K.*, 2019 WI 14, ¶ 88-90 (Roggensack, dissenting) (citing *State v. Tiepelman*, 2006 WI 66, ¶ 3, 291 Wis. 2d 179, 717 N.W.2d 1; *Door Cty. DHFS v. Scott S.*, 230 Wis. 2d 460, 465, 602 N.W.2d 167 (Ct. App. 1999). A harmless error "allows the circuit court's judgment to stand so long as there is no consequential injury to the defendant's case." *State v. C.L.K.*, 2019 WI at ¶ 13.

At no point does the Appellant argue that the trial judge referenced the purportedly inadmissible testimony in the actual finding regarding the Failure to Assume Parental Responsibility Ground. Likewise, the Appellant does not argue that the trial judge impermissibly considered S.T.'s other children and her prior CHIPS and TPR cases in the actual ruling on the second ground alleged. The Appellant contends that the trial court heard very brief testimony over the course of days regarding the grounds phase, and that possibly this testimony affected the court's decision on the Failure to Assume Parental Responsibility ground but fails to fully develop the argument. Arguments that are not fully developed should be disregarded. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Therefore, the trial court's judgment must stand even if this court finds issue with the Continuing CHIPS Ground since there is no "consequential injury to the defendant's case." *State v. C.L.K.*, 2019 WI at ¶ 13. Only one ground is needed, and the State met its burden according to the trial court's finding that both grounds were proven by clear, satisfactory

and convincing evidence and according to the Appellant's lack of actual challenge to the Failure to Assume Parental Responsibility Ground.

CONCLUSION

Contrary to Appellant's assertions, the trial court did rely on clear, satisfactory and convincing evidence in its ruling on the grounds alleged. Even if some of the testimony could have been excluded, the trial court relied on other evidence in its finding regarding the Continuing CHIPS Ground. Even if this court finds that the trial court's discussion of S.T.'s other children tainted the Continuing CHIPS Ground, the error was harmless because the trial court found grounds under the Failure to Assume Parental Responsibility Ground. The trial court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach, so it must be found that the trial court properly exercised its discretion. For the foregoing reasons, the Guardian ad Litem requests this Court affirm the trial court's order.

Dated at Milwaukee, Wisconsin, this 21st day of September, 2021.

Electronically signed by:
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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 1,970 words.

Dated at Milwaukee, Wisconsin, this 21st day of September, 2021.

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