STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

In re the termination of parental rights to:
J.B., J.B., V.B., L.B., M.B., T.B., M.B. and Z.B.,
Persons under the age of 18:

Case Nos. 23AP2093-2100

STATE OF WISCONSIN,
Petitioner-Respondent,

v.

M.M.,
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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ISSUE PRESENTED

1. Whether the trial court erroneously exercises its discretion when it analyzes the facts, applies a proper standard of law, and reaches a conclusion that a reasonable judge could reach.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument and publication are not requested at the Court of Appeals.

STATEMENT OF THE CASE AND FACTS

On May 15, 2019, the State of Wisconsin filed Petitions for Protection or Services over J.L.B., J.A.B., V.B., L.B., M.B.B., T.B., and M.A.B., (R. 46),[1] and on December 17, 2019, the State of Wisconsin filed a Petition for Protection or Services over Z.B. (2023AP2100, R. 39). The first seven children were removed after M.A.B. presented with injuries consistent with physical abuse. (*See* R. 47: 2). Children's Hospital discovered a subdural hematoma with multiple layers of healing and re-injury, and neither the mother, nor the maternal grandmother, could provide a viable description of how the injury occurred. (R. 47: 2). Later that year, Z.B. was removed at birth because the mother had an open case with DMCPS, she did not receive prenatal care, Z.B. tested positive for THC, and the mother tested positive for THC and amphetamines at the hospital. (2023AP2100, R. 40: 2).

The CHIPS court found the first seven children to be in need of protection or services on October 15, 2019, and entered a dispositional order on the same date that outlined conditions for return and services to assist M.M. in meeting those conditions. (R. 45) (R. 48). The CHIPS court found

[1] All references to the index will be made in 2023AP2093, unless otherwise noted. Two children have the initials J.B., and two have the initials M.B., so middle names are used to differentiate. J.L.B. is the child referenced in 21TP107 and 23AP2093; J.A.B. is the child referenced in 21TP108 and 23AP2094; M.B.B. is the child referenced in 21TP111 and 23AP2097; and M.A.B. is the child referenced in 21TP113 and 23AP2099.

Z.B. to be a child in need of protection or services on January 21, 2020, and entered a dispositional order on May 15, 2020. (2023AP2100, R. 42: 7) (2023AP2100, R. 41).

On March 17, 2021, the State of Wisconsin filed Petitions for Termination of Parental Rights to all eight children, with M.M. as the respondent parent, asserting continuing need of protection or services pursuant to Wis. Stat. § 48.415(2), and failure to assume parental responsibility pursuant to Wis. Stat. § 48.415(6). (R. 4). An initial appearance occurred on June 17, 2021. (R. 98). On July 27, 2021, M.M. entered a plea contesting the grounds alleged and demanded a jury trial. (R. 97: 3–4). On April 25, 2022, M.M. entered a no contest plea to the continuing need ground, and after hearing sufficient evidence, the court entered an unfitness finding. (R. 56: 5–16; 35–48). The case was then set for disposition.

Disposition occurred over several court dates on January 12, 2023, January 13, 2023, and April 5, 2023. The trial court heard from several witnesses. Additional facts will be included in the argument section, but generally, the trial court heard that each child is placed with an adoptive resource. (R. 80: 162–63). The children were split into three different placement groups, and each placement resource had completed licensing and was committed to adoption. (R. 80: 163). The trial court heard that all the children were ultimately adoptable, and nothing about their age or health posed an obvious barrier to adoption. (R. 80: 168–69).

The oldest two children, J.L.B. and J.A.B. had the strongest relationship with their mother and maternal grandmother, but the case manager believed severing the relationship in favor of termination was appropriate. The case manager believed the rest of the children recognized and had positive relationships with their mother and maternal grandmother, but the substantiality of those relationships varied and diminished the younger the child was. (R. 80: 179–82) (R. 79: 8–28). The mother's visitation was scheduled twice per week, with the children split into the five oldest at one visit, and the three youngest at the second visit. (R. 80: 179).

J.L.B. and J.A.B. expressed that they wanted to live in their maternal grandmother's home with all of their siblings and their mother living there together. (R. 79: 41). V.B. and L.B. wished to continue to see their mother but expressed that they wanted to stay with their placement, D.M., long-term. (R. 79: 41). The next youngest children, M.B.B., and T.B., could not really understand any questions about their wishes—when asked about their "home," or their "mother," they associated that with their foster mother. (R. 79: 42). Finally, the youngest two, M.A.B. and Z.B., were simply too young to express wishes. (R. 79: 42–43).

The duration of separation is unclear, because the oldest seven children lived with their maternal grandmother for an undetermined amount of time prior to removal. (R. 79: 44–45). The youngest child, Z.B., was separated from M.M. her entire life, as she was removed at birth. The older children were out of home and involved with the DMCPS for well over two years.

At disposition, the mother still was not interested in taking placement of the children. (*See* R. 100: 118). She was requesting that all eight children go to the maternal grandmother, where two other children of M.M.'s lived under legal guardianship. (R. 100: 118). The DMCPS was not in agreement and testified in detail the safety concerns it had with the maternal grandmother's home. For instance, the children had lived with the maternal grandmother when M.A.B. presented with multiple healing or healed head injuries, and the other children presented as dirty and neglected. (R. 79: 44–45). The grandmother did not have appropriate or sufficient space in her house at the time of disposition, (R. 79: 39), her home lacked appropriate safety measures for children, (R. 79: 28–30), and the grandmother did not have the means to appropriately supervise all ten children that would be in her care (R. 79: 32–35, 39, 56). Placement with the grandmother was not a stable permanency option, but TPR provided an option that would ensure stability and permanency. (R. 79: 48–53).

The trial court found that there is an adoptive resource available for each child, and each child is highly likely to be adopted if TPR was granted. (R. 100: 171). The trial court did not find that any child's behaviors, needs,

or age amounted to a barrier to adoption. (R. 100: 175–86). The trial court found that each child has an idea of who their mother and grandmother are, and that for the youngest four children there was no substantial relationship and no harm if the relationships were severed. (R. 100: 175–81). For J.L.B., J.A.B., V.B., and L.B., the trial court noted that severing the legal relationships could cause some repercussions, but that any harm would be mitigated by continued contact, which each placement expressed commitment to. (R. 100: 182–87).

The trial court found that the youngest four children were simply too young to discern any wishes but noted that each child had a significant relationship with their foster parent and the siblings they lived with, and that these children refer to their foster parent by parental names. (R. 100: 176–81). For the oldest four children, the court noted that each child seemed to have some confusion over where they wanted to be long-term, but each had substantial bonds with their foster parents and siblings that they lived with. (R. 100: 182–87). The trial court found that the duration of separation for all of the children was significant—40 months for Z.B., and 47 months for the oldest seven children. (R. 100: 176, 78–82, 84–85, 87).

The trial court believe that stability and permanence was the key to this case. (R. 100: 172). The trial court believed that the maternal grandmother earnestly wished she could have placement of all eight of these children. (R. 100: 172). The trial court also believed it was credible testimony that the grandmother doubted her ability to manage them, asking the case manager questions about her responsibilities and what help she would receive. (R. 100: 172–73). The trial court did not believe that continuing the CHIPS order to provide services to the grandmother to effectuate placement was permanency, nor was a decision to place all of the children with her one that provided stability. (R. 100: 174). The trial court believed that the current foster placements would provide each child with stability and permanence, and that denial of the TPR would lead to the children continuing to languish in foster care. (R. 100: 176, 178–84, 186–87).

Accordingly, on April 6, 2023, the trial court found that there was clear and convincing evidence that termination of parental rights was in the

children's best interests and granted the TPR petitions. (R. 100: 188) (R. 82). M.M. filed a notice of intent to pursue post-disposition relief on April 10, 2023, (R. 83), and a notice of appeal was filed on November 9, 2023. (R. 104).

ARGUMENT

A termination of parental rights action is a bifurcated proceeding. *Sheboygan County DHHS v. Julie A.B.*, 2002 WI 95 ¶ 24, 255 Wis. 2d 170, 648 N.W.2d 402. The first phase, or the grounds phase, involves determining whether there are reasons to terminate a person's parental rights to a child. *Id.* The second phase, or the dispositional phase, requires that a trial court decide whether termination of parental rights is in a child's best interests. Wis. Stat. § 48.426(2); *Steven V. v. Kelley H.*, 2004 WI 47 ¶ 25, 271 Wis. 2d 1, 678 N.W.2d 856.

The decision to terminate parental rights is within the circuit court's discretion. *Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993). A decision by a 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; *Rock County Dept. of Social Servs v. K.K.*, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). If a trial court examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach, then a trial court will be found to have properly exercised its discretion. *Dane County DHS v. Mable K.*, 2013 WI 28 ¶ 39, 346 Wis. 2d 396, 828 N.W.2d 198; *see also Julie A.B.*, 2002 WI 95 ¶ 30, 255 Wis. 2d 170, 648 N.W.2d 402; *Margaret H.*, 2000 WI 42 ¶ 32, 234 Wis. 2d 606, 610 N.W.2d 475.

I. THE TRIAL COURT DID NOT ERRONEOUSLY EXERCISE ITS DISCRETION WHEN IT FOUND THAT TERMINATION WAS IN THE CHILDREN'S BEST INTERESTS BECAUSE THERE WAS SUFFICIENT EVIDENCE TO MAKE THAT FINDING.

Wisconsin Statute § 48.426 governs the dispositional phase of TPR proceedings. The statute provides that the best interests of the children shall be the prevailing factor considered by a court in determining the disposition of a child. Wis. Stat. § 48.426(2); *Julie A.B.*, 2002 WI 95 ¶ 4. A trial court may consider any relevant evidence but must consider the six factors set out in Wis. Stat. § 48.426(3). *Steven V.*, 271 Wis. 2d 1 ¶ 27. The statute does not lay out the degree of weight to be assigned to each factor, and only requires that a trial court give "adequate consideration of and weight to each factor." *Margaret H.*, 2000 WI 42 ¶ 35.

The best interests of the child govern the dispositional phase, and the factors in Wis. Stat. § 48.426(3) exist to "give contour" to the best interests standard and "serve to guide courts in gauging whether termination is the appropriate disposition." *Margaret H.*, 2000 WI 42 ¶ 34. The standard for an erroneous exercise of discretion is not whether a judge gave less weight than desired to a particular factor, or whether a judge considered the same quantity of evidence for each factor, or even whether each factor weighed in favor; it is whether a judge examined the relevant facts, applied a proper standard of law, and demonstrated a rational process to reach a conclusion. *See Mable K.*, 2013 WI 28, ¶ 39.

Here, the trial court considered each factor, and ultimately found that termination was in the children's best interests. M.M. concedes that the trial court weighed each of the required factors in Wis. Stat. § 48.426(3). However, "M.M. believes that the court's weighing produced an erroneous result in this case." (Br. of App. at 10).

M.M. argues that the children have a substantial relationship with her, and that placement with the maternal grandmother was a "better choice" in this case. *Id.* The trial court made findings as to each of these issues and did not erroneously exercise its discretion in the process.

Disposition occurred on three dates: January 12, January 13, and April 5, 2023, where the trial court heard evidence from several witnesses. Given the number of children in this case, it is easiest to go through the evidence by placement group: the eldest two children, J.L.B. and J.A.B.; then the middle

three children, V.B., L.B., and T.B.; and finally the youngest three children, M.M.B., M.A.B. and Z.B.

As to Wis. Stat. § 48.426(3)(a), the court heard evidence that A.D. was a fully-licensed, committed adoptive resource, and had maintained placement of J.L.B. and J.A.B. for over two years. (R. 80. 164). Both boys referred to her as "ma," and were bonded to her. (R. 80: 164). The trial court heard A.D. speak positively, and knowledgably, about both of the children, their strengths, and their needs. (R. 80: 7–8). D.M. was a fully-licensed, committed adoptive resource for T.M., L.M., and V.M. (R. 80: 162–63). D.M. expressed that she loves the children, that they are her family, and that the children view D.M.'s home as their home. (R. 80: 166–67). M.T. was a fully-licensed adoptive resource for M.M.B., M.A.B., and Z.B. (R. 80: 162–63). The children were well-adjusted to her home, they were comfortable, and they are made part of the family. (R. 80: 167–68).

This was sufficient evidence to analyze the first factor, and for each child the factor weighed in favor of termination because the children were placed with an adoptive resource that was committed to adoption. (R. 100: 171).

As to Wis. Stat. § 48.426(3)(b), the court heard evidence that the oldest seven children presented with dental issues, lack of routine medical care, and hygiene issues at removal. (R. 80: 169). At disposition, J.L.B. had aggressive and sexualized behaviors in the home, but A.D. was aware of those behaviors and advocates and follows through with necessary mental health treatment. (R. 80: 169–70). The case manager did not believe it would be impossible to identify another adoptive resource if something unexpected occurred with A.D. and did not believe that J.L.B.'s age or behaviors presented a barrier to adoption. (R. 80: 170). J.A.B. was diagnosed with oppositional defiant disorder and unspecified trauma disorder. (R. 80: 171). A.D. was aware of these diagnoses and the behaviors stemming from them and was following through on treatment and care to address them. (R. 80: 171–72). Similar to his older brother, the case manager did not believe that his behaviors or age posed a barrier to adoption. (R. 80: 172).

V.M. was enrolled in trauma therapy for emotional dysregulation. (R. 80: 172–73.) T.B. had some aggressive behaviors at school, and the school and foster parent were working on it. (R. 80: 175). L.M. did not have any major needs at disposition. (R. 80: 173–74). The foster parent, D.M., was aware of the needs for these three children and was following through with any necessary treatment. (R. 80: 173, 175). None of these needs posed a barrier to adoption. (R. 80: 173–75).

M.B.B. did not have any major needs at removal, nor at disposition, beyond some extra tutoring for academic needs. (R. 80: 174). M.A.B. had a subdural hematoma at removal and evidence of repeated head injury. (R. 80: 175–76). He additionally had issues with detached ear tubes, likely as a result of being shaken as a baby. (R. 80: 176). He had surgery to reattach the tubes, and recovery was going well. (R. 80: 176). Z.B. was born drug positive for THC and amphetamines. (R. 80: 177). At disposition, Z.B. had asthma, and a gluten intolerance, both of which required some special cares. (R. 80: 177). The foster parent, M.T. was aware of the needs of all three children and was following through on necessary cares. (R. 80: 174, 176, 177). None of these needs posed barriers to adoption. (R. 80: 174, 177, 178).

This was sufficient evidence for the trial court to analyze the second factor. The trial court found that A.D. is a special education teacher, and she had developed a bond and structure to manage J.L.B. and J.A.B.'s significant behavioral issues. (R. 100: 184). The court noted the diagnoses for the children, but also noted that the children were in services, and A.D. is trained and doing well regulating both children. (R. 100: 184–86). The court found that V.B., and T.B. both had no special needs, and no barrier to adoption. (R. 100: 180, 183). The trial court noted that L.B. was in speech therapy, but it was not a barrier to adoption. (R. 100: 181).

The court noted that M.B.B. has some learning delays, and some behavioral issues, but she was scheduled to start therapy and neither issue posed a barrier to adoption. (R. 100: 178–79). M.A.B. was enrolled in speech, occupational therapy, and had some hearing issues and surgeries as a result of his injuries prior to removal, but overall there was no barrier to adoption and those issues were being appropriately monitored and treated. (R. 100:

176–77). Finally, Z.B. had some behaviors requiring redirection, and some medical concerns—asthma and a gluten intolerance—but no concerns that would cause a barrier to adoption. (R. 100: 175). Overall, all of the children were adoptable.

As to Wis. Stat. § 48.426(3)(c), the court heard evidence that J.L.B. and J.A.B. were older, and thus had a more solid relationship with M.M. due to having more memories with her. (R. 80: 179). The case manager believed the circumstances were likely confusing for the boys. (R. 80: 179). J.L.B. talked to M.M. at visits, would tell her what is going on in his life, and what is happening at school. (R. 79: 3). The case manager believed that J.L.B. had a significant emotional bond with M.M. that was positive. (R. 79: 4). The case manager testified that J.A.B. is the most prone to outbursts at visits and presented with a mix of excitement and dysregulation at visitation with M.M. (R. 79: 4). The case manager noted that M.M. struggled to redirect him. (R. 79: 4). Nevertheless, the case manager believed J.A.B. had a positive emotional bond with M.M. (R. 79: 7).

As to the maternal grandmother, the case manager believed that both boys loved their grandmother and testified that J.L.B. was always excited to visit the grandmother. (R. 79: 18–19). J.A.B. required a lot of redirection from the grandmother, which she struggled to do because she was primarily Spanish-speaking, and J.B. did not speak Spanish. (R. 79: 19–20). The situation was also complex with J.A.B., as he had disclosed sexual abuse against his maternal uncle who lived in the maternal grandmother's home. (R. 79: 5–6). Despite the language barrier and the dynamics at visitation, the case manager believed both boys have a positive emotional bond with their grandmother. (R. 79: 19–20). The case manager testified that despite the relationship, it was not appropriate for either boy to be placed with the grandmother due to safety concerns in the home, and it was not appropriate to reunify only the oldest child and split the boys up. (R. 79: 58–62).

The trial court heard that V.B. and L.B., as the next two oldest children, also had more memories with their mother and grandmother that caused a closer relationship. V.B. would run up to M.M. at visits, want to talk to her, and want to share things or show her things. (R. 79: 8). V.B. had

expressed that she likes to see M.M., but wanted to stay with her foster mother, D.M. (R. 79: 8). Nonetheless, the case manager believed that V.B. has an overall positive relationship with her mother. (R. 79: 8). The case manager testified that L.B. generally enjoys going to see M.M. but is easily overstimulated or overwhelmed in the presence of all of her siblings. (R. 79: 9). For instance, as one visit she isolated herself in a bedroom crying, and her mother and grandmother had to coax her out of the room. (R. 79: 9). L.B. told the case manager that she likes to visit, but would be sad to leave her foster mother, D.M. (R. 79: 9). Nonetheless, the case manager believed that L.B. has a positive relationship with M.M. (R. 79: 10).

Similarly, V.B. enjoyed visits with her grandmother, would ask her questions, and grandma would paint her nails at visits. (R. 79: 20–21). However, V.B. would reach a point at visits with her grandmother when she wanted to go back home to her foster parent's home. (R. 79: 21). The case manager believed it was still a positive relationship. (R. 79: 22). L.B. would get frustrated at visits with grandma, and the case manager observed that the grandmother "[did] not have a lot of patience for it." (R. 79: 22). For instance, the time L.B. isolated in a room by herself, the grandmother did not appear to empathize with L.B.'s need to take a moment to herself to calm down. (R. 79: 22–23). Nonetheless, the case manager believed that L.B. had a positive relationship with her grandmother. (R. 79: 23).

The four youngest children did not view M.M. as a mother figure, and the case manager would have to be very specific with the children to differentiate M.M. from their foster parent when referencing their "mother." (R. 80: 179, 182) (R. 79: 11–13, 15). The case manager believed T.B. had a positive relationship with M.M, but a more limited relationship, as he associated the word "mom," or "mother," which D.M., his foster parent. (R. 79: 12–13). The case manager believed the same about M.B.B., M.A.B., and Z.B., who would associate mother with their foster parent, M.T., rather than M.M. (R. 79: 11, 14, 15). She believed that M.B.B. had a positive, but limited relationship, and that M.A.B. and Z.B. likely had indifferent relationships with M.M. (R. 79: 11–12, 15–16). All four children seemed to get more attention from their grandmother at visits than the older children, and so the relationship was likely positive, but from the children's perspective they

were usually excited to see their siblings more than their grandmother. (R. 79: 24–26).

The relationship amongst the siblings was positive, but there were often meltdowns and stress when all of the siblings were together. (R. 79: 34). The kids would be excited to go but would get overstimulated and would separate into their placement groups by the end of visitation. (R. 79: 34). All of the foster parents expressed willingness to facilitate continued contact with the mother, the grandmother, and the other siblings. (R. 79: 37–38). The case manager did not believe that the legal severance would cause harm, and any harm would be mitigated if the children continued to have some contact. (R. 79: 38). The case manager ultimately believed that the most harm would occur if the children were removed from their current homes. (R. 79: 38–39).

This was sufficient evidence to analyze this factor. Visitation with the mother was one time per week for each child as visitation was split into the oldest five once per week and the youngest three once per week. (R. 80: 179). Visitation with the grandmother was once a week for a while but stopped for a period due to sexual abuse allegations against the maternal uncle who lived in the grandmother's home. (R. 79: 5–6, 16–18).

The trial court did not believe the relationship was truly substantial for any of the children given the circumstances of visitation. Specifically, though, the court acknowledged that J.L.B., J.A.B., V.B., and L.B. stood the most risk to suffer some possible repercussions from severing the legal relationship. (R. 100: 182–87). The court believed that those repercussions could be mitigated by continued contact if the adults arranged for it. (R. 100: 182–87). The court believed that the youngest four children recognize M.M., and their grandmother, but the relationship was not substantial with either of them and there would be no harm in severing the relationship. (R. 100: 175–81). This comported with the children's ages and respective memories of their mother and grandmother, as compared with limited visitation throughout the case.

As to Wis. Stat. § 48.426(3)(d), the court heard that both J.L.B. and J.A.B.'s wishes were idealized—they both wanted a scenario in which they

would live in their grandmother's house, with their mother, and with all of their siblings. (R. 79: 41). V.B. and L.B. indicated that they wanted to continue to visit with their mother, but wanted to stay with their foster parent, D.M. (R. 79: 41). When you asked M.B.B. and T.B., they associated "home," and "mother," with their foster parents. (R. 79: 42). M.A.B. and Z.B. were too young to discuss long-term wishes. (R. 79: 42–43).

This was sufficient to analyze the fourth factor. The trial court found that the boys had some confusion about where they wanted to end up; specifically, the trial court found that they have a substantial relationship with their foster parent that they call "ma," but also expressed wanting an ideal world where their home would consist of approximately 13 people under one roof, which was not a viable possibility. (R. 100: 185, 187). The court found that V.B. and L.B. expressed wanting to stay with their foster parent. (R. 100: 182, 184). The trial court found that the youngest four children were too young to express wishes, though called their foster parents by parental terminological (R. 100: 176–81).

As to Wis. Stat. § 48.426(3)(e), it was somewhat unclear truly how long the children had been separated from M.M., because they had lived with their grandmother prior to removal for an undetermined amount of time. (R. 79: 44–45). However, the trial court heard and found that the children had been formally out of home for 47 months. (R. 100: 185, 187). This was sufficient to analyze this factor, and it is a notably significant amount of time to be outside the mother's home.

Finally, as to Wis. Stat. § 48.426(3)(f), the court heard that the foster parents had provided for all of the children's needs throughout the case. (R. 79: 48). At disposition, M.M. did not want reunification or placement of the children. (R. 100: 117–18). The trial court heard that the DMCPS had repeatedly assessed the maternal grandmother's home and deemed it inappropriate for some or all of the children. The grandmother was in the process of remodeling her house during the first two disposition dates, adding bedrooms to her unfinished basement in hopes of taking placement. (R. 79: 28). By the last date, the grandmother testified that she had built a "full apartment" in the basement with "five bedrooms," and she put up cameras

throughout the house. (R. 100: 4–5). Nonetheless, the case manager did not believe the grandmother could provide for all of the children. (R. 100: 126).

The children lived with the grandmother at removal. (R. 79: 44–45). The children reported at removal that their fifteen year old aunt was their primary caregiver, not their grandmother. (R. 79: 55). M.A.B. sustained repeated head injuries in this home, T.B. was likely being dosed with Benadryl to control his behaviors, and the children were filthy and lacking basic hygienic care. (R. 79: 55). The grandmother reported that she relied on neighbors for help or childcare. (R. 79: 56). At the time of disposition, visitation was chaotic and out of control for just two hours every week, which did not support the grandmother's ability to provide for full-time daily care of ten children. (R. 100: 125–26). At visitation, the grandmother continued to rely on older children in the home to provide care, specifically the children's older brothers who were 12 and 13 years old. (R. 79: 35, 56). When asked what her plan would be if she took placement, the grandmother testified that she would ask her husband and neighbors for help. (R. 79: 32–33). Further, the grandmother denied the sexual abuse allegations against her son, and instead accused the foster parents of fabricating it. (R. 79: 60). The DMCPS was concerned that she would not acknowledge it as a possibility or ask more questions to demonstrate support of the child. (R. 79: 60–61). Even after the uncle left the home, J.L.B. and J.A.B. remained triggered in the environment. (R. 100: 139).

This was sufficient evidence to analyze the sixth factor. The court found that this was the most significant factor for the children, (R. 100: 172), that the children would enter a more permanent and stable family relationship if the TPR was granted, and conversely that they would languish in foster care if the TPR was denied. (R. 100: 186–87). The trial court noted that it believed the grandmother was earnestly interested as an alternative placement but was already astutely questioning her abilities to care for all ten children. ((R. 100: 172). The trial court had heard testimony that she was asking DMCPS what the terms of placement would be, what powers she would have, what help she could get to manage the children, and what visitation would be required. (R. 100: 172–73). The trial court found that foster care was not permanency, a continued CHIPS order was not

permanency, and delays to give the grandmother appropriate services was not permanency. (R. 100: 174). The court found that placement with the grandmother was not wise, nor was it stable. (R. 100: 174).

At disposition, the trial court is tasked with determining what is in the best interests of the child, and it is tasked with giving "adequate consideration of and weight to each factor" in Wis. Stat. § 48.426(3), in addition to any other relevant evidence. Wis. Stat. § 48.426(3); *Steven V.*, 271 Wis. 2d 1 ¶ 27; *Margaret H.*, 2000 WI 42 ¶ 35. M.M. asserts that the trial court should have weighed the factors differently, in such a way that it denied the TPR petition, or gave placement to the grandmother, but that is not how an erroneous exercise of discretion is analyzed. The trial court found that the factors ultimately weighed in favor of TPR, and the trial court found that placement with the grandmother was not a stable permanency option, nor a wise decision to put the responsibility for ten children on one person. M.M. does not get to assign weight to evidence. The trial court is tasked with doing so, giving "*adequate* consideration of and weight to each factor." The trial court did so, quite carefully, upon evaluation of sufficient evidence, and did not erroneously exercise its discretion in the process.

CONCLUSION

The trial court's decision terminating parental rights of M.M. to all eight children is consistent with the mandates of Wis. Stat. § 48.426 and the case law interpreting that statute. The factors weighed ultimately in favor of TPR, and placement with the grandmother was found to be unwise given the evidence before the court. Accordingly, the Guardian ad Litem respectfully requests that this Court find that the trial court did not erroneously exercise its discretion in finding that termination of parental rights and adoption was in J.L.B., J.A.B., V.B., L.B., T.B., M.B.B., M.A.B., and Z.B.'s best interests.

Dated at Milwaukee, Wisconsin, this 16th day of January, 2024.

Respectfully submitted,

/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 5,754 words.

Dated at Milwaukee, Wisconsin, this 16th day of January, 2024.

/Electronically signed by/

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