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STATE OF WISCONSIN
COURT OF APPEALS
District 2
Appeal No. 2024AP001622
Circuit Court No. 22 TP 41

In re the Termination of the Parental Right to:
N.V.M., a person under the age of 18:

Waukesha County Department of Health
& Human Services,
Petitioner-Respondent,

vs.

M.M.M.,
Respondent-Appellant.

ON APPEAL FROM JUDGMENTS AND ORDERS ENTERED IN
WAUKESHA COUNTY CIRCUIT COURT BRANCH 7, THE
HONORABLE CODY HORLACHER, PRESIDING.

BRIEF AND APPENDIX OF
THE RESPONDENT-APPELLANT

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Statutes and Other Authority

Wis. Stats. § 48.415(2) passim

ISSUES PRESENTED

- I. Was the jury verdict and the trial court's unfitness finding clearly erroneous?

Trial Court Treatment: The trial court found M.M.M. to be an unfit parent under the grounds of Continuing CHIPS and Failure to Assume Parental Responsibility after receiving the jury's verdict.

- II. Was there sufficient evidence that termination of M.M.M.'s parental rights was in N.V.M.'s best interest?

Trial Court Treatment: The trial court here answered yes when it entered the orders terminating M.M.M.'s parental rights.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Counsel does not believe that oral argument is necessary issues in this case in that the issues can be adequately addressed in the briefs.

Publication is not appropriate, given that this is a one-judge appeal.

STATEMENT OF FACTS

On November 1, 2022, a termination of parental rights (TPR) petition was filed regarding M.M.M.'s child in Waukesha County case number 22 TP 41. (Document, 3:1) The petitioner was the Waukesha County Department of Health & Human Services (DHSS). *Id.*

The petition alleged two unfitness grounds: 1) Continuing CHIPS, under Wis. Stat. sec. 48.415(2), and 2) Failure to Assume Parental Responsibility, under Wis. Stat. sec. 48.415(6). M.M.M. appeared before the circuit court and indicated her desire to contest the petitions. (126:6) A jury trial was demanded. *Id.*

The case was adjourned for various reasons and a jury was impaneled on November 13, 2023. (135:1)

Jury Trial

Testimony at the jury trial included witnesses Shimona Seabrook, M.M.M., Cynthia Nation, Alyssa Jones, April Behounek and Laura Miller.

Of note, M.M.M. testified to the following:

M.M.M. discussed and was able to describe her son's birth, and her pregnancy. (135:138) She admitted to using prescribed Suboxone daily for opioid addiction, relapsing with Oxycodone, using cocaine, and smoking cigarettes. (135:139) N.V.M. was born positive for opiates and cocaine. (135:139) Due to her substance abuse, the

Waukesha County Department of Health and Human Services deemed her care unsafe, leading to N.V.M.'s removal. (135:140)

M.M.M. tested positive for cocaine and controlled substances after childbirth. (135:141) She lived with her family in Waukesha, Wisconsin, and moved around a lot afterwards, residing temporarily in hotels. (135:142)

M.M.M. admitted that she was incarcerated from May to July 2022 due to a probation violation, failure to appear, and testing positive for cocaine. (135:144) Following the release, she resided with her grandfather and then had housing through Welfare Warriors. (135:145) The housing situation changed due to the needs of another family. M.M.M. described living in hotels paid for by her grandfather, with her mother accompanying her. (135:144-45)

M.M.M. testified to her familiarity with the 2020 disposition order and described the conditions for return, including proving empathy for her son, creating a safety plan, and reporting to probation. (135:145) M.M.M. testified that she complied with these conditions. (135:145) She discussed struggles with heroin and cocaine addiction, the last usage in March 2023, multiple relapses, and positive tests for different substances such as fentanyl. M.M.M. also detailed her engagement in various treatment programs, including a Suboxone program, intensive outpatient program (IOP), dual diagnosis therapy, and PTSD-specific EMDR therapy. (135:146-7)

M.M.M. testified that she was involvement in various treatment programs through the 16th Street Clinic, including AODA, Suboxone, and EMDR therapy, often highlighting issues with consistency and transportation. (135:147) She did admit to testing positive for multiple substances during her treatment. (135:149)

M.M.M. was asked about her refusal to engage in random drug testing and clarified that she did not refuse but was already being tested elsewhere. (135:150) She testified about incidents involving illegal substances found in a hotel room, a traffic stop with pills, and a probation warrant leading to her going into custody. (135:151)

M.M.M. addressed her engagement with therapy recommended by the Waukesha County Department of Human Services and the details surrounding her compliance with mental health conditions. (135:152) She also described her experiences with a second psychological evaluation, communication with the Department, and issues with keeping in contact due to phone problems. (135:154)

M.M.M. described her issues with phone communication and acknowledged avoiding phone contact with Ms. Girman due to feeling stressed, and despite being suggested other communication methods, did not utilize them. (135:154) M.M.M. also testified about her mixed feelings about the assistance from parenting aide Sara Matson, including a point of contention regarding advice on child bribing, and ultimately discontinued her services. (135:155)

Additionally, M.M.M. described her relationship with Nathan Majewski beginning in November 2022 and her subsequent cohabitation. (135:156) M.M.M. testified about a four-month abusive relationship with Mr. Majewski. (135:157) She detailed a police-involved incident that led to charges against Mr. Majewski and a no-contact order. (135:157) Despite this, the relationship continued, leading to issues at the 16th Street Clinic. (135:158) M.M.M. later had intermittent contact with Mr. Majewski, although they are no longer in a relationship. (135:158)

Regarding visits with N.V.M., visits initially took place at M.M.M.'s aunt's house and happened almost every weekend, sometimes lasting up to three days. (135:159-60) Concerns about M.M.M. being under the influence during visits were raised. (135:160) Visits were later transferred to M.M.M.'s home and became virtual after a certain period. (135:161)

M.M.M. testified to her history of attending virtual visits and attempts to switch to in-person visits, acknowledging some inconsistencies. (135:162) She also provided information about her child's daycare, healthcare, and speech therapy, including missed doctor's appointments due to not being informed of dates. (135:163)

M.M.M. initially questioned the decision to provide N.V.M. with speech therapy, feeling it was for the foster mom's benefit. (135:164-65) She admitted to defending him but was open to necessary care. (135:165) She has never spoken to the speech therapist and confirmed that N.V.M. was never in her care. (135:165) She has

not been employed, but she has bought gifts and paid \$500 in child support. (135:165-66)

M.M.M. saved money from allowances and received financial help from her grandfather. (135:166) She admitted that she was not the primary caretaker for N.V.M. and did not care for N.V.M. daily. (135:166) M.M.M. admitted that she had been convicted of three crimes. (135:167)

Ms. M.M.M. discussed her PTSD diagnosis, received as a teenager before her pregnancy with N.V.M., and her EMDR treatment during the case. She elaborated on experiencing childhood trauma, being placed in foster care at age 15, and her involvement with the child welfare system.

Ms. M.M.M. testified that she could not sleep in the days leading up to the court appearance due to crying and worry. (152:193) She first learned about Welfare Warriors after seeking advice from Milwaukee Child Protective Services. (152:194) Welfare Warriors assisted her in securing housing and provided support through her caseworker, Amada, who attended family team meetings. (152:194-95) M.M.M. frequently asked her caseworker, Ms. Girman, for guidance on how to regain custody of her child, N.V.M., but was always instructed to re-read the conditions. (152:195)

M.M.M. frequently told to just reread the conditions of return, but with not addition detail or explanation. *Id.*

M.M.M. recalls meeting Gibba Solorzano at the hospital and clarified the Suboxone refusal incident. (152:198) M.M.M. describes the hospital stay, attempts to visit her son, and actions post-discharge, including a visit from Gibba and subsequent urine testing. (152:199) She discussed turning herself into jail and her actions upon release. (152:199)

M.M.M.'s son was placed with her aunt, causing tension due to family dynamics. (152:200-201) She faced challenges during visits but continued seeing her son. (152:201) N.V.M. was moved and visits occurred at Parents Place, where she admits that she fell asleep during one. (152:201) M.M.M. stated she would not allow her mom near N.V.M. and emphasized the importance of regulating who is around her son. (152:202) She testified that she has obtained her driver's license and is applying for SSI independently. (152:202)

M.M.M. describes a hit-and-run incident where she was run over while doing laundry. (152:202-3) She detailed the incident, the aftermath, and her injuries, which include broken ribs, a brain cyst, and internal injuries. (152:203-5). She was hospitalized for over a week and indicated she couldn't move due to the severity of her injuries. (152:205) Ms. M.M.M. discussed her follow-ups with doctors concerning her health issues, including the potential need for surgery on a cyst in her brain and concerns about her liver and spleen. (152:193)

After testimony and argument, the jury returned verdicts against M.M.M. regarding each unfitness ground (102:1-3, 148:88).

The court found parental unfitness based on the jury verdicts. (148:93). The matter was set over for disposition. *Id.*

Disposition Hearing

The dispositional hearing took place on November 29, 2023. (147:1) Testimonies were heard from S.R., the foster parent, Abbey Girman, grandfather, K.V., Amanda Morales-Zamudio, and M.M.M.

The court heard the parties' arguments before finding that terminating M.M.M.'s parental rights was in the best interest of N.V.M. (147:93, 116:1)

Among the testimony at the disposition hearing was the following:

M.M.M.'s grandfather, K.V., testified and discussed his interactions during video visits and the activities they engage in, such as pretending to cook. (147:46) He expressed a strong bond with N.V.M. and indicated a willingness to support M.M.M. and stay involved regardless of court matters. (147:49-50, 147:53)

K.V. testified and described his visits with his grandson, N.V.M., emphasizing his excitement upon their arrival and his love for playing with a toy kitchen. (147:51) He recounted their activities at visits, such as coloring, reading, and watching Mickey Mouse. (147:51)

M.M.M. also testified to her bond with N.V.M. (147:55). M.M.M. also shared several moments with N.V.M. (147:55). One time he wanted her to watch him fall asleep, highlighting their

bonding time. (147:55) She described N.V.M. is very observant and often talks about a deer he saw in the backyard. (147:55) He repeatedly checks for the deer, feeling afraid. (147:55) He also shows great affection for his grandfather, wanting to show him everything and seeking his praise. (147:57) N.V.M. becomes concerned if Mr. Vanderpool leaves the room and actively looks for him. (147:57)

She testified about N.V.M.'s speech difficulties and efforts to assist him. (147:57-58) N.V.M. had problems with ending words, and Stephanie helped track his progress. (147:58) Visits were three hours, with natural coordination. (147:60) N.V.M. often struggled by not wanting to leave visits, particularly when transitioning between caretakers. (147:60) N.V.M. frequently wanted to extend the visits. *Id.*

M.M.M. testified about the time N.V.M. spent with the S.R., his reaction to family visits, what he calls his relatives, medical care releases, missed appointments, and an encounter in a parking lot.

She testified about a recent video visit with N.V.M., who she described as an active young man. (147:63) She used emojis and a whiteboard on Zoom to engage during visits. N.V.M., with help from Stephanie, learned to draw on the whiteboard. *Id.* Visits are screen-recorded for later viewing, and they express love during these sessions. (147:64)

M.M.M. confirmed her willingness to work with the department and agreed to meet the requirements outlined by Ms.

Girman. (147:64) She expressed her commitment to continue efforts if her parental rights are not terminated. (147:64)

M.M.M. now appeals the judgment and order terminating her parental rights. (133:1)

ARGUMENT

I. The finding that grounds exist to terminate M.M.M.'s parental right is clearly erroneous.

A. Standard of Review.

In a challenge to the sufficiency of the evidence, the proper standard of review is a question of whether there is any credible evidence to sustain the verdict. *Sheboygan Cnty. DHHS v. Tanya M.B.*, 2010 WI 55, ¶49, 325 Wis.2d 524, 785 N.V.M.2d 369. *St. Croix County D.H.H.S. v. Matthew D.*, 2016 WI 35, ¶29, 368 Wis. 2d 170, 889 N.V.M.2d 107

B. The State is required to prove each element of both the Continuing CHIPS ground and the Failure to Assume Parental Responsibility ground for parental unfitness.

In *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶ 21, 246 Wis.2d 1, 629 N.V.M.2d 768, the court said that “due to the severe nature of terminations of parental rights, termination proceedings require heightened legal safeguards against erroneous decisions. Although termination proceedings are civil proceedings, *M.W. v. Monroe County Dep't of Human Servs.*, 116 Wis. 2d 432, 442, 342 N.V.M.2d 410 (1984), the Due Process Clause of the Fourteenth Amendment to

the United States Constitution requires that "[i]n order for parental rights to be terminated, the petitioner must show by clear and convincing evidence that the termination is appropriate." (Citing *Santosky v. Kramer*, 455 U.S. 745, 769 (1982)).

Thus, pursuant to the Fourteenth Amendment and the Wisconsin Children's Code, Wis. Stat. §§ 48.31 and 48.424, in determining if grounds existed to terminate M.M.M.'s parental rights, the jury had a duty to find by clear and convincing evidence that all of the elements of § 48.415(2) had been satisfied. The court cannot sustain the verdict without evidentiary support and make an unfitness finding.

The first two elements of Continuing Chips are from Wis. Stat. § 48.415(2)(a)1-2, and they read that:

(2) Continuing need of protection or services. Continuing need of protection or services, which shall be established by proving any of the following:

(a)

1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2.a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court *which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.* (Emphasis added.)

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court. ...

C. The evidence was not sufficient as to the Continuing Chips ground.

As was testified on this ground was the following evidence:

M.M.M. discussed her son's birthdate, and her pregnancy. (135:138) She admitted to using prescribed Suboxone daily for opioid addiction, relapsing with Oxycodone, using cocaine, and smoking cigarettes. (135:139) N.V.M. was born positive for opiates and cocaine. (135:139) Due to her substance abuse, the Waukesha County Department of Health and Human Services deemed her care unsafe, leading to N.V.M.'s removal. (135:140)

M.M.M. tested positive for cocaine and controlled substances after childbirth. (135:141) She lived with her family in Waukesha, Wisconsin, and moved around a lot afterwards, residing temporarily in hotels. (135:142)

M.M.M. admitted that she was incarcerated from May to July 2022 due to a probation violations failure to appear and testing positive for cocaine. (135:144) Following the release, she resided with her grandfather and then had housing through Welfare Warriors. (135:145) The housing situation changed due to the needs of another family. M.M.M. described living in hotels paid for by her grandfather, with her mother accompanying her. (135:144-45)

M.M.M. testified to her familiarity with the 2020 disposition order and described the conditions for return, including proving empathy for her son, creating a safety plan, and reporting to probation. (135:145) M.M.M. testified that she complied with these conditions. (135:145) She discussed struggles with heroin and cocaine addiction, the last usage in March 2023, multiple relapses, and positive tests for different substances such as fentanyl. M.M.M. also detailed her engagement in various treatment programs, including a Suboxone program, intensive outpatient program (IOP), dual diagnosis therapy, and PTSD-specific EMDR therapy. (135:146-7)

M.M.M. testified that she was involved in various treatment programs through the 16th Street Clinic, including AODA, Suboxone, and EMDR therapy, often highlighting issues with consistency and transportation. (135:147) She did admit to testing positive for multiple substances during her treatment. (135:149)

M.M.M. was asked about her refusal to engage in random drug testing and clarified that she did not refuse but was already being tested elsewhere. (135:150) She testified about incidents involving illegal substances found in a hotel room, a traffic stop with pills, and a probation warrant leading to her going into custody. (135:151)

M.M.M. addressed her engagement with therapy recommended by the Waukesha County Department of Human Services and the details surrounding her compliance with mental health conditions. (135:152) She also described her experiences with a second psychological evaluation, communication with the

Department, and issues with keeping in contact due to phone problems. (135:154)

M.M.M. described her issues with phone communication and acknowledged avoiding phone contact with Ms. Girman due to feeling stressed, and despite being suggested other communication methods, did not utilize them. (135:154) M.M.M. also testified about her mixed feelings about the assistance from parenting aide Sara Matson, including a point of contention regarding advice on child bribing, and ultimately discontinued her services. (135:155)

Additionally, M.M.M. described her relationship with Nathan Majewski beginning in November 2022 and her subsequent cohabitation. (135:156) M.M.M. testified about a four-month abusive relationship with Mr. Majewski. (135:157) She detailed a police-involved incident that led to charges against Mr. Majewski and a no-contact order. (135:157) Despite this, the relationship continued, leading to issues at the 16th Street Clinic. (135:158) M.M.M. later had intermittent contact with Mr. Majewski, although they are no longer in a relationship. (135:158)

Regarding visits with N.V.M., visits initially took place at M.M.M.'s aunt's house and happened almost every weekend, sometimes lasting up to three days. (135:159-60) Concerns about M.M.M. being under the influence during visits were raised. (135:160) Visits were later transferred to M.M.M.'s home and became virtual after a certain period. (135:161)

M.M.M. testified to her history of attending virtual visits and attempts to switch to in-person visits, acknowledging some inconsistencies. (135:162) She also provided information about her child's daycare, healthcare, and speech therapy, including missed doctor's appointments due to not being informed of dates. (135:163)

M.M.M. initially questioned the decision to provide N.V.M. with speech therapy, feeling it was for the foster mom's benefit. (135:164-65) She admitted to defending him but was open to necessary care. (135:165) She has never spoken to the speech therapist and confirmed that N.V.M. was never in her care. (135:165) She has not been employed, but she has bought gifts and paid \$500 in child support. (135:165-66)

The above testimony describes the efforts put forth by M.M.M. based on what was available to her for meeting the condition of return. Her efforts touched on every point mentioned in the CHIPS order and nearly beyond what was necessary to have her child returned to her care.

Furthermore, the CHIPS orders clearly stated what DHHS was required to do to assist M.M.M. with meeting her conditions of return. (89:1-15) The conditions of return read as follows:

The WCDHHS must make reasonable efforts to provide the following services to the mother to help her meet these conditions:

Case management, court related services, AODA services, parenting assessment/education, mental health services, and collaboration with Probation and Parole. (89:3)

The testimony of M.M.M. suggests that she was never given the necessary assistance that the DHHS was ordered to reasonably provide. M.M.M. frequently needed to ask her caseworker, Ms. Girman, for guidance on regaining custody of her child, N.V.M., but was always instructed to re-read the conditions. (152:195) M.M.M. was, in fact, frequently told to just reread the conditions of return but with no additional detail or explanation. *Id.* Reading the condition of return can hardly be described as “making reasonable efforts” to assist M.M.M. with meeting the condition of return.

D. The evidence was not sufficient as to the Failure to Assume Parental Responsibility ground.

Failure to assume parental responsibility, an additional ground here for terminating M.M.M.’s parental rights, is established “by proving that the parent ... [has] not had a substantial parental relationship with the child.” Wis. Stat. § 48.415(6)(a). “[S]ubstantial parental relationship’ means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” Wis. Stat. § 48.415(6)(b). A nonexclusive list of factors that the court may consider in determining whether the parent has a “substantial parental relationship” with the child includes:

[W]hether the person has expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the mother of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy. *Id.*

In this case, M.M.M.'s son was placed with her aunt, causing tension due to family dynamics. (152:200-201) N.V.M. was moved and visits occurred at Parents Place. (152:201) M.M.M. stated she would not allow her mom near N.V.M. and emphasized the importance of regulating who is around her son. (152:202) She testified that she has obtained her driver's license and is applying for SSI independently. (152:202) M.M.M. expressed concern to the social workers about her child. (152:202) M.M.M. consistently expressed a desire to visit and to obtain information concerning her child's well-being. (152:202) She first learned about Welfare Warriors after seeking advice from Milwaukee Child Protective Services. (152:194) Welfare Warriors assisted her in securing housing and provided support through her caseworker, Amada, who attended family team meetings. (152:194-95) M.M.M. sought ways to be better able to care for her child. (152:95)

The above actions by M.M.M. vis-à-vis her child demonstrate that he has had a substantial relationship with her child. Given these undisputed facts, the finding that M.M.M. failed to assume parental responsibility is clearly erroneous.

II. There was insufficient evidence to determine that termination of M.M.M.'s parental rights was in the child's best interest.

A. Standard of Review

There are two phases in an action to terminate parental rights. First, the court determines whether grounds exist to terminate the parent's rights. *Kenosha County. DHS v. Jodie W.*, 2006 WI 93, ¶10 n.10, 293 Wis. 2d 530, 716 N.V.M.2d 845. In this phase, "the parent's rights are paramount." *Id.* If the court finds grounds for termination, the parent is determined to be unfit. *Id.* The court then proceeds to the dispositional phase where it determines whether it is in the child's best interest to terminate parental rights. *Id.*

Whether circumstances warrant termination of parental rights is within the circuit court's discretion. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.V.M.2d 855 (Ct. App. 1996). In a termination of parental rights case, appellate courts applies the deferential standard of review to determine whether the trial court erroneously exercised its discretion. *See Rock Cnty. DSS v. K.K.*, 162 Wis. 2d 431, 441, 469 N.V.M.2d 881 (Ct. App. 1991). "A determination of the best interests of the child in a termination proceeding depends on the first-hand observation and experience with the persons involved and therefore is committed to the sound discretion of the circuit court." *David S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.V.M.2d 4 (1993) Therefore, "[a] circuit court's determination will not be upset unless the decision

represents an erroneous exercise of discretion." *Id.* Furthermore, a trial court's finding of fact will not be set aside unless against the great weight and clear preponderance of the evidence. *Onalaska Elec. Heating, Inc. v. Schaller*, 94 Wis. 2d 493, 501, 288 N.V.M.2d 829 (1980).

The factors that give contour to the standard are codified under Wis. Stat. § 48.426(3) serves to guide courts in gauging whether termination is the appropriate disposition. *State v/ Margaret H.*, 2000 WI 42, ¶34 234 Wis. 2d 606, 610 N.V.M.2d 475.

In making its decision in a termination of parental rights case, the court should explain the basis for its disposition on the record by considering all of the *factors* in Wis. Stat. § 48.426(3) and any other factors it relies upon to reach its decision. *Sheboygan Cty. Dep't of Health & Human Servs. v. Julie A.B.*, 2002 WI 95, ¶30, 255 Wis. 2d 170, 648 N.V.M.2d 402.

While it is within the province of the circuit court to determine where the best interests of the child lie, the record should reflect adequate consideration of and weight to each factor. *Margaret H.*, 2000 WI 42 at ¶35. Failure to apply the appropriate legal standard constitutes an erroneous exercise of discretion.

B. Terminating M.M.M.'s parental rights was an erroneous exercise of discretion.

To determine whether termination of parental rights is in the best interests of the child, under Wis. Stats. §48.426(3), the Court must consider the following factors:

- 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.

At the dispositional hearing, the court heard testimony from several witnesses. As required by Wis. Stat. § 48.426, the court weighed the required factors. M.M.M. believes that the court's weighing was erroneous given the outcome and decision to terminate her parental rights.

The among evidence adduced at the dispositional hearing was:

M.M.M.'s grandfather, K.V., testified and discussed his interactions during video visits and the activities they engage in, such as pretending to cook. (147:46) He expressed a strong bond with N.V.M. and indicated a willingness to support M.M.M. and stay involved regardless of court matters. (147:49-50, 147:53)

K.V. described his visits with his grandson, N.V.M., emphasizing his excitement upon their arrival and his love for playing with a toy kitchen. (147:51) He recounted their activities at visits, such as coloring, reading, and watching Mickey Mouse. (147:51)

M.M.M. also testified to her bond with N.V.M. (147:55). M.M.M. also shared several moments with N.V.M. (147:55). One time he wanted her to watch him fall asleep, highlighting their bonding time. (147:55) She described N.V.M. is very observant and often talks about a deer he saw in the backyard. (147:55) He repeatedly checks for the deer, feeling afraid. (147:55) He also shows great affection for his grandfather, wanting to show him everything and seeking his praise. (147:57) N.V.M. becomes concerned if Mr. Vanderpool leaves the room and actively looks for him. (147:57)

She testified about N.V.M.'s speech difficulties and efforts to assist him. (147:57-58) N.V.M. had problems with ending words, and Stephanie helped track his progress. (147:58) Visits were three hours, with natural coordination. (147:60) N.V.M. often struggled by not wanting to leave visits, particularly when transitioning between caretakers. (147:60) N.V.M. frequently wanted to extend the visits. Id.

M.M.M. testified about the time N.V.M. spent with the S.R., his reaction to family visits, what he calls his relatives, medical care releases, missed appointments, and an encounter in a parking lot.

She testified about a recent video visit with N.V.M., who she described as an active young man. (147:63) She used emojis and a whiteboard on Zoom to engage during visits. N.V.M., with help from Stephanie, learned to draw on the whiteboard. *Id.* Visits are screen-recorded for later viewing, and they express love during these sessions. (147:64)

While the court's decision at the dispositional hearing is one of discretion, after reviewing the facts and the findings made here, there was no support on this record for the court's finding that terminating M.M.M.'s parental rights was in the N.V.M.'s best interest.

Here, the court appears to give great emphasis to the facts surrounding M.M.M.'s addiction issues and not her love and desire to continue her substantial relationship with her son. (147:90-91) The court does not sufficiently account for the fact that M.M.M. continues to express her love and desire to have her child returned to her. The court did not give any weight to M.M.M.'s recent efforts to continue as a significant factor in her son's life.

The courts have said that despite the broad range of factors that a court may consider in exercising its discretion, the exercise of discretion is not unlimited. See, *State v. Salas Gayton*, 2016 WI 58, ¶24, 370 Wis. 2d 264, 882 N.V.M.2d 459 (2016). Terminating

M.M.M. parental rights given the evidence and factors examined by the court was an erroneous exercise of its discretion.

CONCLUSION

There was insufficient evidence for the trial court to find unfitness under the grounds of Continuing Need for Protection or Services or Failure to Assume Parental Responsibility. There was not sufficient evidence to have found that terminating the parental rights of M.M.M. was in the best interest of N.V.M.

This matter should be remanded to the circuit court for a hearing on both grounds and disposition.

Dated: September 17, 2024

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 5342 words.

A paper copy of this brief and certificate has been served on all non-electronic parties.

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