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STATE OF WISCONSIN
SUPREME COURT
Case No. 2024AP001622
Circuit Court Case No. 2022TP000041

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

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

M.M.M.,
Respondent-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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STATEMENT OF THE CASE AND FACTS

M.M.M. is the mother of N.V.M. (R.3:3). N.V.M. was removed from the home of M.M.M. on March 4, 2020¹. Id. On March 9, 2020, a petition was filed by the Waukesha County Department of Health and Human Services (“the department”) alleging that N.V.M. was a child in need of protection or services. Id. On June 1, 2020, the circuit court found N.V.M. to be a child in need of protection and services, pursuant to Wis. Stat. § 48.13(10). Id. A dispositional order was entered placing N.V.M. in out-of-home care and included (1) services to be provided by the department; (2) conditions for the return of N.V.M. to M.M.M.’s home; and (3) written termination of parental rights warnings. Id. N.V.M. has remained in out-of-home care since March 4, 2020. Id.

On November 1, 2022, the department filed a petition to terminate M.M.M.’s parental rights to N.V.M. in the Waukesha County Circuit Court². Id. The petition alleged grounds of (1) continuing need of protection or services and (2) failure to assume parental responsibility. Id. A three-day jury trial was held from November 13 through November 15, 2023. (R.135;148;152). In addition to M.M.M., social workers Abbey Girman and Gibba Solorzano testified at trial. Id.

¹ N.V.M. was born in February of 2020. (R.3:3).

² N.V.M.’s biological father, L.K.D. voluntarily consented to the termination of his parental rights. (R.113;145).

Jury Trial Testimony

M.M.M.

M.M.M., N.V.M.'s mother, testified about her efforts to satisfy the conditions of return and supervision established in the Dispositional Order signed by the circuit court on June 1, 2020. (R.135:138-176;152:193-211;89:8-13). M.M.M.'s testimony supported the County's position. M.M.M. testified she had a history of controlled substance use and acknowledged she had used controlled substances during her pregnancy and after N.V.M.'s birth. M.M.M. was incarcerated from May through July 2022 for violating her probation. (R.135:143,151). M.M.M. also detailed her history of unstable housing throughout N.V.M.'s life. (R.135:142,144-145). M.M.M. admitted that N.V.M. had never been in her care. (R.135:165-166).

Giba Solorzano

Former initial assessment social worker for the department, Giba Solorzano, testified to her February 2020 investigation of neglect to N.V.M. (R.152:4-38). Ms. Solorzano testified to the following: (1) M.M.M. relapsed the day before delivering N.V.M. and tested positive for cocaine, opiates, and barbiturates after delivering N.V.M.; and (2) N.V.M.'s

meconium³ was tested positive for methamphetamine, cocaine, and opiates. (R.152:7,11).

Abbey Girman

Abbey Girman, the social worker assigned to N.V.M. by the department in April 2020, testified about M.M.M.'s efforts to meet return conditions and the reasonable efforts the department made to provide services to M.M.M. (R.135:176-195;152:38-191;89:8-13). The department and other service providers collaborated to provide the following services to M.M.M.: case management, AODA, parenting assessment/education, visitation, and mental health, and probation/parole service collaborations. (R.135:181-182).

M.M.M.'s case management services involved meetings with Ms. Girman, reviewing conditions, service monitoring, and ensuring visitation. (R.135:183). Monthly family team meetings addressed conditions, consistency, and barriers regarding meeting the conditions set forth by the circuit court. (R.135:184,187). Ms. Girman monitored M.M.M.'s AODA and mental health treatment

³ Giba Solorzano testified "Meconium is the first bowel movement of an infant that is tested to see when he or she, the baby's inside the womb, if there's any drugs in their system. And so that's significant because that entails and means the mother has been on drugs while pregnant". (R.152:11).

engagement, communicated with therapists, and made recommendations accordingly. (R.135:188,199).

Ms. Girman testified M.M.M. failed to meet any of the conditions of return and provided detailed explanations for each condition. (R.135:176-195;152:38-191;89:8-13). M.M.M. “always expressed love and sensitivity toward [N.V.M.]” but was “really inconsistent throughout the life of the case”. (R.152:95-96). M.M.M. often postponed, rescheduled, or canceled visitation with N.V.M. citing health issues. (R.152:94). Moreover, there were concerns M.M.M. was under the influence at times when visiting with N.V.M. (R.152:101). Based on her continued substance use and inconsistency, M.M.M. never progressed to unsupervised visits with N.V.M. (R.152:121).

Jury Verdict and Court Findings

Following closing arguments from the department, Guardian *ad Litem*, and M.M.M.’s counsel, the jury returned verdicts finding grounds to terminate M.M.M.’s parental rights to N.V.M. The circuit court issued a directed verdict as to the first element of the continuing need of protection or services ground and the jury did not decide this question. (R.152:213). The jury found (1) M.M.M. failed to meet the conditions for N.V.M.’s safe return; (2) the department made reasonable efforts to provide court-ordered services; and (3) M.M.M. failed to assume parental responsibility for N.V.M. Id.

M.M.M.'s counsel moved the circuit court for a judgment notwithstanding the verdict. (R.147:93). The circuit court denied M.M.M.'s motion and entered an unfitness finding based on the jury's verdicts. Id.

The circuit court held a disposition hearing on November 29, 2023. N.V.M.'s foster parent, Ms. Girman, M.M.M., N.V.M.'s great grandfather, and Amada Morales-Zamudio testified. (R.147).

Disposition Hearing Testimony

S.R.

S.R., N.V.M.'s foster parent, testified about the child's current placement, likelihood for adoption, health, and familial relationships. (R.147:3-12). N.V.M. bonded with his foster family, calling his foster parents "Mom" and "Dad." (R.147:5-6). S.R. expressed commitment to adopting N.V.M., with no barriers posed by his needs. (R.147:5,7). During placement with S.R., N.V.M.'s contact with M.M.M. was inconsistent. (R.147:7).

Abbey Girman

Abbey Girman discussed N.V.M.'s placement, adoption potential, health, and family relationships. (R.147:12-44). N.V.M. was described as adoptable, healthy, and interactive, with a foster family approved and ready to adopt him. (R.147:13-14,17).

Ms. Girman noted N.V.M. looked to his foster family and siblings for support, and adoption by this family was likely if parental rights were terminated. (R.147:14,17). Without termination, N.V.M. would likely stay in foster care indefinitely as reunification wasn't recommended. (R.147:26). Ms. Girman suggested termination would provide a more stable and permanent family relationship for N.V.M. (R.47:26,41).

Ms. Girman testified N.V.M. lacked a strong bond with M.M.M., citing inconsistent visits, long-term out-of-home care, and M.M.M. never being N.V.M.'s primary caregiver. (R.147:18-22). Safety concerns with M.M.M. were noted due to substance use and mental health issues impacting daily functioning. (R.147:22). Ms. Girman believed severing ties with M.M.M. and extended family wouldn't harm N.V.M. (R.147:21,25).

M.M.M.'s Testimony

M.M.M. testified on her own behalf, offering an overview of her visitations and interactions with N.V.M. as well as her attendance at appointments. (R.147:54-65). She expressed love for N.V.M. and willingness to continue collaborating with the department if her parental rights were not terminated. (R.147:64-65).

Ruling

The circuit court, guided by Wis. Stats. § 48.426(3) and prioritizing “above all things, the best interest of [N.V.M.]”, separately addressed each factor under § 48.426(3) on the record. (R.147:88-92). It noted the lack of a “live-in relationship” between N.V.M. and M.M.M. and based its decision on the absence of a substantial relationship and potential stability post-termination. (R. 147:88-90). The court observed M.M.M. had not visited with N.V.M. since July 2023, last interacting in September 2023 after a doctor’s appointment. (R.147:90). It also considered M.M.M.’s ongoing substance use issues, concluding she had not “exercised any legal right through the duration of [N.V.M.]’s life.” (R.147:91). Consequently, the court granted the petition to termination, and M.M.M. filed intent to seek post-disposition relief the same day. (R.114;119;145).

Case on Appeal

On August 15, 2024, M.M.M., via appellate counsel, filed a Notice of Appeal. (R.151). The appellate court separately examined the sufficiency of the evidence regarding the verdicts rendered by the jury and the circuit court’s discretionary decision to terminate M.M.M.’s parental rights.

The court examined all testimony and other evidence presented to determine whether there is any credible evidence, when viewed in a light most

favorable to the verdict, to support it. *DH & HS vs. M.M.M.*, No. 2024AP1622, decision, ¶¶29, 31. (Respondent-Appellant-Petitioner's App. p. 102).

The court separately examined each ground for termination. It first addressed the elements required to prove continuing need of protection or services under Wis. Stat. § 48.415(2)(a)1.-3. *Id.* at ¶29. The first element was undisputed: N.V.M. continued to need protection or services and required placement outside the home. *Id.* at ¶30. The jury was only asked to decide if the County made reasonable efforts to provide the services ordered by the court and if M.M.M. had met the conditions established for N.V.M.'s safe return to the home. *Id.*

The court found that Ms. Girman's testimony was credible and provided a sufficient basis for the jury's determinations that the County made reasonable efforts to provide court-ordered services and that, despite those efforts, M.M.M. failed to meet the conditions of return.

The court examined the second ground for termination in accordance with Wis. Stat. § 48.415(6). *Id.* at ¶33. The court examined the totality of the circumstances and considered M.M.M.'s actions throughout the entirety of the child's life when determining whether she assumed parental responsibility. *Id.* at ¶33 (citing *Tammy W.-G.*, 333 Wis. 2d 273, ¶¶22-23). The court determined while M.M.M. expressed love and concern for N.V.M. she

did not have a substantial relationship with him as “she never ‘exercise[d] ... significant responsibility for [his] daily supervision, education, protection and care.’ *See* Wis. Stat. § 48.415(6)(b).” *Id.* at ¶34. Accordingly, after reviewing the testimony, evidence presented, and legal standards, the court of appeals affirmed the jury’s verdicts. *Id.* at ¶¶29-34.

Finally, the court found M.M.M.’s argument fell short of demonstrating the circuit court erroneously exercised its discretion in weighing the factors of this case. *Id.* at ¶38. M.M.M. argued the court inappropriately weighed her history of addiction over her expressions of love for N.V.M. *Id.* at ¶37. The court found M.M.M.’s showing “about her progress toward possible reunification and her love for her [child] and desire for reunification are not controlling considerations. The circuit court’s concern at the dispositional hearing is the [child’s] best interest based on the evidence presented, not [the parent]’s.” *Id.* at ¶38 (citing *State v. S.A.*, Nos. 2023AP1288, 2023AP1289, 2023AP1290, 2023AP1291, and 2023AP1292, unpublished slip. op. ¶26, WI App Oct. 10, 2023, *review denied*, 2024 WI 5, 6 N.W.3d 697).

Reviewing the record and ruling, the court confirmed the circuit court

considered the best interest of the child standard
and each of the statutory factors in its ruling
[and]
...

explained how the testimony supported its findings as to each factor and its overall determination of N.V.M.'s best interest.

Id. at ¶¶38-39.

The Court of Appeals ultimately rejected the arguments made by M.M.M., finding M.M.M. failed to show the circuit court applied incorrect legal standards, overlooked relevant facts, or arrived at a conclusion that no reasonable judge would have made; and affirmed the circuit court's decision. Id. at 39.

M.M.M. now petitions this Court for review.

ARGUMENT

I. THE PETITION FOR REVIEW SHOULD BE DENIED AS REVIEW IS NOT WARRANTED UNDER THE CRITERIA SET FORTH IN WIS. STAT. § 809.62(1r).

This Court should deny M.M.M.'s Petition for Review as this case does not warrant review under Wis. Stat. § 809.62(1r). Supreme Court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. Wis. Stat. § 809.62(1r). While neither controlling nor fully measuring the Court's discretion, Wis. Stat. 809.62(1r) sets forth criteria that will be considered when determining whether special and important reasons are presented for review:

- (a) A real and significant question of federal or state constitutional law is presented.
- (b) The petition for review demonstrates a need for the supreme court to consider establishing, implementing or changing a policy within its authority.
- (c) A decision by the supreme court will help develop, clarify or harmonize the law, and
 - 1. The case calls for the application of 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 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.
- (d) The court of appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the supreme court or other court of appeals' decisions.
- (e) The court of appeals' decision is in accord with opinions of the supreme court or the court of appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.

Notably, M.M.M. fails to identify a basis under which this case warrants review under any of these standards and merely states this case may be worthy of review given the nature of the rights involved. By M.M.M.'s own omission, this case does not meet any of the criteria set forth in Wis. Stat. § 809.62(1r).

The court of appeals' decision was made in accordance, not in opposition, to prior decisions of this Court, and M.M.M. does not allege that error correction is being sought. The law is well-settled and clear, the court of appeals applied it appropriately, and such application was consistent with past decisions. Accordingly, review by this Court is not warranted and should be denied.

II. THE PETITION FOR REVIEW SHOULD BE DENIED AS IT FAILS TO PRESENT OTHER SUBSTANTIAL OR COMPELLING REASONS FOR REVIEW BY THIS COURT.

This Court should deny the Petition for Review because it would amount to a review of correctness and a review of a discretionary determination by the circuit court where no error of law is alleged to have occurred. M.M.M. does not claim that an error in law occurred and is simply seeking alternative review by this Court.

A. The court of appeals correctly concluded there was sufficient evidence to support the jury's verdicts that grounds exist to terminate M.M.M.'s parental rights.

i. Standard of Review and Applicable Law.

There are two phases of an involuntary termination of parental rights proceeding. Oneida County Dep't of Soc. Servs. v. Nicole W., 2007 WI 30, ¶11. During the first phase, the petitioner has the burden under Wis. Stats. § 48.31(1) to prove to the jury the alleged grounds by clear and convincing evidence. If the jury finds grounds exist to terminate a parent's rights, Wis. Stats. § 48.424(4) requires the circuit court to find the parent unfit and move to the second phase, disposition.

The County asserted two grounds to terminate M.M.M.'s parental rights. The first ground, continuing need of protection or services, required the County to prove that (1) the child has been placed outside of the home for a cumulative total period of six months or longer pursuant a dispositional order; (2) the parent has failed to meet the conditions established for the safe return of the child to the home; and (3) the agency responsible for the care of the child has made a reasonable effort to provide the services ordered by the court. Wis. Stats. § 48.415(2)(a).

The second ground for termination, failure to assume parental responsibility, required the County to prove that the parent has not had a substantial relationship with the child to establish the ground of failure to assume parental responsibility. Wis. Stat. § 48.415(6)(a). Wis. Stats. § 48.415(6)(b) defines a substantial parental relationship as

the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether 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 father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

The court is to examine the totality of the circumstances and should consider a parent's actions throughout the entirety of the child's life when determining whether the parent has assumed parental responsibility. Tammy W-G v. Jacob T., 2011 WI 30, ¶¶22-23, 333 Wis. 2d 273, 797 N.W.2d 854 (2011).

Whether the evidence presented to a jury is sufficient to sustain its verdict is a question of law. Sheboygan Cnty. Dep't of Health & Human Servs. v. Tanya M.B., 2010 WI 55, ¶18. "A jury's verdict must be sustained if there is any credible evidence, when

viewed in the light most favorable to the verdict, to support it.” Id. ¶49.

- ii. The sufficiency of the evidence was adequately addressed by the court of appeals.

M.M.M. fails to identify how the court of appeals erred in its decision that there was credible evidence to sustain the jury’s verdicts. Instead, she merely reasserts her arguments previously raised to the court of appeals. In doing so, M.M.M. has not demonstrated any error in fact or law that warrants this Court’s review.

It is undisputed that the court of appeals applied the correct legal standard of review in determining whether there was sufficient evidence to establish grounds for termination found by the jury. M.M.M. only argues that the evidence adduced at trial was not sufficient to sustain the jury’s verdicts. This Court ordinarily does not review questions concerning the sufficiency of the evidence. State v. Minued, 141 Wis. 2d 325, 328, 415 N.W.2d 515 (Wis. 1987). This Court has previously stated that it is not this Court’s institutional role to perform this error correcting function. Id.

Notwithstanding, it is important to note that the court of appeals examined all the testimony and other evidence presented in analyzing whether any credible evidence supported the jury’s verdict for both

grounds. The court of appeals noted that M.M.M. focused her argument solely on her testimony and a review of the evidence could not be so circumscribed. The court of appeals appropriately addressed each element to establish continuing need of protection of services under § 48.415(2)(a) and determined that Ms. Girman's testimony provided credible evidence to support the jury's verdict.

The court of appeals considered the testimony of M.M.M. and appropriately concluded that her testimony was not sufficient to show the absence of any credible evidence in the record to show that she failed to assume parental responsibility for N.V.M. The court of appeals found that Ms. Girman's testimony, when viewed in the light most favorable to the jury's verdict, was sufficient to sustain it. M.M.M. fails to identify how the court of appeals erred in its conclusion.

The petition for review should be denied. The court of appeals applied the correct legal standard and examined all testimony and evidence presented in finding credible evidence to support the jury's verdicts. Because the issue presented for review involves the sufficiency of the evidence, and because the issue does not meet the criteria for reviewing court of appeals' decisions, the petition for review should be denied.

B. The court of appeals' order affirming the decision of the circuit court to terminate

M.M.M.'s parental rights was based upon a proper view of the law.

i. Standard of Review and Applicable Law

At the dispositional phase, the circuit court determines whether it is in the child's best interest to terminate a parent's rights. Oneida County Dep't of Soc. Servs. v. Nicole W., 2007 WI 30, ¶13. The circuit court properly exercises its discretion when it "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." State v. B.W., 2024 WI 28, ¶70 (citing Dane Cnty. Dep't of Human Servs. v. Mable K., 2013 WI 28, ¶39). The circuit court must make its findings on the record, consider the standard and factors in Wisconsin Statutes § 48.426(3), and explain the basis for its disposition. Sheboygan County HHS v. Julie A.B., 2002 WI 95, 255 Wis. 2d 170, 187-88, 648 N.W.2d 402 (2002).

In deciding whether to terminate parental rights, the circuit court must give paramount consideration to the best interests of the child, which constitutes the prevailing factor. In considering the best interests of the child, the court shall consider but not be limited to the following factors under Wis. Stats. § 48.426:

- (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.
- (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.

Great deference is accorded to a circuit court's decision to terminate a parent's rights, and that decision will only be overturned based on an erroneous exercise of the trial court's discretion. State v. S.A., 2023 WI App 62, ¶124; Rock County Dept. of Social Services. v. K.K., 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). The court of appeals appropriately found the circuit court properly exercised its discretion in determining it was in N.V.M.'s best interest to terminate M.M.M.'s parental rights.

- ii. The circuit court properly exercised its discretion when it terminated M.M.M.'s parental rights.

M.M.M. does not plead any allegations of error and is simply seeking alternative review by this Court. The circuit court properly exercised its discretion to terminate M.M.M.'s parental rights because it examined all relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.

The circuit court applied the proper standard of law when it terminated M.M.M.'s parental rights. The circuit court considered the best interests of the child standard and conducted a thorough analysis of each of the required factors under § 48.426, addressing each factor in turn, and providing its rationale for emphasizing certain factors. The circuit court record reflects an adequate consideration of and weight of each factor under § 48.426. M.M.M. reasserts her previous arguments raised before the court of appeals and argues that the circuit court erroneously exercised its discretion because it emphasized her struggle with addiction and did not sufficiently account for her love for her son or recent efforts to be in his life. M.M.M.'s analysis ends there, providing no further discussion as to how this was an erroneous exercise of discretion or providing any further context.

The court of appeals properly reviewed the circuit court's decision to terminate M.M.M.'s parental rights under the deferential erroneous exercise of discretion standard. Upon review of the circuit court ruling, the court of appeals determined that the circuit court properly considered M.M.M.'s relationship with N.V.M., appropriately weighed each factor under § 48.426, and made its decision based upon N.V.M.'s best interest. The court of appeals concluded that the circuit court properly exercised its discretion because it examined the relevant facts, applied the proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach when it determined it was in N.V.M.'s best interest to terminate M.M.M.'s parental rights. The court of appeals properly affirmed the decision of the circuit court to terminate M.M.M.'s parental rights.

Accordingly, the circuit court properly exercised its discretion when it terminated M.M.M.'s parental rights. The court of appeals' decision affirming the decision of the circuit court is consistent with controlling opinions of this Court and was based upon a proper view of the law. On this basis, the petition for review should be denied.

CONCLUSION

Based on the record and aforementioned arguments, Waukesha County respectfully requests this Court deny M.M.M.'s petition for review.

Dated this 26th day of November, 2024.

Electronically signed by:

ERIK G. WEIDIG

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CERTIFICATION AS TO FORM AND
LENGTH

I hereby certify that this Petition conforms to the rules contained in Wis. Stat. §§ 809.19(8)(b), (bm), and (c) for a brief. The length of this Petition is 4,461 words.

Dated this 26th day of November, 2024.

Electronically signed by
DEMETRA CHRISTOPOULOS
Principal Assistant Corporation Counsel
State Bar No. 1068398