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COURT OF APPEALS
DISTRICT I

In re the Termination of Parental Rights to:
N.M., A Person under the Age of Eighteen

STATE OF WISCONSIN,
Petitioner-Respondent,

v.

Appeal No. 2020AP1057
Trial Court No.: 2018TP000181

J. M.-W.,
Respondent-Appellant,

ON APPEAL FROM THE CIRCUIT COURT OF MILWAUKEE
COUNTY, HONORABLE SANDERS, PRESIDING

PETITIONER-RESPONDENT'S BRIEF

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STATEMENT ON THE ISSUES PRESENTED

1. Did the Circuit Court exercise an appropriate use of discretion when it decided that terminating the parental rights of J.M.W. after a contested dispositional hearing were in the best interests of the child?

**STATEMENT ON NECESSITY OF ORAL ARGUMENT
AND PUBLICATION OF OPINION**

Petitioner-Respondent (“Petitioner”) does not request oral argument. The issues presented can be fully argued in the briefs and should be resolved by the application of controlling precedent to the facts of the case. Publication is not necessary.

STATEMENT OF THE CASE

A Petition for Termination of Parent Rights (“the TPR Petition”) to N.M. was filed on August 2, 2018. (R1). The TPR petition alleged that grounds existed to terminate the parental rights of J.M.W. because J.M.W. had failed to assume parental responsibility (“Failure to Assume”) under Wisconsin statute section 48.415(6) and because the child remained in need

of protection or services (“Continuing CHIPS”) under Wisconsin statute section 48.415(2). (Id).¹

On March 25, 2019, J.M.W. entered a no contest plea to the ground of Continuing CHIPS and the case was adjourned for a contested dispositional hearing. (R56). The court conducted a dispositional hearing on January 24, 2020 (R62 & R63), before ultimately finding it to be in the best interests of the child for J.M.W.’s parental rights to be terminated (R63).

J.M.W. filed a timely notice of intent to appeal and was appointed appellate counsel. (R42). A timely notice of appeal was filed by J.M.W. (R49).

STATEMENT OF FACTS

N.M. is the child of J.M.W. and an unknown biological father. (R1). She was nine years old when the Division of Milwaukee Child Protective Services (DMCPS) first placed her in out of home care in on August 30, 2017 due to ongoing safety concerns related to her mother’s domestically abusive relationships and substance abuse problems. (R23). At the time of detention, J.M.W. had made multiple trips to the emergency room for

¹ The State also filed to terminated the parental rights of the unknown father to N.M. No man appeared in court to contest the petition and those rights will not be addressed in this appeal.

injuries that she stated were caused by both her boyfriend and her father. (Id.) These incidents of violence occurred in front of N.M. and while J.M.W. was abusing alcohol. (Id.) Collateral reports at the time of detention, indicated that J.M.W. was drinking to the point of intoxication on a daily basis and that there was frequent violence between J.M.W. and her boyfriend at the time. (Id.)

On September 18, 2017, J.M.W. plead no contest to the allegations in the CHIPS petition and N.M. was found to be a child in need of protection or services. (R22). The court entered a CHIPS dispositional order on November 23, 2017 outlining the behavioral changes that J.M.W. needed to make in order for N.M. to be safely returned to her care. (R25). The State filed a TPR petition on August 2, 2018 after J.M.W. failed to make substantial progress on meeting these conditions of return. (R1).

On the date of the scheduled TPR trial in March 2019, J.M.W. plead no contest to the ground of Continuing CHIPS. (R56: 3-12). Following the no contest plea, the circuit court took testimony related to facts alleged in the Continuing CHIPS ground. (Id. at 12). The ongoing case manager, Z.H., testified that he had been the case manager for the family since the

case originally came to the attention of DMCPs in August 2017. (Id. at 13).

Z.H. testified that visitation still remained fully supervised because of concerns of J.M.W. continued alcohol abuse and the fact that J.M.W. would become upset with the child during contact and use profanities with her. (R56: 13-14). He also still had significant concerns that J.M.W. was abusing alcohol based on his interactions with her where she appeared to be under the influence, her lack of attendance at any AODA treatment, and admissions of continuing to drink at least three to four times a week. (Id. at 14-19). In addition, Z.H. testified that J.M.W. continued to associate with unsafe and violent individuals and expose N.M. to these same individuals. (Id. at 15-16). Furthermore, J.M.W. also refused to attend individual mental health therapy to help address her underlying trauma issues that were causing her to abuse alcohol. (R56: 19). Finally, J.M.W. continued to state that her alcohol abuse and domestic violent relationships had no negative impact on her parenting and did not negatively impact N.M. in any way. (Id. at 18). After Z.H. testified, the Circuit Court found J.M.W. unfit and set the case over for a contested dispositional hearing (R56: 21).

Prior to scheduling the dispositional hearing, there was a discussion on the record as to whether N.M. would need adversary counsel appointed because she was continuing to express a desire to return home to J.M.W. despite the ongoing safety concerns. (R56: 22-25). The dispositional hearing was ultimately scheduled for July 1, 2019, and the circuit court ordered the GAL to file a letter within two weeks advising if she felt that appointing adversary counsel was necessary. (Id. at 26).

On April 8, 2019, the GAL filed a letter with the circuit court stating that she did not believe it would be in N.M.'s best interests to terminate the mother's parental rights because of the newness of her foster placement with V.G. and fact that this was N.M.'s fourth foster care placement since August 2017. (R26). The GAL did note that "my position may change with additional information, the passage of time, and the continuation of services for [N.M.] and her mother." (Id.)

On July 1, 2019, the State moved to adjourn the dispositional hearing and schedule the case for a status date in fall 2019 to determine if proceeding with the TPR was still in the best interests of N.M. (R58: 2-5). During that hearing, the GAL brought to the circuit court's attention that N.M. was under the belief that her mother was no longer drinking, and that

N.M. wished to return home to protect her mother, including very specific details about how she would protect her in a domestically violent situation. (Id. at 4-5). The case was then calendared for a status hearing on October 14, 2019. (Id. at 14).

At the October 14, 2019, the GAL indicated that she now felt that proceeding to the TPR was in the best interests of N.M. because the child had been able to maintain her current placement², the safety concerns that necessitated the out of home placement still existed, and the GAL was able to spend more time with both N.M. and her foster parents. (R59: 4-6). Because of this, the GAL asked that adversary counsel be appointed for N.M. because the child still wished to return to the care of J.M.W. (Id. at 7). The circuit court appointed adversary counsel (R33), and the case was ultimately scheduled for a contested dispositional hearing on January 24, 2020 (R60: 6).

The TPR dispositional hearing occurred on January 24, 2020 and included testimony from the child's foster mother, V.G., and the ongoing case manager, Z.H. (R62 & R63). V.G. testified that she and her husband have had placement of N.M. for a little over a year, and were an adoptive

² N.M. had only been moved to her current placement on December 31, 2018. (R54).

resource for her. (R62: 5-6). She testified that N.M. was extremely bonded in their family, and frequently told both foster parents that she loved them. (Id. at 6-7). V.G. testified that she had a masters in social work and runs a housing program for formerly homeless youth. (Id. at 9-10). She testified that her professional experiences allowed her to have insight into N.M.'s trauma history and gave her the ability to meet N.M.'s extraordinary needs. (Id. at 9-10). V.G. further testified that she had an excellent relationship with J.M.W. and had always encouraged the relationship between daughter and mother. (Id. at 10-11). The foster parents had placed no restrictions on phone calls between N.M. and J.M.W. other than supervising the phone calls, had invited J.M.W. to their home, had invited J.M.W. to community events as a family, and even had been to J.M.W.'s home with N.M. (Id. at 10-14). When specifically asked if she would ever keep N.M. from her biological mother, V.G. stated, "I can't think of a single situation that we would do that...because [J.M.W.] loves [N.M.] very much and [N.M.] loves her very much and they're family, and it's very important for her to have a relationship with her mom." (Id. at 33).

In addition to the foster mother, Z.H., the ongoing case manager since August 2017, testified at the dispositional hearing. (R62: 34-80). Z.H. acknowledged that there was a strong bond between J.M.W. and N.M., but testified that over the last year, N.M. had also developed a strong bond with her foster parents. (R62: 35-38).

He also testified that in the last six months, J.M.W. has missed approximately fifty percent of her scheduled visitation with N.M. and when visits do not occur, it negatively impacts N.M. (Id. at 40-41). In addition to the inconsistent visitation and phone calls, J.M.W. had been making promises to N.M. including, that she would be coming home soon and that she had a room ready for her; this negatively impacted N.M. (Id. at 41).

Z.H. testified that over the previous year that J.M.W. had made no substantial progress at meeting the conditions of return for N.M. (F62: 43-49). J.M.W. still struggled with significant alcohol abuse, still did not acknowledge that the abuse had any impact on her parenting ability, and had not addressed her mental health or domestic violence issues. (Id.) He also testified that N.M. was largely shielded from the extend of her mother's continued alcohol abuse because "we didn't want to put [N.M.] in

a situation where she would be upset with her mom and that would ruin their relationship because mom is a positive support for her.” (Id. at 55).

When questioned about guardianship, Z.H. felt that it would not be in the best interests of N.M. because her foster parents would not qualify for a subsidized guardianship (Id. at 48) and a Chapter 54 guardianship would not be beneficial to N.M. because it not provide the additional financial and insurance support that adoption would provide. (Id. at 78-79).

Z.H. testified that any harm from terminating J.M.W.’s parental rights could be mitigated by the continued contact that V.G. testified about post-TPR. (Id. at 76). Furthermore, N.M. could not safely be returned to J.M.W.’s home in the foreseeable future and that she was safe with her foster parents. (Id. at 77). Ultimately, Z.H. testified that even though N.M. wanted to return home to J.M.W., he felt that a TPR was in the best interests of N.M. because “Kids need to have permanence. Maintaining in the foster care system puts a stress on [N.M.] not knowing what’s going to happen next. She doesn’t have any concrete of what the future holds for her. In addition, the agency is required to set up visitation on a structured basis and when those visits do not occur it impacts [N.M.] negatively.” (Id. at 48-49).

At the conclusion of the hearing, the Court heard arguments from all parties. The State argued how termination of J.M.W.'s parental rights was in the best interests of the child based on the non-exclusive factors outlined under Wisconsin Statute section 48.426(3)(a)-(f). (R63: 2-7). The Guardian Ad Litem also made a recommendation based on the best interests of the children that J.M.W.'s parental rights be terminated. (Id. at 7-12).

The circuit court issued an lengthy oral decision after listening to the testimony and arguments. (R63: 25-47). In its decision, the circuit court weighed the credibility of each of the witnesses, made note of nonverbal interactions within the courtroom between the parties, and weighed each of the factors under Wisconsin Statute section 48.426(3)(a)-(f). (Id).

The circuit court went through each of the factors under Wisconsin Statute section 48.426(3)(a)-(f) individually and applied the facts presented during the dispositional contest. The court acknowledged that this was a difficult case and ultimately decided that "In this particular circumstance, I think the likelihood of adoption, the stability and duration of separation tend to weigh in favor of termination, and the harm that [N.M.] will suffer is balanced and her wishes are balanced against this. I think that this

balance is very close, but overall I think that the greater degree of stability offered by the [foster parents] weighs in favor of termination sufficiently.” (R63: 46).

ARGUMENT

I. The Court Appropriately Used Its Discretion when It Found It was in the Best Interests of the Child to Terminate the Parental Rights of J.M.W.

a. Standard of Review

In examining a trial court’s decision to terminate a person’s parental rights, great deference is accorded to the trial court’s decision, and will only be overturned based on an erroneous exercise of the trial court’s discretion. Rock County Dept. of Social Services v. K. K., 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). In reviewing a discretionary determination, the record is examined “to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach.” Brandon Apparel Group v. Pearson Properties, Ltd., 247 Wis. 2d 521, 530, 634 N.W.2d 544 (Ct. App. 2001). Furthermore, a circuit court in deciding whether to terminate a person’s parental rights must make its findings on the record, give consideration to the standards and factors

found in Sec. 48.426(3), Wis. Stat., related to the child's best interests, and explain the basis for its disposition. Sheboygan County HHS v. Julie A. B., 255 Wis. 2d 170, 187-88, 648 N.W.2d 402 (2002).

b. The Court Did Not Abuse Its' Discretion When Determining to Terminate the Parental Rights of J.M.W.

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

J.M.W. has failed to meet each of these required elements to overturn the discretionary decision. J.M.W. argues that the Court improperly balanced the harm to the child factor under Wisconsin statute section 48.426(3)(c) because the Court took into account that the social workers and foster parents had worked hard to shield N.M. from the extent of her mother's alcohol abuse in order to preserve the relationship between them. (Appellant's brief, pg.15-19).

The factors outlined in section 48.426(3) are not exclusive and in fact the statute specifically states, "the court shall consider but not be limited to the following..." Id. There is nothing improper for the Court to

take into consideration the fact that N.M.'s relationship with her mother, and her desire to be reunified is heavily influenced by the information that was presented to her. The adults in this case, recognizing that it was best for N.M.'s relationship with her mother, shielded her from the severity of the alcohol abuse. It is completely reasonable for the Court to take that fact into consideration when weighing N.M.'s opinions on reunification and harm that might occur to her.

Because J.M.W. does not agree with the circuit court's decision, does not mean that the Court abused its discretion in reaching its ultimate judgment. Rather, the Court utilized the facts presented at the contested dispositional hearing, applied them to appropriate standards and factors under Wisconsin statute 48.426(a)-(f), and came to a logical and reasonable conclusion.

CONCLUSION

The State respectfully requests that this Court AFFIRM the trial court's order terminating the rights of J.M.W. She has failed to demonstrate that the circuit court abused its discretion.

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 using the following font: Proportional serif font: Min. printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text. The length of this brief is 2,590 words.

I further certify that if the record is required by law to be confidential, the portions of the brief referring to the juveniles, parents of the juveniles, and family members of the juveniles have been so redacted to preserve confidentiality.

Dated at Wauwatosa, Wisconsin this 11th day of August, 2020.



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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

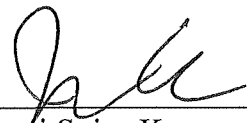
I will submit an electronic copy of this brief on July 14, 2020, excluding the appendix, if any, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 11th day of August, 2020.

Respectfully submitted,



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