COURT OF APPEALS
DECISION
DATED AND FILED

April 15, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal Nos. 2007AP2056
2007AP2057

Cir. Ct. Nos. 2005TP233
2005TP234

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

NO. 2007AP2056

IN RE THE TERMINATION OF PARENTAL RIGHTS TO JINEKWA B.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JIMECA H.,

RESPONDENT-APPELLANT.

NO. 2007AP2057

IN RE THE TERMINATION OF PARENTAL RIGHTS TO KAJUANA K.-L. B.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JIMECA H.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: CARL ASHLEY and GLENN H. YAMAHIRO, Judges. *Affirmed*.

¶1 FINE, J. Jimeca H. appeals orders terminating her parental rights to Jinekwa B. and Kajuana K.-L. B., and also an order denying her post-disposition motion.[1] The only issue on appeal is the sustainability of the post-disposition court's determination that Jimeca H. intelligently, knowingly, and voluntarily stipulated to a ground to terminate her parental rights. We affirm.

I.

¶2 As material to this appeal, Jimeca H. was accused of abandoning Jinekwa B. and Kajuana K.-L. B., which is a ground under WIS. STAT. § 48.415(1) that permits the termination of a person's parental rights to the abandoned children. Jimeca H. admitted in open court that she did abandon the children. *See* WIS. STAT. § 48.422(7).

¶3 Before accepting a person's admission that he or she did something or failed to do something that warrants the termination of that person's parental rights, the circuit court must: "Address the parties present and determine that the

[1] The Honorable Carl Ashley entered the orders terminating Jimeca H.'s parental rights; the Honorable Glenn H. Yamahiro denied Jimeca H.'s post-disposition motion.

admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions." WIS. STAT. § 48.422(7)(a). The circuit court must also be satisfied that there is a factual basis for the parent's admission. Sec. 48.422(7)(c) (The circuit court shall "[m]ake such inquiries as satisfactorily establish that there is a factual basis for the admission.").

¶4 Jimeca H. does not contend that she did not understand "the nature of the acts alleged in the petition" in connection with her admission, and does not assert that there was an insufficient factual basis for the admission. Rather, Jimeca H. contends that the circuit court that accepted her admission did not explain to her, and that she did not understand, the "potential dispositions," which she asserts encompass (1) that admission to a ground results in the automatic finding of parental unfitness, *see* WIS. STAT. § 48.424(4) ("If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit."); and (2) as Jimeca H. expresses it in her main brief on appeal, that "as a result of her stipulation to the abandonment ground and the resulting unfitness finding, the court was required to shift its focus from protection of her parental rights to consideration of the best interest of the children, under Wis. Stat. § 48.426(2)."[2]

[2] WISCONSIN STAT. § 48.426(2) provides: "The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter." Thus, in the pre-disposition grounds phase, "the parent's rights are paramount." ***State v. Shirley E.***, 2006 WI 129, ¶27, 298 Wis. 2d 1, 18, 724 N.W.2d 623, 630 (inner quotation marks and quoted source omitted). Once the disposition phase is reached, however, the children's "interests are paramount." ***Id.***, 2006 WI 129, ¶28, 298 Wis. 2d at 19, 724 N.W.2d at 630. We agree with both the State and the guardian *ad litem* that, contrary to Jimeca H.'s contention and the post-disposition court's determination, the words "potential dispositions" in WIS. STAT. § 48.422(7)(a) do not encompass the statutorily required finding of unfitness and the shift of focus in the disposition phase from the parent to the children, but, rather refer merely to the range of dispositions set out in WIS. STAT. § 48.427 (which is titled "**Dispositions**") as opposed to *how* the disposition court is directed by the legislature to apply the factors the (continued)

II.

¶5 When a person contends that his or her admission to a ground justifying the termination of that person's parental rights was not knowing or voluntary, there is a required two-step inquiry. First, did the circuit court comply with WIS. STAT. § 48.422(7), and, if not, second, did the person otherwise know the things about which he or she claims ignorance. ***Waukesha County v. Steven H.***, 2000 WI 28, ¶42, 233 Wis. 2d 344, 364, 607 N.W.2d 607, 617 (Parent challenging his admission "must make a prima facie showing that the circuit court violated its mandatory duties and he must allege that in fact he did not know or understand the information that should have been provided at the § 48.422 hearing."). If the parent makes the first showing, the burden shifts to the State "to demonstrate by clear and convincing evidence" that the parent nevertheless knew and understood "the information that should have been provided" by the circuit court. *See* ***ibid.***

¶6 As we have seen, Jimeca H. asserts and the post-disposition court agreed, that the disposition court did not fully explain the "potential dispositions," as required by WIS. STAT. § 48.422(7)(a). After an evidentiary hearing on Jimeca H.'s motion to withdraw her admission, the post-disposition court found as a fact, after hearing from both Jimeca H. and the lawyer who represented her when she agreed to admit the "abandonment" ground, that the State had met its burden

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legislature has set out in § 48.426 (which is titled "**Standard and factors**"). As will be seen in the main body of this opinion, we decide this appeal on the more narrow ground that the post-disposition court's findings of fact that Jimeca H. was aware at the time she admitted to abandoning her children that her admission would result in the statutorily required finding of unfitness and that focus in the disposition phase would shift from the parent to the children are not clearly erroneous. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514, 520 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground").

to show that Jimeca H.'s admission was knowing and voluntary. First, as the post-disposition court found in its oral decision, Jimeca H.'s lawyer explained to her "that it was mandatory for the Court if she were to stipulate to a ground, that she be found unfit." Indeed, Jimeca H. conceded at the post-disposition evidentiary hearing that her lawyer explained that to her. Second, despite Jimeca H.'s testimony to the contrary, the post-disposition court also found that Jimeca H.'s lawyer "did discuss with [Jimeca H.] the focus of the first phase and the shift in focus post grounds to the best interests of the children."

¶7 Although the post-disposition court was, as it noted during its oral decision, "very disturbed by the fact that [Jimeca H.'s lawyer] testified that she keeps no written records of her consultation in regard to a [termination-of-parental-rights] case," the post-disposition court resolved any testimonial dispute between Jimeca H. and her lawyer in favor of the lawyer: "So while it is true that there is some conflict in the testimony regarding the recollections of [Jimeca H.] and the recollections of [Jimeca H.'s lawyer], I do find [the lawyer]'s recollections to be of greater credibility." Based on those findings, the post-disposition court opined:

> I think in looking at the totality of the record, that the State has met their burden with regard to the second prong [that is, what Jimeca H. knew before she agreed to admit that she had abandoned her children], as shown by clear and convincing evidence, [and] that [Jimeca H.] knowingly, voluntarily, and intelligently waived her right to contest the grounds phase.

¶8 Under our standard of review, a circuit court's findings of fact must be given deference unless they are "clearly erroneous." WIS. STAT. RULE 805.17(2) ("Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the

credibility of the witnesses."); *see also* ***Steven H.***, 2000 WI 28, ¶51 n.18, 233 Wis. 2d at 367 n.18, 607 N.W.2d at 618 n.18. Although Jimeca H. disagrees with the post-disposition court's assessment of her testimony and the testimony of her lawyer, she has not, by any stretch of the imagination, shown how or why those assessments are clearly erroneous. In light of those assessments and the post-disposition court's findings of fact, we agree, on our *de novo* review, *see* ***Steven H.***, 2000 WI 28, ¶51 n.18, 233 Wis. 2d at 367 n.18, 607 N.W.2d at 618 n.18, with the post-disposition court's legal conclusion that Jimeca H.'s admission was intelligent, knowing, and voluntary. Accordingly, we affirm.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.