**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**April 17, 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 No. 2008AP275** **Cir. Ct. No. 2007TP26**

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

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**IN RE THE TERMINATION OF PARENTAL RIGHTS TO JESSE E.,**
**A PERSON UNDER THE AGE OF 18:**

**LA CROSSE COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**V.**

**CRYSTAL T.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for La Crosse County: SCOTT L. HORNE, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Crystal T. appeals the circuit court's order terminating her parental rights to her son, Jesse E. We affirm the order.

¶2 Crystal argues that the circuit court erred when it terminated her parental rights because it failed to adequately address all of the required factors under WIS. STAT. § 48.426(3). Crystal's brief seems to suggest that the court's consideration of all six statutory factors was inadequate. Crystal makes specific arguments, however, with respect to only two factors and, therefore, we address only those two factors. Crystal argues that the court failed to adequately consider the likelihood of Jesse's adoption after termination and whether Jesse has a substantial relationship with her. *See* § 48.426(3)(a) and (c).

¶3 Before addressing Crystal's specific arguments, we note that Crystal seems to assume that the only information the circuit court did or could consider was the Department's six-page "Termination of Parental Rights Report to the Court." Crystal provides no legal or factual basis for this assumption. The Department argues in its responsive brief that the circuit court had before it evidence in addition to the report. Crystal does not reply to this argument. Moreover, we know of no authority directing that a circuit court may rely only on the Department's report. Accordingly, we take Crystal to have conceded that we may consider the evidence cited by the Department. *See* ***Hoffman v. Economy Preferred Ins. Co.***, 2000 WI App 22, ¶9, 232 Wis. 2d 53, 606 N.W.2d 590 (Ct. App. 1999) ("An argument to which no response is made may be deemed conceded for purposes of appeal."); *see also* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (courts need not consider undeveloped arguments).

*Standard Of Review*

¶4 A circuit court's decision whether to terminate parental rights is discretionary. *See* ***Sheboygan County Dep't of Health & Human Servs. v. Julie A.B.***, 2002 WI 95, ¶42, 255 Wis. 2d 170, 648 N.W.2d 402; ***David S. v. Laura S.***, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993). In exercising its discretion, the circuit court "should explain the basis for its disposition, on the record, by alluding specifically to the factors in WIS. STAT. § 48.426(3) and any other factors that it relies upon in reaching its decision." ***Julie A.B.***, 255 Wis. 2d 170, ¶30. We will not reverse findings of fact underlying a discretionary decision so long as those findings are supported by the evidence of record and are not clearly erroneous. *See* ***Englewood Cmty. Apartments Ltd. P'ship v. Alexander Grant & Co.***, 119 Wis. 2d 34, 39, 349 N.W.2d 716 (Ct. App. 1984).

*Likelihood Of Adoption Factor*

¶5 In its decision, the circuit court considered the likelihood of adoption, finding that "[i]t appears that … the foster parents are willing to adopt." Crystal argues, however, that "[t]here [was] no factual basis for the [circuit] court's finding that there was a likelihood of adoption." Crystal concedes that the Department's report states that Jesse's foster parents are willing to adopt Jesse, but argues that this information does not establish the likelihood of adoption. Therefore, Crystal asserts, the court was unable to adequately address the likelihood-of-adoption factor when the court found that the foster parents "appear[ed] … willing to adopt."

¶6 In rejecting Crystal's argument, we first note that Crystal cites no authority requiring the circuit court to find that adoption *is likely*. Rather, what the statute requires is that the circuit court *consider the likelihood of adoption*. *See* WIS. STAT. § 48.426(1) and (3)(a); *see also* WIS. STAT. § 48.428(1) (authorizing the court to order sustaining care for a child if the court terminates parental rights and finds that the child is *unlikely* to be adopted or that adoption is not in the child's best interest). The circuit court did consider the likelihood of adoption in this case.

¶7 Perhaps Crystal is arguing that the circuit court erred because Jesse's adoption was not *sufficiently* likely to support termination of her parental rights. If that is what she is arguing, we reject that argument because she does not provide a developed explanation of how likely Jesse's adoption had to be.

¶8 Perhaps Crystal is instead arguing that there is insufficient evidence to support the circuit court's finding that Jesse's foster parents "appear[ed] … willing to adopt." If that is Crystal's argument, we reject it because the Department's report plainly supports the court's finding. Moreover, as the Department points out, the circuit court also had before it a letter from the Department's adoption consultant. That letter stated that "[t]he permanency plan for this child is adoption" and that "[t]he plan at this time is that the current foster/adoptive parents … will adopt Jesse."

¶9 In addition, there is an exchange on the record between the circuit court and the adoption consultant immediately following the court's decision that confirms that the circuit court adequately considered the likelihood of adoption. During the exchange, the court inquired whether the adoption would conclude within the next six months, and the consultant responded by informing the court

that the adoptive family had started a home study, that "things [were] progressing as fast as they can," and that "in the next six months the adoption should happen."

*Substantial Relationship Factor*

¶10 Jesse was approximately 22 months old at the time of the dispositional hearing and order. As relevant to the substantial relationship factor, the circuit court found as follows:

> This appears to be a young man who was removed from his home, in fact, never really went home but was removed very quickly after birth. There have been efforts to reunite Jesse with the parents, but as the jury has found, I think in part because of the emotional limitations and in part because one or both of the parents, I guess, had other priorities, they did not establish a strong bond with Jesse.
>
> … I think [Crystal] probably has some fairly strong emotional attachments, but hasn't or couldn't, I guess, do what was required to become an effective parent.
>
> I don't know that Jesse has a strong bond with the parents. I think in part that's because of parenting techniques, lack of—you know, some neglect, in part because of a failure to really maintain communication, maintain contact with Jesse.
>
> At this point it appears that he views the foster parents as in real terms as his parents. They're the people that he's had the strongest bond, the strongest relationship with over the past year and a half or so.

In another part of its decision, the court also referenced Jesse's "lack of a strong relationship" with his biological parents.

¶11 Crystal argues that the record lacks a factual basis for the circuit court's finding of no substantial relationship between Crystal and Jesse. She concedes that the Department's report concludes that there was not a substantial relationship between Crystal and Jesse, but argues that the circuit court

nonetheless had insufficient information to find that she did not have a substantial relationship with Jesse. We reject this argument for the reasons that follow.

¶12 Part of Crystal's argument seems to be that the Department's report was insufficient because the report provided no underlying factual basis for its conclusion. We disagree. The report, dated approximately two weeks before the dispositional hearing, shows Jesse's birth date as December 23, 2005, and states that "Jesse [] has been separated from his mother and father since December 23, 2005 when he was taken into custody and placed in emergency foster care." The report also states that Crystal had not seen Jesse since July 25, 2007, when she chose to stop attending visits with Jesse.

¶13 In any event, we need not decide whether the report by itself supplies a sufficient factual basis for the circuit court's finding of no substantial relationship. As the Department points out, the circuit court also had the benefit of evidence presented at the fact-finding or "grounds" phase of the termination proceeding. This evidence included specific information supporting a finding of no substantial relationship. For example, the court heard testimony that Crystal visited with Jesse only once per month between April and July 2007. The court also heard testimony that Crystal had difficulty forming a connection with Jesse.

¶14 When we consider all of the information the circuit court had before it, we are satisfied that the court's finding of no substantial relationship is adequately supported, particularly given that Crystal directs us to no evidence supporting a contrary finding.

¶15 Finally, Crystal seems to be arguing that the circuit court's statement that "I don't know that Jesse has a strong bond with his parents" should be seen as a concession by the court that it did not know whether there was a strong bond.

Read in context, however, it is apparent that the court's "I don't know" statement was a common turn of phrase meant to convey the court's belief that the evidence showed that Jesse did *not* have a strong bond with his parents.[2]

¶16 In sum, for the reasons stated above, we reject Crystal's arguments that the circuit court erroneously exercised its discretion when it terminated her parental rights.

*By the Court.*—Order affirmed.

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

[2] Crystal also seems to be asserting that the evidence was insufficient as a matter of law because the Department's report did not reference any expert opinion and because no "bonding assessment" was performed. Crystal does not, however, develop these arguments or supply any authority supporting them. We therefore consider these arguments no further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).