COURT OF APPEALS
DECISION
DATED AND FILED

January 11, 2012

A. John Voelker
Acting 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. 2011AP1776 **Cir. Ct. No. 2010TP11**

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO TALIA I. H., A PERSON UNDER THE AGE OF 18:

RACINE COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-APPELLANT,

V.

ROSEANNAH M. H.,

RESPONDENT-RESPONDENT,

BOBBY G. H.,

RESPONDENT.

APPEAL from an order of the circuit court for Racine County: RICHARD J. KREUL, Judge. *Affirmed*.

¶1 REILLY, J.[1] The Racine County Human Services Department (HSD) filed a petition to terminate the parental rights (TPR) of Roseannah M.H. on the grounds that her daughter was in continuing need of protection or services and that Roseannah had failed to assume parental responsibility. Roseannah admitted that her daughter was in continuing need of protection or services and the circuit court terminated her parental rights. Five months later, Roseannah filed a motion to withdraw her admission, alleging that the circuit court's colloquy was defective. The circuit court found that the colloquy was defective and granted Roseannah's motion. We granted HSD's interlocutory appeal. The issue on appeal is whether Roseannah's admission was entered knowingly, voluntarily, and intelligently. We defer to the circuit court's credibility determinations that Roseannah may not have been aware that her parental rights could be terminated after she admitted to the allegations in the TPR petition. The order of the circuit court is affirmed.

BACKGROUND

¶2 TPR proceedings are a two-step process that begins when the petitioner pleads one of the ten grounds for termination under WIS. STAT. § 48.415. ***Tammy W-G. v. Jacob T.***, 2011 WI 30, ¶18, 333 Wis. 2d 273, 797 N.W.2d 854. In the first stage, a fact finder determines whether grounds exist to terminate parental rights. ***Id.*** If the fact finder determines that the facts alleged in

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

the petition have not been proven, the petition is dismissed. ***Id.*** If however, a court or jury finds that the grounds for termination were met, the court shall find the parent unfit. ***Id.*** Only if this first step is met do the proceedings move to the second stage. ***Id.***, ¶19. The second step—known as the "dispositional hearing"—is where the court determines whether termination of parental rights is in the child's best interest. ***Id.***

¶3 On March 4, 2010, HSD filed a petition to terminate the parental rights of Roseannah.[2] The petition alleged that Roseannah's daughter Talia was in continuing need of protection or services and that Roseannah had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6). On October 25, 2010, Roseannah admitted that grounds existed to terminate her parental rights because Talia was in continuing need of protection or services. The circuit court terminated Roseannah's parental rights on January 10, 2011.

¶4 Five months later, Roseannah filed a motion to withdraw her October 25, 2010 admission that Talia was in continuing need of protection or services. Roseannah alleged that the circuit court's colloquy was defective because the court did not discuss with her the potential dispositional outcomes she faced as a result of her admission. She also argued that the colloquy was defective because the circuit court failed to explain to her that the "best interest of the child" would be the primary factor in determining whether to terminate Roseannah's

[2] The TPR petition was filed against both Roseannah and her ex-husband, Bobby G.H. This court recently affirmed the termination of Bobby's parental rights in a separate appeal. *See* ***Racine Cnty. HSD v. Bobby G.H.***, No. 2011AP795, unpublished slip op. (WI App Nov. 16, 2011).

parental rights. Roseannah stated that she was confused about the court procedures and the legal consequences of her decision.

¶5 When a parent chooses to admit to the facts in a TPR petition, the circuit court must engage the parent in a colloquy to ensure that the plea is knowing, voluntary, and intelligent. ***Brown Cnty. DHS v. Brenda B.***, 2011 WI 6, ¶¶34-35, 331 Wis. 2d 310, 795 N.W.2d 730. This colloquy is governed by WIS. STAT. § 48.422(7) and notions of due process. ***Brenda B.***, 331 Wis. 2d 310, ¶35. If the parent later shows that the colloquy was deficient and also alleges that he or she did not know or understand the information that should have been provided, the parent has made a prima facie case that the admission was not knowing, voluntary, and intelligent. ***Id.***, ¶36. The burden then shifts to the petitioner to demonstrate by clear and convincing evidence that the parent knowingly, voluntarily, and intelligently admitted to the facts.[3] ***Id.***

¶6 The circuit court found that the colloquy was deficient and granted Roseannah's motion to withdraw her admission. When a parent admits to the allegations in a TPR petition at the first stage of the TPR proceedings, the circuit

[3] We note that admitting to the allegations in a TPR petition is different than pleading no contest to the allegations. *See* ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, ¶52, 233 Wis. 2d 344, 607 N.W.2d 607. WISCONSIN STAT. § 48.415(3) governs no contest pleas while § 48.415(7) governs admissions. *See* ***Steven H.***, 233 Wis. 2d 344, ¶¶52-53. In ***Brown Cnty. DHS v. Brenda B.***, 2011 WI 6, ¶¶8-9, 331 Wis. 2d 310, 795 N.W.2d 730, the mother pled no contest to the allegations at the first stage of the TPR proceedings and the circuit court engaged in a colloquy with her to verify that her plea was entered knowingly, voluntarily, and intelligently. However, in analyzing whether the colloquy for the no contest plea was sufficient, the supreme court referred to § 48.415(7), which governs admissions. ***Brenda B.***, 331 Wis. 2d 310, ¶¶35-36. When the supreme court discussed whether the colloquy was deficient on the grounds that the circuit court failed to inform the parent of the range of dispositions it could enter, the supreme court indicated that the standard for reviewing the colloquy was the same for both no contest pleas and admissions. *See* ***id.***, ¶47. We therefore believe that the standard for reviewing a request to withdraw an admission is the same as the standard for reviewing a request to withdraw a no contest plea. Furthermore, both HSD and Roseannah agree this is the proper standard.

court must "[a]ddress the parties present and determine that the 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 court conceded that it did not say to Roseannah at the time she entered her admission that the two possible outcomes at the second stage of the TPR proceedings were either dismissal of the petition or termination of Roseannah's parental rights. The circuit court thus ruled that Roseannah had established a prima facie case that the admission was not knowing, voluntary, and intelligent.

¶7 The court moved to the second part of the test: whether HSD demonstrated by clear and convincing evidence that Roseannah knowingly, voluntarily, and intelligently admitted to the facts. First the court noted that the record indicated that Roseannah did in fact understand that termination of her parental rights was a potential outcome. Roseannah's attorney testified that he did discuss the possibility of termination with Roseannah, and the circuit court found this testimony credible. The court found that Roseannah's decision to admit that Talia was in continuing need of protection or services was a strategic trial decision on her part as she believed "that her best shot was going to be in phase two [of the TPR proceedings]." The court also found, however, that Roseannah "perhaps discounted the possibility that the court would terminate her parental rights." Ultimately, the circuit court granted Roseannah's motion and allowed her to withdraw her admission. HSD filed an interlocutory appeal and we granted the motion.

STANDARD OF REVIEW

¶8 Whether Roseannah presented a prima facie case that her admission was not entered knowingly, voluntarily, and intelligently is a question of law that we review de novo. *See* ***Brenda B.***, 331 Wis. 2d 310, ¶¶26-27. A circuit court's decision to grant or deny a motion to withdraw a plea is discretionary. ***State v. Jenkins***, 2007 WI 96, ¶29, 303 Wis. 2d 157, 736 N.W.2d 24. We sustain discretionary decisions by the circuit court as long as the court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. ***Id.***, ¶30. We also defer to the circuit court's fact findings and its credibility determinations. ***Id.***, ¶33.

DISCUSSION

¶9 The first issue we address is whether Roseannah established a prima facie case that she did not enter her admission knowingly, voluntarily, and intelligently. We agree with the circuit court that Roseannah met this test.

¶10 WISCONSIN STAT. § 48.422(7)(a) provides that before a circuit court accepts a parent's admission to the allegations in a TPR petition the court must "[a]ddress the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions." When Roseannah entered her admission, the circuit court failed to inform her that as a result of her admission the two possible dispositions at stage two of the TPR proceedings were dismissal of the petition or termination of her parental rights. HSD counters that the colloquy was sufficient because after Roseannah admitted that Talia was in continuing need of protection or services in violation of WIS. STAT. § 48.415(2), the court read aloud the statute and added

"unless the conditions are met … you would be in jeopardy of losing your parental rights." This was not sufficient, as "a court must inform the parent that at the second step of the process, the court will hear evidence related to the disposition and then will either terminate the parent's rights or dismiss the petition if the evidence does not warrant termination." ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶16, 314 Wis. 2d 493, 762 N.W.2d 122. As the circuit court admittedly did not do this, Roseannah established a prima facie case that she did not enter her admission knowingly, voluntarily, and intelligently.[4]

¶11 We now turn to the second part of the test: whether HSD demonstrated by clear and convincing evidence that Roseannah knowingly, voluntarily, and intelligently admitted to the allegations that Talia was in continuing need of protection or services. The circuit court noted that Roseannah's attorney testified that he discussed with Roseannah the possibility of

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[4] Roseannah also argues that the circuit court's colloquy failed to inform her that the best interests of Talia would be the prevailing factor at the second stage of the TPR proceedings. *See* ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶16, 314 Wis. 2d 493, 762 N.W.2d 122. After Roseannah entered her admission, the circuit court informed her that:

> The hearing itself is a fact-finding hearing and it is in two phases. The first phase has to do with the grounds for termination of a parent's rights. The second phase has to do with what is in the best interests of the child. We are not concerned with phase two at this time. We are only concerned with phase one.

HSD argues that this constitutes sufficient notice to Roseannah that "[t]he best interests of the child shall be the prevailing factor considered by the court in determining the disposition" of Talia. WIS. STAT. § 48.426(2). Roseannah counters that because the court did not say that the best interests of Talia would be the "*prevailing factor*," the court did not sufficiently inform Roseannah. We agree with HSD that the circuit court's words sufficiently informed Roseannah that the best interests of Talia would be the focus of the second stage of the TPR proceedings. This issue is mooted, however, by the fact that we agree with Roseannah that the court did not sufficiently inform her of the potential dispositions at the second stage.

her losing her parental rights. The court also indicated that it found her attorney credible. Nonetheless, the court granted Roseannah's motion to withdraw her admission, finding that Roseannah "perhaps discounted the possibility that the court would terminate her parental rights." As the circuit court is in the best position to judge witness credibility, we are reticent to reverse the court's decision that Roseannah did not enter her admission knowingly, voluntarily, and intelligently. *See* ***Jenkins***, 303 Wis. 2d 157, ¶33. We hold that HSD did not meet its burden of demonstrating by clear and convincing evidence that Roseannah knowingly, voluntarily, and intelligently admitted to the allegations in the TPR petition.

CONCLUSION

¶12 The order granting Roseannah's motion to withdraw her plea is affirmed.

By the Court.—Order affirmed.

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