

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 2, 2012

Diane M. Fremgen
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. 2011AP3000

Cir. Ct. No. 2011TP21

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO DEMITRI C. J., A PERSON
UNDER THE AGE OF 18:**

JESSICA L. G.,

PETITIONER-RESPONDENT,

v.

GILBERT G. J., III,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
CHAD G. KERKMAN, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Gilbert G. J. appeals from an order terminating his parental rights to Demitri C. J. He contends that the circuit court erroneously exercised its discretion in terminating his parental rights by precluding testimony at the dispositional hearing related to Demitri's relationship with Demitri's maternal stepgrandfather. Because the circuit court did not err in precluding the testimony, we affirm.

FACTS

¶2 The record establishes the following undisputed facts. Demitri is the biological and marital child of Gilbert G. J. and Jessica L. G. and was born in 1997. Gilbert and Jessica separated when Demitri was an infant and ultimately divorced. Gilbert's only contact with Demitri subsequent to the first few months after the separation was one meeting at a McDonald's when Demitri was around ten years old. After getting remarried in 2009, Jessica petitioned to terminate Gilbert's parental rights so her new husband could adopt Demitri. Gilbert admitted that there were grounds for terminating his parental rights and the matter proceeded to a dispositional hearing.

¶3 At the time of the dispositional hearing, Jessica was not permitting contact between Demitri and her mother and stepfather, Demitri's maternal grandmother and stepgrandfather, because of a concern with exposure Demitri had to pornography when he was at their house.

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.

¶4 Early in the dispositional hearing, Jessica objected to Gilbert's questioning of a witness regarding Demitri's relationship with Jessica's extended family because Jessica's parental rights were not at issue. In response, Gilbert's counsel proffered that Gilbert had a good relationship with Jessica's mother and stepfather and that Demitri's maternal extended family would "most likely" have contact with Demitri, through Gilbert, if his rights were not terminated.

¶5 The circuit court sustained Jessica's objection due to lack of foundation. The court indicated, however, that it would not preclude such testimony but that it "need[ed] to hear information that your client has contact with Demitri, and that when he has contact with Demitri that he allows the maternal grandparents to have contact as well." The court stated it "want[ed] to understand the relationship between Mother's extended family and the effect of the termination of parental rights of the father."

¶6 Later in the hearing, Demitri's stepgrandfather testified on Gilbert's behalf regarding the circumstances related to Demitri's prior exposure to pornography while at his house. Noting Jessica's prior objection, the court stated that it did not see the relevance of the stepgrandfather's testimony, noting in part that "the record so far shows that your client has seen Demitri once in his entire life."

¶7 Gilbert made an offer of proof that the stepgrandfather previously had a significant relationship with Demitri and that the pornography incident was likely a contributing factor to Demitri's mother forbidding contact with the stepgrandfather. Gilbert proffered that because of his relationship with Jessica's mother and stepfather, contact would be "open[ed] up" between Demitri and his maternal grandmother and stepgrandfather, suggesting that such contact would be

in Demitri's best interest. The court responded: "And I appreciate that. And—and your representation is that to not terminate parental rights would open up contact with the maternal grandmother and her husband. But that just hasn't happened yet in 14 years."

¶8 The court precluded further testimony from the stepgrandfather, concluding that testimony regarding Demitri's relationship to his maternal grandmother and stepgrandfather, through Gilbert, was not one of the statutory factors the court was required to consider. The court added:

I agree with you, though, that the statute states the Court shall consider but is not limited to the following. I still don't see how that's relevant to these proceedings. I don't see how that's relevant to the potential termination of the father's parental rights. I don't—I don't see how it's relevant. I don't see how that information would help me determine what is in the child's best interest.

If the mother does not want her child to have contact with her mother and her stepfather because of this pornography incident, I—I'm not likely to make a finding that it is in the child's best interest to have contact with them over the mother's objection. The mother has a right to be a parent to the child and so does the father, *but the record so far is that the father's chosen to see his son only once in his son's entire life since birth.* (Emphasis added.)

STANDARD OF REVIEW

¶9 Whether to terminate parental rights is a decision left to the sound discretion of the circuit court. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. The court also has broad discretion in admitting or excluding evidence. *Martindale v. Ripp*, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698. Both types of discretionary decisions are reviewed for an erroneous exercise of discretion. *See Rock County DSS v. K.K.*, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991), and *Martindale*, 246 Wis. 2d 67, ¶28. We will

uphold the court's ruling if it considered the relevant facts and applicable law and used a rational process to reach a reasonable conclusion. *Martindale*, 246 Wis. 2d 67, ¶28. "We will not find an erroneous exercise of discretion if there is a rational basis for a circuit court's decision." *Id.*, ¶29.

DISCUSSION

¶10 On appeal, Gilbert contends the court erroneously exercised its discretion by terminating his parental rights without having heard the proffered testimony regarding Demitri's relationship with his maternal grandmother and stepgrandfather. Gilbert argues that WIS. STAT. § 48.426(3)(c), which identifies factors the circuit court must consider in determining the best interests of the child, required the court to consider Demitri's relationship with his maternal grandmother and stepgrandfather because it requires the court to consider "[w]hether 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." (Emphasis added.) Gilbert contends that the maternal grandmother and stepgrandfather were "other family members" whose relationship with Demitri had to be considered by the court.

¶11 Alternatively, Gilbert argues that even if WIS. STAT. § 48.426(3)(c) does not require the court to consider Demitri's relationship with his maternal grandmother and stepgrandfather, it at least permits the court, in the exercise of its discretion, to consider the significance of the relationship. In support, he points to the introductory language of § 48.426(3) which identifies that the specifically enumerated factors in § 48.426(3) must be considered, but also states that a court is "not [] limited" to considering just those factors. He also points out that WIS.

STAT. § 48.427(1) provides that “[a]ny party may present evidence relevant to the issue of disposition.”

¶12 We need not decide here whether Demitri’s relationship with his maternal grandmother and stepgrandfather was required to be considered by the court under WIS. STAT. § 48.426(3)(c) or whether it was not required but nonetheless should have been considered under the introductory language of § 48.426(3) and WIS. STAT. § 48.427(1). In either case, the court made the correct evidentiary ruling.

¶13 Here, the court informed Gilbert that it would not preclude testimony regarding Demitri’s relationship with his maternal grandmother and stepgrandfather, but that Gilbert first needed to lay a foundation that he “has contact with Demitri, and that when he has contact with Demitri that he allows the maternal grandparents to have contact as well.” The court made clear that it “want[ed] to understand the relationship between Mother’s extended family and the effect of the termination of parental rights of the father.” Plainly, the court was willing to consider evidence of the nature of Demitri’s relationship with his maternal grandmother and stepgrandfather, if the foundation for such testimony was laid. Gilbert never laid that foundation.

¶14 Despite the court’s clear direction and invitation to Gilbert in this regard, the stepgrandfather testified only about the pornography incident that occurred between Demitri and his stepgrandfather years earlier. Such testimony went only to the nature of Demitri’s relationship with his stepgrandfather. For such testimony to have any relevance to the court’s decision whether to terminate Gilbert’s parental rights, the court made clear there would have to be foundation testimony demonstrating the likelihood that terminating Gilbert’s parental rights

would actually have a material effect on Demitri's relationship with his stepgrandfather. Gilbert proffered that not terminating Gilbert's parental rights would "most likely" result in Demitri having future contact with his maternal grandmother and stepgrandfather, but never put forth testimony to this effect, despite being invited by the court to do so. Therefore testimony regarding the nature, quality or substance of Demitri's relationship with his grandmother and stepgrandfather was properly ruled irrelevant by the circuit court.²

CONCLUSION

¶15 The circuit court properly exercised its discretion in excluding further testimony about Demitri's relationship with his maternal grandparents. It considered the evidence of record and concluded that further evidence regarding the nature of Demitri's prior relationship with his stepgrandfather was irrelevant in light of the fact that there was no evidence demonstrating that Demitri had ever had contact with his grandmother or stepgrandfather through Gilbert "in 14 years." Without any foundation demonstrating a likelihood that Demitri would actually have contact with his grandmother and stepgrandfather through Gilbert, testimony about the nature of Demitri's relationship with his grandmother and stepgrandfather was irrelevant to the decision regarding termination of Gilbert's parental rights and whether termination was in Demitri's best interest. The circuit court used a rational process to reach a reasonable conclusion.

² To the extent that we have not addressed other arguments made by Gilbert, we consider those arguments to be undeveloped and inadequate, and therefore rejected. *See League of Women Voters v. Madison Cmty. Found.*, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285 (we need not decide undeveloped arguments); *see also Vesely v. Security First Nat'l Bank of Sheboygan Trust Dep't*, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593 (Ct. App. 1985) (we need not decide inadequately briefed arguments).

By the Court.—Order affirmed.

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