

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 16, 2014

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 Nos. 2014AP1424
2014AP1425**

**Cir. Ct. Nos. 2013TP77
2013TP78**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LATOYA M.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LATOYA M.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
MARK A. SANDERS, Judge. *Affirmed.*

¶1 CURLEY, P.J.¹ Latoya M. appeals the orders terminating her parental rights to her children Terayonna S. and Treveon S. She argues that the trial court erroneously exercised its discretion in placing the children with their respective foster families rather than with Wilma S.-H., their paternal grandmother. This court disagrees and affirms.

BACKGROUND

¶2 Latoya is the mother of Terayonna S., born June 21, 2002, and Treveon S., born May 16, 2004. In February 2013, the State filed a petition for the termination of Latoya’s parental rights, alleging that the children were in continuing need of protection or services (“CHIPS”) under WIS. STAT. § 48.415(2). Latoya stipulated to the CHIPS ground for both of the children, and, after the trial court found a factual basis to support the CHIPS ground, the matter was set for a dispositional hearing.

¶3 The dispositional hearing that followed Latoya’s stipulating to CHIPS for Terayonna S. and Treveon S. also concerned the parental rights of the children’s father, Jevon S. Jevon S.’s appeal is not before this court; rather it was decided in a one-judge opinion authored by Judge Joan F. Kessler. *See State v. Jevon S.*, Nos. 2014AP1426 & 2014AP1427, unpublished slip op. (Sept. 16,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12).

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

2014). As noted in *Jevon S.*, numerous witnesses testified at the dispositional hearing, including the children’s case manager, their therapist, their respective foster mothers, and their paternal grandmother—Wilma S.-H. *See id.*, ¶¶5-13 (summarizing hearing testimony). Like Jevon S., Latoya M.’s only argument at the dispositional hearing was that instead of termination, guardianship should be transferred to Jevon S.’s mother, Wilma S.-H. Indeed, at the hearing, Latoya M.’s attorney conceded that, “I don’t think we’re going to have a whole lot of success with that argument, and I think [Latoya M.] knows that.” Given that Jevon S. and Latoya M. made the same arguments at the dispositional hearing, this court, having reviewed the record, concludes that the facts of *Jevon S.* are equally applicable here, and adopts the background information detailing the testimony of these witnesses at the joint dispositional hearing in full. *See id.*, ¶¶5-13.

¶4 As noted in Judge Kessler’s decision, the trial court ultimately determined that it was in the children’s best interest to remain in their respective foster homes. *See id.*, ¶14. This appeal follows.

ANALYSIS

¶5 On appeal, Latoya challenges the orders terminating her parental rights to Terayonna S. and Treveon S. for the same reason set forth by Jevon S. in his appeal. Latoya, citing WIS. STAT. § 48.834,² which requires the Bureau of Milwaukee Child Welfare to consider placement when a child is placed for

² It appears that Jevon S. cited to different sections of Chapter 48 of the Wisconsin Statutes to support the same argument made by Latoya M.—*i.e.*, that the trial court erroneously exercised its discretion in placing the children with their respective foster families rather than with Wilma S.-H., their paternal grandmother. *See State v. Jevon S.*, Nos. 2014AP1426 & 2014AP1427, unpublished slip op., ¶18 (Sept. 16, 2014).

adoption with a family member if available and to make reasonable efforts to keep siblings in the same home, argues that the trial court erroneously exercised its discretion in placing the children with their respective foster families rather than with Wilma S.-H., their paternal grandmother.

¶6 As Judge Kessler so thoroughly explained in *Jevon S.*, however, the record for these cases clearly establishes that the trial court carefully considered all of the testimony given at the dispositional hearing and properly addressed the factors it was required to consider pursuant to WIS. STAT. § 48.426(3). For ease of reference, this court includes the pertinent portions of Judge Kessler’s analysis here:

Contrary to Jevon’s implication ... [n]o statute obligates a circuit court to place a child with a family member if the court finds that such placement is not in the child’s best interest. Rather, WIS. STAT. § 48.426(3) establishes the “best interest of the child” as the prevailing factor in all TPR dispositions.

The record establishes that the circuit court carefully considered all the testimony provided at the dispositional hearing and that the court properly addressed the multiple dispositional factors provided by WIS. STAT. § 48.426(3). The statute provides:

In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(a) The likelihood of the child’s adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether 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.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

In its very thorough, well-reasoned decision, the circuit court summarized the testimony of each witness and addressed each of these factors. With regard to the likelihood of adoption, the court found that Treveon's age and behavioral issues generally "create barriers to adoption," but found that Treveon is likely to be adopted by his current foster family. The court noted that Treveon's foster mother "changed jobs so that she could be more available when [Treveon] needed her available," making it "highly likely" that Treveon would be adopted by his foster family. As to Terayonna, the circuit court noted that she has many psychological issues and is older than Treveon, but found her to be "in the intermediate category in terms of adoptability in a general sense." The court stated that while Terayonna's foster family is currently unwilling to commit to adoption, the family "is willing at some point in the future to reconsider adoption." Terayonna's foster mother testified that the current reluctance to adopt was only because the family could not afford the special services Terayonna needed—services which the Bureau of Milwaukee Child Welfare provided.

With regard to the second statutory factor—the age and health of the children at the time of the disposition and at the time of removal from their home—the court noted that at the time of the disposition the children were eleven years old and nine years old and in good physical health, with the exception of Terayonna's "vision issues." The court stated that both children have psychological, behavioral and emotional health issues, but are improving.

The circuit court called the third statutory factor—whether the children have substantial relationships with Jevon or other family members and whether it would be harmful to sever these relationships—"multifaceted." The court stated that neither child has a substantial relationship with Jevon, in part, because Jevon's visits were suspended. However, the court noted that Jevon did not take any action to remedy the causes of the suspension, and that the children are actually fearful of Jevon. The court also did

not find a substantial relationship between the children and Wilma S.-H.³ The court stated that the children acknowledge their grandmother, but Terayonnia has expressed concern about “abuse” at her grandmother’s home, and that Wilma does not visit the children. The court found that severing the children’s relationship with Jevon and Wilma S.-H. would not be harmful to the children.

As to the wishes of the children, the fourth statutory factor, the court stated that the children’s wishes “are fairly straightforward. They wish to remain where they are.” As to the fifth statutory factor—the duration of separation between the parent and children—the court stated that “[r]emoval [from the care of their mother and father] was so long ago when [the children] were very, very young, that it’s not really something of comparison.”

As to the final statutory factor—whether the children will be able to enter more stable families as a result of termination—the court stated that Treveon’s foster family “offers a great deal of permanence and stability.” Specifically, the court said Treveon’s foster mother’s “current work as a crisis stabilizer [and] the willingness that she has displayed to adjust her own life to his needs ... demonstrate that she provides a level of stability and a high level of permanence.”

Regarding Terayonnia, the court stated that while her foster family is currently unwilling to adopt, it is “willing to provide permanence.... [The foster mother] is willing and desirous of having Terayonnia until Terayonnia is an adult. The mechanism that is advocated to achieve that permanence ... is a sustaining care contract.” The court explained that a sustaining care contract “is less permanent than adoption,” but that the risk of Terayonnia’s foster family “giv[ing] up on Terayonnia” is “small.” The court addressed specific actions taken by Terayonnia’s foster mother that suggest “her willingness to provide permanence.” The circuit court particularly pointed to

³ The court also found that there was a relationship between Latoya M. and the children, but that it was “not substantial.” The court found, that it was “not substantial because [Latoya M. has] not been able to have visits for years. It is true that the visits were suspended. Steps could have been taken to remedy that ... [but] weren’t ... those steps weren’t taken.” The court further noted that the children “don’t appear to talk about their biological parents all that much when they’re in therapy.” Latoya M. does not dispute these findings.

foster mother's detailed understanding of Terayonna's medications and her involvement in Terayonna's extracurricular activities.

The circuit court also discussed the rationale for rejecting Wilma S.-H.'s request for custody:

One of the issues is the presence of [T.S.] in that home.... The issue is the relationship between Terayonna and [T.S.]

Historically when placed together, they had what, I think, could generously be described as a volatile relationship. There is an incident four and a half years ago when they were both much younger and much different people, ... where [T.S.] chases Terayonna around ... with a broken bottle, or something sharp anyway, and threatens to kill her.... They are having improved visits ... [b]ut [T.S.] continues to have some behavioral issues that are violent.

....

Another issue that is present with placement with [Wilma] is the fact that there is not a substantial relationship between Terayonna and Treveon and [Wilma]. They haven't seen each other in five years.

(Some formatting altered.) The court elaborated on the lack of a relationship between the children and their grandmother and mentioned Terayonna's statement about "abuse," noting that it was unsure of how much weight to give the statement, but that it should be acknowledged.

It is clear that the circuit court carefully addressed each of the factors outlined by WIS. STAT. § 48.426(3). The court heard testimony from multiple witnesses and ultimately determined that both children are in stable, loving, and permanent homes, and should remain in those homes. The court also articulated why a sustaining care contract is in Terayonna's best interest at this time, stating that her foster family cannot afford all of the services Terayonna requires, but still wants to provide a permanent home for her. This is a conclusion that a reasonable judge could reach....

See Jevon S., unpublished slip op., ¶¶16-27. This court has reviewed the record, the parties' arguments on appeal, and concludes that Judge Kessler's analysis in *Jevon S.* applies with equal force to Latoya M.'s appeal. This court will therefore adopt Judge Kessler's analysis in full.

¶7 Therefore, for all of the reasons articulated in *Jevon S.*, this court concludes that the trial court properly exercised its discretion. Consequently, this court affirms the orders terminating Latoya's parental rights to Terayonna S. and Treveon S.

By the Court.—Orders affirmed.

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

