COURT OF APPEALS
DECISION
DATED AND FILED

February 11, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2420 **Cir. Ct. No. 2014TP52**

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

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

ROCK COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

D. B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Rock County: R. ALAN BATES, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] D.B. appeals from an order of the circuit court terminating her parental rights to T.J. D.B. contends that the circuit court

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

erroneously exercised its discretion in determining that termination of her parental rights was in the best interest of T.J. because the court failed to give proper consideration to three of the statutory factors the court is required to consider when determining whether termination of parental rights is in the child's best interest. For the reasons discussed below, I conclude that the circuit court properly exercised its discretion and, therefore, affirm.

BACKGROUND

¶2 D.B. is the biological mother of T.J., who was born in September 2009. In November 2013, a dispositional order was entered determining T.J. to be a child in need of protection or services, *see* WIS. STAT. § 48.415(2), and placing him outside his home. In October 2014, Rock County Department of Human Services petitioned the circuit court for the termination of D.B.'s parental rights to T.J. on the basis that T.J. is in continuing need of protection or services. *See* § 48.415(2).

¶3 D.B. pled no contest on the issue of whether grounds existed for the termination of her parental rights. Following a hearing on disposition, the circuit court found that termination of D.B.'s parental rights to T.J. was in T.J.'s best interest, and the circuit court entered an order terminating D.B.'s parental rights to T.J. D.B. appeals.

DISCUSSION

¶4 D.B. contends that the circuit court erroneously exercised its discretion in determining that termination of her parental rights was in T.J.'s best interest. D.B. argues that the circuit court did not take into proper consideration the fact that there was no adoptive resource available for T.J. at the time of

termination, that a strong bond exists between T.J. and D.B. and T.J.'s older brother, and that T.J. had "consistently expressed wishes to be returned to [D.B.'s] care."

¶5 Once the grounds for termination have been established, a circuit court's decision to terminate an individual's parental rights turns on whether termination would be in the child's best interests. *See* WIS. STAT. § 48.01(1) ("[T]he best interests of the child or unborn child shall always be of paramount consideration."); § 48.426(2) ("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."). Accordingly, the focus at disposition phase is on the child, and not the parent. *See* ***Richard D. v. Rebecca G.***, 228 Wis. 2d 658, 672-73, 599 N.W.2d 90 (Ct. App. 1999). Whether termination of parental rights is in the child's best interests is a discretionary decision of the circuit court. ***Darryl T.-H. v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. We will not overturn a circuit court's discretionary decision unless the court erroneously exercised its discretion. ***Jerry M. v. Dennis L.M.***, 198 Wis. 2d 10, 21, 542 N.W.2d 162 (Ct. App. 1995). A circuit court properly exercises its discretion "when it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach." ***Bank Mut. v. S.J. Boyer Constr., Inc.***, 2010 WI 74, ¶20, 326 Wis. 2d 521, 785 N.W.2d 462.

¶6 When assessing whether termination is warranted, the circuit court is required to focus on what is in the child's best interests. WIS. STAT. § 48.426. In doing so, the court should consider any relevant evidence, but must consider the following six statutory factors:

> (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.

Section 48.426(3); ***Sheboygan Cty. DHHS v. Julie A.B.,*** 2002 WI 95, ¶¶28–29, 255 Wis. 2d 170, 648 N.W.2d 402.

¶7 At its core, D.B.'s arguments on appeal are really a complaint about the weight the circuit court gave to certain WIS. STAT. § 48.426(3) factors. The circuit court is not required to afford greater weight to any particular factor in § 48.426(3), and this court will defer to the circuit court as to the weight it gives various factors and affirm so long as the court properly examined each factor. *See* ***Darryl T.-H.***, 234 Wis. 2d 606, ¶¶29, 35; ***Bank Mut***., 326 Wis. 2d 521, ¶20. Here, the record plainly shows that the circuit court took into consideration each of the § 48.426(3) factors.

¶8 In assessing the first factor, the circuit court acknowledged that at the time of the disposition hearing, there were not an individual or individuals ready to adopt T.J. As to the second factor, the court addressed T.J.'s age when he was removed from D.B.'s custody–four, and his age at the time of the hearing–

five, and remarked that "in terms of his consciousness as a human being," T.J. had been out of D.B.'s care for a long time. T.J.'s health was not a concern.

¶9 The circuit court explicitly addressed the third factor. The court acknowledged that T.J. has a substantial relationship with his older brother, but that T.J.'s relationship with other family members "is not nearly as strong as they make it out to be." The court acknowledged that termination would result in T.J.'s separation from his brother, and that the severing of T.J.'s family connections to D.B. and T.J.'s brother would be "painful" and "sad." The court found, however, that "compared to everything else[,] it will not be harmful to sever those relationships," and the court stated that it hoped that T.J.'s relationship with his brother could be continued.

¶10 As to the fourth factor, the circuit court found that T.J. was only five at the time of the termination proceeding and that "other than the fact that he has a relationship with his mother, he cannot express any other wishes regarding this serious matter of termination." The court was fully within its discretion to give less weight to any expressed desire by T.J. to be returned to his mother's care.

¶11 Considering the fifth factor, the circuit court found that for T.J., the length of his separation from D.B. "might as well be life long in terms of his consciousness as a human being."

¶12 When addressing the fifth and final factor, the circuit court considered D.B.'s unstable life, her recent employment, her failure to conquer her drug addiction problems, and the unlikelihood that D.B. would achieve stability in the future. The court found termination would provide T.J. with the ability to "enter into a more stable and permanent family relationship," and that T.J.'s

"childhood experiences [would be] significantly better" if D.B.'s parental rights were terminated.

¶13 D.B. does not challenge the court's findings. As stated above, her argument is really about the fact that the court placed more weight on the importance to T.J. of stability and permanence in his family placement as opposed to his bond with D.B. and his brother and the lack of an imminent adoption on the horizon. Whether or not any other court would have given the same weight to the various factors or reached the same conclusion, the circuit court in this case was fully within its discretion to do so.

¶14 The court here "examine[d] the relevant facts, applie[d] a proper standard of law, and, using a demonstrated rational process, reache[d] a conclusion that a reasonable judge could reach." ***Bank Mut.***, 326 Wis.2d 521, ¶20. Accordingly, I cannot say that the circuit court erroneously exercised its discretion in finding that termination of D.B.'s parental rights was in T.J.'s best interest and, therefore, affirm.

CONCLUSION

¶15 For the reasons discussed above, I affirm.

By the Court.—Order affirmed.

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