COURT OF APPEALS
DECISION
DATED AND RELEASED

February 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1368-NM

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

In the Interest of Brittany B.,
A Child Under the Age of 18:

WAUKESHA COUNTY,

Petitioner-Respondent,

v.

SARA B.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Waukesha County: J. MAC DAVIS, Judge. *Affirmed*.

BROWN, J. Sara B. appeals from a dispositional order determining that her daughter, Brittany B., is a child in need of protection and services. Specifically, the order provides that Sara's discharge of her parental responsibilities for Brittany must be supervised by the Waukesha County Department of Health and Human Services.

Appellate counsel for Sara, Attorney Judith M. Paulick, filed a no merit report pursuant to RULE 809.32, STATS., and ***Anders v. California***, 386 U.S.

738 (1967). Pursuant to the order of this court, Paulick also submitted an amended no merit report on November 10, 1995. Sara has not filed a response to either document.

The no merit reports focus first on whether the record supported the trial court's dispositive determination that Brittany was a child in need of protection or services under § 48.13(10), STATS. We conclude that the record does support the trial court's findings of fact underlying its determination.

A trial court's factual findings will not be disturbed on appeal unless they are clearly erroneous. *See* § 805.17(2), STATS. This standard is essentially the same as the "great weight and clear preponderance" test, and we sometimes refer to that test for an explanation of the "clearly erroneous" standard. ***Noll v. Dimiceli's, Inc.***, 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983). Under the "great weight and clear preponderance" test:

> The evidence supporting the findings of the trial court need not in itself constitute the great weight or clear preponderance of the evidence; nor is reversal required if there is evidence to support a contrary finding. Rather, to command a reversal, such evidence in support of a contrary finding must itself constitute the great weight and clear preponderance of the evidence.

Cogswell v. Robertshaw Controls Co., 87 Wis.2d 243, 249-50, 274 N.W.2d 647, 650 (1979). "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." ***Id.*** at 250, 274 N.W.2d at 650.

Here, the record submitted for trial before the court was replete with examples indicating that Sara routinely failed to provide Brittany with adequate clothing, medical care or protection from risk of injury. The record was undisputed that Sara failed to take those steps necessary to ensure Brittany's regular attendance at preschool, despite the provision of tuition and transportation by the Red Cross and the Waukesha County Department of Health and Human Services. It was undisputed that Brittany is

developmentally delayed, has not grown significantly since her birth, and was diagnosed as suffering from a failure-to-thrive syndrome. At least one cause of her failure to thrive was documented to be her mother's failure to feed her adequately.

In light of the evidence submitted, the trial court found that Brittany has "substantial problems that have and are likely, if not remedied or addressed, will in the future interfere with her optimum development, physically and otherwise." The trial court catalogued these problems as including Brittany's marginal weight and size, substantial history of illness and her developmental delay. The trial court also took note of Sara's failure to provide Brittany with adequate clothing, food and routine diapering. Finally, the trial court found that Sara had failed to use an available car seat or safety belt when transporting Brittany. Relying on § 48.13(10), STATS., the trial court concluded that the record showed that Brittany's parents had failed to provide her with the necessary care so as to "seriously endanger" the child's health.

We conclude that the trial court's findings of fact were not clearly erroneous within the meaning of ***Noll***. We further conclude that the inference of neglect drawn by the trial court was a reasonable one. Accordingly, we must accept it under our rules of appellate review. *See* ***Cogswell***, 87 Wis.2d at 249-50, 274 N.W.2d at 650.

The second issue identified in the no merit report was whether the trial court erred in entering its order and plan regarding Brittany. The trial court's order incorporated a treatment plan directing Brittany's parents to attend parenting classes, provide Brittany with adequate food, clothing and medical attention, protect her safety, continue her participation in preschool, and meet and cooperate with certain social services professionals regarding Brittany's well-being. The trial court's order carefully targeted the areas of concern raised at trial and limited its terms to one year.[1] This court cannot find

[1] The trial court's order expired prior to the issuance of this opinion due to this court's request for an amended no merit report. Accordingly, this court concludes that resort to the doctrine of mootness is not appropriate in this appeal. *But see* ***City of Racine v. J-T Enters. of America, Inc.***, 64 Wis.2d 691, 701-02, 221 N.W.2d 869, 875 (1974) (court has discretion to decline to rule on moot cases unless exceptional or compelling circumstances are present).

any error with respect to the order, the terms of its implementation or its duration.

After an independent review of the record, we conclude that there is no arguable merit to any additional issue that could be raised on appeal. Therefore, we affirm the trial court's dispositional order and relieve counsel from further representing Sara in this matter.

By the Court.—Order affirmed.