COURT OF APPEALS
DECISION
DATED AND FILED

NOVEMBER 18, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

Nos. 98-2158
98-2159

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

NO. 98-2158

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

MANITOWOC COUNTY DEPARTMENT OF SOCIAL SERVICES,

PETITIONER-RESPONDENT,

V.

SHANNON T.,

RESPONDENT-APPELLANT.

NO. 98-2159

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

MANITOWOC COUNTY DEPARTMENT OF SOCIAL SERVICES,

PETITIONER-RESPONDENT,

V.

SHANNON T.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Manitowoc County: PATRICK L. WILLIS, Judge. *Affirmed.*

ANDERSON, J. Shannon T. appeals from circuit court orders terminating her parental rights to her children, Brittany T. and Richard T., Jr. On appeal, Shannon claims that the termination orders should be vacated because she "did not give a voluntary and informed consent to terminate her parental rights." We have reviewed the record and are satisfied that she voluntarily, knowingly and intelligently consented to the termination of her parental rights. Therefore, we affirm.

Petitions for the termination of Shannon's parental rights to Brittany and Richard were filed on February 9, 1998. *See* § 48.42, STATS. The State claimed that, as to Shannon, both children were in continuing need of protection or services. *See* § 48.415(2), STATS. At the first appearance on March 5, 1998, Shannon denied the allegations of the petitions and requested a jury trial. At the next hearing on April 24, 1998, Shannon admitted that both children were in continuing need of protection or services, withdrew her request for a jury trial and entered her consent to the termination of her parental rights. The circuit court terminated her parental rights to Brittany and Richard.

On July 13, 1998, Shannon filed a motion to vacate the orders of the circuit court. A hearing on the motion was conducted on July 28, 1998. At the

hearing Shannon attempted to establish that her consent was not knowing and voluntary. The circuit court denied her motions and Shannon appeals.

On our own motion we remanded these appeals to the circuit court because the record was not sufficient to permit appellate review of the issue Shannon raises.[1] The circuit court was directed to conduct an evidentiary hearing to determine whether Shannon's consent and waiver were knowing and voluntary. After conducting the hearing, the circuit court found that Shannon's consent to the termination of her parental rights was voluntary and informed. With the record of the circuit court before us, we now consider Shannon's underlying claim.

Shannon argues that she did not voluntarily, knowingly and intelligently waive her right to contest the grounds for the termination of her parental rights to Brittany and Richard. We begin with the applicable standard of review. In ***T.M.F. v. Children's Service Society***, 112 Wis.2d 180, 188, 332 N.W.2d 293, 298 (1983), the supreme court held that the applicable standard is that "the appellate court should give weight to the circuit court's decision, although the circuit court's decision is not controlling." (Quoted source omitted.) The court noted that when proceedings to terminate parental rights are undertaken, "the legal conclusion of voluntary and informed consent is derived from and intertwined with the trial court's factual inquiry." ***Id***. Because the circuit court

[1] Pursuant to RULE 809.107(6)(e), STATS., we are required to issue a decision in an appeal from an order terminating parental rights within thirty days "after the filing of the appellant's reply brief or statement that a reply brief will not be filed." The appellant's reply brief was due on September 21, 1998. We remanded this case to the circuit court on September 14, 1998, and it was resubmitted to us on October 23, 1998. We determine that the period of time during which this case was on remand shall not be counted within the thirty days given us for appeal. Because the record was remanded before the appellant filed her reply brief or a statement that one would not be filed, the thirty days within which to issue a decision began to run when this case was resubmitted to us on October 23, 1998. *See* ***Rhonda R.D. v. Franklin R.D.***, 191 Wis.2d 680, 694, 530 N.W.2d 34, 39 (Ct. App. 1995).

has the opportunity to question and observe the witnesses, it is better prepared to reach an accurate and just conclusion on this issue. *See* ***id***. Furthermore, public policy is served by a standard which favors the finality of the circuit court's conclusion as to the voluntariness of the parent's consent. *See* ***id***.

Because the only issue on appeal concerns the voluntariness of Shannon's agreement not to contest the factual bases for the State's claim that Brittany and Richard were in continuing need of protection or services, this matter was initially remanded to the circuit court for a factfinding hearing on the issue of voluntariness. *See* ***Rhonda R.D. v. Franklin R.D.***, 191 Wis.2d 680, 692, 530 N.W.2d 34, 39 (Ct. App. 1995) (stating that this court retains jurisdiction but may remand for an evidentiary hearing). The circuit court found that Shannon's consent was knowing and voluntary and articulated its reasoning in a meticulous and well-reasoned memorandum decision.

The basic information a circuit court must ascertain to determine on the record whether consent is voluntary and informed includes:

> 1. the extent of the parent's education and the parent's level of general comprehension;
>
> 2. the parent's understanding of the nature of the proceedings and the consequences of termination, including the finality of the parent's decision and the circuit court's order;
>
> 3. the parent's understanding … of the right to retain counsel at the parent's expense;
>
> 4. the extent and nature of the parent's communication with the guardian ad litem, the social worker, or any other adviser;
>
> 5. whether any promises or threats have been made to the parent in connection with the termination of parental rights;
>
> 6. whether the parent is aware of the significant alternatives to termination and what those are.

T.M.F., 112 Wis.2d at 196-97, 332 N.W.2d at 301-02. With this as a standard, we examine the transcript of the original hearing in which Shannon agreed not to contest the factual bases for the termination, as well as the later factfinding hearing wherein the circuit court revisited the issue of whether Shannon's waiver was voluntary and informed.

We start with Shannon's education and level of general comprehension. The circuit court noted that in her testimony Shannon demonstrated the "capacity to understand that she was voluntarily consenting to the permanent termination of her parental rights to both children." The circuit court commented that at the remand hearing Shannon demonstrated her comprehension of the proceedings by providing coherent answers to complex questions. The circuit court paid special attention to Shannon's use of alcohol and drugs. First, it found that her use of prescription medication did not impair her comprehension of the proceedings. Second, it found her testimony at the remand hearing that she was under the influence of drugs or alcohol when she gave her consent to be incredible.

Based upon our review of the transcripts of the various hearings in this case, it is apparent that the circuit court's conclusion that Shannon understood the nature of the proceedings and the questions asked of her is supported by the record. The circuit court's concern over Shannon's possible impairment because of alcohol or drug abuse is supported by the record; Shannon was in an AODA program for the two weeks prior to the termination hearing. Like the circuit court, we conclude that there is no medical evidence that at any of the hearings Shannon was under the influence of alcohol or drugs.

We next consider Shannon's level of understanding of the nature of the proceedings and the consequences of the termination. The circuit court acknowledged that the questions asked of Shannon at the April 24, 1998 hearing were not very probing; nevertheless, Shannon's answers on October 6, 1998, clarified she understood the consequences of termination, including the finality of her decision. Our review of the transcripts supports this conclusion. On April 24, 1998, Shannon admitted that she would have no further contact with her children and that neither she nor her children could inherit from each other. She knew that she could register with the State and give her consent to the disclosure of her whereabouts to either child at any time after adoption. Under questioning by the circuit court at the remand hearing, Shannon gave answers that demonstrated her understanding of the nature of the proceedings and the consequences of termination, including the finality of the decision and the circuit court's order. For example, she understood that she would have no further contact with her two children and her limited appeal rights.

The third factor from ***T.M.F.*** is Shannon's understanding of the right to retain counsel at her expense. Throughout these proceedings Shannon has been represented by the State Public Defender. Shannon had several face-to-face meetings with her counsel in the circuit court and several phone calls. From our review of the transcripts it is obvious that trial counsel took the time to discuss both the law of termination of parental rights and the facts of this case with Shannon. Like the circuit court, we conclude that this factor does not weigh against the voluntary and informed nature of Shannon's consent.

The circuit court also heard testimony concerning the extent and nature of the parent's communication with the guardian ad litem, the social worker and any other advisor. Shannon testified that the guardian ad litem did not return

any of the phone calls that she placed to him. However, when pressed as to the dates of the calls, Shannon could not remember where her notes were. The circuit court concluded that given the duties of a guardian ad litem and the "normal conscientious attention to his work" of the guardian ad litem it was improbable that the guardian ad litem failed to return Shannon's calls. As to communications with the social worker, the circuit court noted that the same social worker handled these cases from their inception in January 1997. Although the circuit court limited its decision to discussions about Shannon's termination of parental rights, finding that there were several discussions, we note that extensive services were offered to Shannon while the underlying CHIPS orders were in effect and she routinely ignored those services designed to return the children to her care. We are satisfied that Shannon had sufficient contacts with her social worker that included attempts to provide her services that would insure the return of her children. Those contacts also included an explanation of the TPR process after Shannon refused services.

We agree with the circuit court's conclusion that there is no evidence that any threats or promises were made to Shannon in connection with her decision to voluntarily terminate her parental rights.

The final factor from ***T.M.F.*** is whether Shannon was aware of the significant alternatives to termination and what those alternatives were. We find ourselves in agreement with the circuit court that at the time of the hearing on April 24, 1998, there were no alternatives to the termination of Shannon's parental rights.

> The court finds … that no other significant alternatives existed. The traditional alternatives had already been tried or were being utilized, but the County was still seeking termination. Her children had already been in foster care for 16 months…. Foster care was no longer an option

> which would forestall the contested hearing. Likewise, placement with a relative was not an option. Brittany had already been placed with her biological father, and Richard Jr. was at least being considered for placement with Shannon's sister. Despite these actual and potential placements, the County was still seeking the involuntary termination of Shannon's rights to her children. None of the usual significant alternatives were available to Shannon because of her alleged lack of compliance with the CHIPS Orders.

We consider instructive the supreme court's commentary in ***T.M.F.*** when it considered the issue of voluntary consent in a termination proceeding. The court there stated:

> We do not and cannot set forth precisely what information must be given to the parent in each termination hearing or what questions must be asked or what responses must be elicited on the record to ensure that a sufficient judicial inquiry is made to determine that the consent is voluntary and informed. Each parent and each family will be different. In this nonadversarial setting, the circuit court has a unique opportunity and a special obligation to be vigilant in protecting the interests of all parties.

T.M.F., 112 Wis.2d at 196, 332 N.W.2d at 301. Applying the broad requirements of ***T.M.F.***, we conclude that the trial court's finding that Shannon's consent to the termination was both voluntary and informed should be upheld.

By the Court.—Orders affirmed.

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