COURT OF APPEALS
DECISION
DATED AND FILED

August 24, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 00-1682

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

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

TIFFANY N. AND JOEL N.,

PETITIONERS-RESPONDENTS,

V.

KAREEM W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed*.

¶1 ROGGENSACK, J.[1] Kareem W. appeals the termination of his parental rights to his minor daughter, Shanay W. He ascribes error to the circuit court's dismissal of his motion for relief from judgment, based on what he alleges to be the ineffective assistance of trial counsel. Because the circuit court did not erroneously exercise its discretion in refusing to permit Kareem's motion to set aside the judgment to go forward more than fourteen months after his parental rights had been terminated, we affirm its order.

BACKGROUND

¶2 Shanay was born on December 14, 1989. Due to circumstances not relevant to this appeal, a petition to terminate Kareem's parental rights was filed on June 26, 1997. On June 30, 1998, after a full hearing at which Kareem was represented by counsel, the circuit court terminated Kareem's parental rights to Shanay. Kareem then filed an untimely notice of intent to pursue his appeal rights. When that was denied, he filed a notice of appeal which we dismissed on jurisdictional grounds because the notice of intent to appeal had not been timely filed.

¶3 On February 8, 1999, Kareem filed a petition for a supervisory writ in this court to review a claim that he had ineffective assistance of trial counsel. We dismissed the writ on February 17, 1999. On September 20, 1999, Kareem filed a motion in circuit court that essentially seeks to set aside or provide relief from the judgment terminating his parental rights based upon an allegation that his trial counsel was ineffective. On April 18, 2000, the circuit court denied the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98). All further references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

motion as untimely because it was filed more than fourteen months after the order was entered terminating Kareem's parental rights. Kareem now appeals the latest decision of the circuit court.

DISCUSSION

Standard of Review.

¶4 Whether a motion is timely under WIS. STAT. § 806.07 is a question of statutory construction which we review *de novo*. ***Truttschel v. Martin***, 208 Wis. 2d 361, 364-65, 560 N.W.2d 315, 317 (Ct. App. 1997). The exercise of a circuit court's inherent authority is a discretionary decision, which we will not overturn unless it was erroneously exercised. *See* ***Roberta Jo W. v. Leroy W.***, 218 Wis. 2d 225, 240, 578 N.W.2d 185, 192 (1998). Furthermore, an order denying a motion that effectively reopens a judgment may not be reversed on appeal unless the circuit court erroneously exercised its discretion. ***EPF Corp. v. Pfost***, 210 Wis. 2d 79, 85, 563 N.W.2d 905, 908 (Ct. App. 1997), *overruled on other grounds*, ***Rumage v. Gullberg***, 2000 WI 53, ¶29, 235 Wis. 2d 279, 297, 611 N.W.2d 458, 466.

Timeliness.

¶5 This appeal centers on whether Kareem's motion to address his allegation that he had ineffective assistance of trial counsel should have been denied by the circuit court because it was untimely filed. Kareem asserts that the motion is not one brought under WIS. STAT. § 806.07(1), which is the statutory section generally used to set aside or grant relief from a judgment. Rather, he claims it is a motion that may be heard by the circuit court in its inherent capacity to address concerns of a litigant focusing on why a judgment should no longer be

effective. The guardian ad litem and the respondent before us contend that Kareem's motion does fall under § 806.07, but even if it did not, such a motion must be brought within a reasonable time. While we do not decide whether Kareem's motion comes within § 806.07, we agree that reasonableness is the standard that must be applied to it. We also conclude that the circuit court did not erroneously exercise its discretion when it determined that a lapse of fourteen months between the entry of judgment terminating Kareem's parental rights and the filing of his motion was not a reasonable time.

¶6 WISCONSIN STAT. § 806.07(2) requires:

> The motion shall be made within a reasonable time, and, if based on sub. (1)(a) or (c), not more than one year after the judgment was entered or the order … was made.… This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court.

As the supreme court has explained, the primary issue to be examined in reviewing a motion to set aside a judgment is whether the motion has been filed in a reasonable time. *See* ***Rhodes v. Terry***, 91 Wis. 2d 165, 172, 280 N.W.2d 248, 251 (1979). In deciding whether a motion for relief from judgment has been brought within a reasonable time, a circuit court balances two competing factors: "the need for finality of judgments and the ability of a court to do substantial justice when the circumstances so warrant." ***EPF***, 210 Wis. 2d at 89, 563 N.W.2d at 909-10 (citing ***State ex rel. Cynthia M.S. v. Michael F.C.***, 181 Wis. 2d 618, 626-27, 511 N.W.2d 868, 872 (1994)). When such a motion involves re-examining the termination of parental rights, the supreme court has instructed on the special needs of a child for finality in the decisions which affect his or her ability to maintain stable family relationships:

> The legislature emphasized that courts should recognize that instability and impermanence in family relationships are contrary to the welfare of children. The legislature also entreated the courts to recognize the importance to children of eliminating unreasonable periods while their parents try to correct the conditions that prevent the child's return to the family.

Waukesha County v. Steven H., 2000 WI 28, ¶32, 233 Wis. 2d 344, 359, 607 N.W.2d 607, 615. Therefore, given the concerns for finality in judgments that affect the parental rights to a child, we conclude that regardless of whether Kareem's motion falls within the ambit of § 806.07 or within the exercise of the circuit court's inherent authority, as Kareem contends, it is untimely because it was not brought before the circuit court in a reasonable time.

¶7 Here, the circuit court carefully considered the need for finality of the judgment which terminated Kareem's parental rights when it stated:

> Since the final judgment was issued in this case, the child who was the subject of the initial petition has been adopted by the Petitioner's husband and has been residing with them. To allow this motion at such a late date would cause the child's mother and adoptive father to return to court regarding the child they have been parenting without disruption for a year and a half.

The court also took care in reviewing its ability to do substantial justice when it examined the numerous times when Kareem could have brought the motion that is the subject of this appeal. The court noted that Kareem's parental rights were terminated by a final order entered more than fourteen months before he brought the current motion and, furthermore, that he knew that his trial counsel had erred more than one year before he filed his motion. Therefore, the ineffective assistance of trial counsel of which he complains could have been brought before the circuit court twelve months earlier; it was not based on facts that were recently discovered. The court then balanced Kareem's lack of diligence with the need for

finality in the termination of the parental rights of Shanay and concluded that the motion had not been brought within a reasonable time.

¶8 An exercise of discretion involves the application of the correct law to the facts of the case and a reasoning process stated on the record. *See* ***EPF***, 210 Wis. 2d at 85, 563 N.W.2d at 908. Here, the circuit court carefully exercised its discretion by applying the proper law to facts that are essentially undisputed. Therefore, we conclude that it did not erroneously exercise its discretion in denying Kareem's motion for relief from judgment.[2] Therefore, we affirm the order of the circuit court.

CONCLUSION

¶9 Because the circuit court did not erroneously exercise its discretion in refusing to permit Kareem's motion to set aside the judgment based upon an allegation of ineffective assistance of counsel to go forward more than fourteen months after his parental rights had been terminated, we affirm its order.

By the Court.—Order affirmed.

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

[2] Because Kareem's motion was untimely, we do not address the merits of his ineffective assistance of counsel or equal protection arguments. *See* ***Bright v. City of Superior***, 163 Wis. 1, 10, 156 N.W. 600, 603 (1916) (concluding that it is unnecessary to reach the merits of each argument of the appellant if deciding one issue disposes of the appeal).