

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 13, 2001

Cornelia G. Clark
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.

No. 01-2378

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE TERMINATION OF PARENTAL
RIGHTS TO DEON R.D., JR.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

ESTHER T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Esther T. appeals from an order terminating her parental rights to Deon R.D., Jr. Esther claims the trial court erroneously

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

exercised its discretion when it terminated her parental rights even though she complied with all the conditions required for the return of her son and because the evidence here was not so egregious as to warrant termination of her parental rights. Because the trial court did not erroneously exercise its discretion, this court affirms.

I. BACKGROUND

¶2 On May 18, 2000, Deon R.D., Jr. was born to Esther. Esther used cocaine during the pregnancy. Both Esther and Deon tested positive for cocaine at the time of the birth. Accordingly, a referral was made to the department of social services. Deon was determined to be a child in need of protection or services and was placed in foster care.

¶3 On February 21, 2001, the State filed a petition seeking to terminate the parental rights of Esther and Deon, Sr., the alleged father. The petition alleged that grounds existed to terminate Esther's parental rights pursuant to WIS. STAT. § 48.415(10). Specifically, Esther's parental rights to two other children, Diamond K. and Steven F., had been involuntarily terminated within three years prior to the court's finding that Deon was a child in need of protection or services.

¶4 On April 12, 2001, Esther stipulated that grounds existed to terminate her parental rights. In June 2001, the trial court held a hearing on the dispositional phase of the petition. The trial court concluded that Esther's parental rights should be terminated. An order to that effect was entered. Esther now appeals.

II. DISCUSSION

¶5 Esther argues that the trial court should have dismissed the TPR petition because any unfitness was not so egregious to justify termination and because she complied with the conditions required for the return of her son. In reviewing TPR decisions, this court is limited to whether or not the trial court erroneously exercised its discretion. *Darryl T.H. v. Margaret H.*, 2000 WI 42, ¶¶27, 234 Wis. 2d 606, 610 N.W.2d 475. This court will uphold a discretionary act if the trial court examined the relevant facts, applied the proper standard of law, and used a rational process to reach a reasonable conclusion. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶6 This court has reviewed the trial court's decision. This court cannot conclude that the decision was an erroneous exercise of discretion. The trial court addressed both the positive and the negative factors present in this case. The court acknowledged that for the past thirteen months, Esther has made remarkable strides, that she has remained sober, and that she has made every effort to visit with Deon and maintain a relationship with Deon. The court, however, found that the risks associated with returning Deon to Esther outweighed the positive factors. Those risks include Esther's history of recovery and relapse, her choice to repeatedly involve herself with destructive relationships, the fact that Esther has already had her parental rights terminated to two other children, and Esther's inability to break the vicious cycle. The trial court also pointed out that Esther was struggling with her relationship with her teenage daughter, Sade, and was pregnant for the tenth time.

¶7 The trial court addressed the statutory factors contained in WIS. STAT. § 48.426(3), including that Deon was likely to be adopted. The trial court

found that this was a “window of opportunity to introduce [Deon] on a permanent basis into a loving, nurturing, safe, stable, permanent environment that meets all of his needs, his physical needs, his needs for physical safety, his emotional needs, his bonding issues, his developmental issues” In addressing the other statutory factors, the trial court found that Deon had been removed from his mother’s care for his whole life, that although Esther fought hard for a relationship with Deon, the relationship was not substantial, and that it would be in Deon’s best interests to terminate parental rights now. Thus, this court concludes that the trial court considered pertinent facts, applied the correct law, and reached a reasonable conclusion.

¶8 Esther also contends that the evidence of unfitness was not so egregious as to warrant termination. *B.L.J. v. Polk County DSS*, 163 Wis. 2d 90, 470 N.W.2d 914 (1991). This court disagrees. The test for egregiousness has two parts: (1) the trial court must find that a parent’s conduct seriously undermines his or her ability to function as a parent; and (2) the trial court must determine whether termination is in the child’s best interests—that is, whether further contact between the parent and child will be seriously detrimental to the child. *Id.* at 112-13. Here, both parts of the test were satisfied. The trial court found that Esther’s life demonstrated a cyclical pattern of using drugs and living destructively, and then getting clean for a period of time. Dr. Stephen Emiley, a psychologist who evaluated Esther, testified as to his concern that Esther would relapse into using drugs and again adopt her destructive lifestyle, despite her previous ability to stay clean for long periods of time. This destructive pattern seriously undermines Esther’s ability to function as a parent.

¶9 Additionally, the trial court determined that it would be in Deon’s best interests to terminate Esther’s parental rights. The trial court found that if

Esther relapses, Deon could be seriously hurt, both physically and emotionally. Accordingly, the record does reflect sufficient evidence to demonstrate that Esther's unfitness rises to the level of egregiousness.

By the Court.—Order affirmed.

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

