

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 9, 2003

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.

**Appeal Nos. 03-2425
03-2426
03-2427**

**Cir. Ct. Nos. 02TP000225
02TP000696
02TP000697**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**NO. 03-2425
CIR. CT. NO. 02TP000225**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
ROBERT W-B., A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ZENOBIA W.,

RESPONDENT-APPELLANT.

**NO. 03-2426
CIR. CT. NO. 02TP000696**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
BRANDI J-W., A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ZENOBIA W.,

RESPONDENT-APPELLANT.

NO. 03-2427

CIR. CT. NO. 02TP000697

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
NIA J-W., A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ZENOBIA W.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
TIMOTHY M. WITKOWIAK, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Zenobia W. appeals from orders terminating her parental rights to her children, Robert W-B., Brandi J-W. and Nia J-W. She claims the trial court erroneously exercised its discretion in terminating her rights because the children had a substantial relationship with her. Because the trial

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

court did not erroneously exercise its discretion when it terminated Zenobia's parental rights, this court affirms.

I. BACKGROUND

¶2 On October 30, 2000, a social worker went to the family home to investigate a referral alleging that Brandi and Nia were hungry and frequently asking for food and money while at school. At that time, the social worker found six children, ages four through eleven, home alone. The home was filthy. Brandi and Nia were taken into protective placement. Zenobia was later taken into custody, subject to a probation hold related to a previous conviction for child neglect. Robert was born during the time Zenobia was incarcerated and immediately placed in foster care.

¶3 On March 29, 2002, the State filed a petition to terminate Zenobia's parental rights to Robert. On September 27, 2002, the State filed a petition to terminate her parental rights to Brandi and Nia. Zenobia stipulated that grounds existed to terminate her parental rights. The case proceeded to the dispositional hearing, during which Zenobia contested termination. Gwen Doyle, the case manager, testified that Zenobia never provided any care for Robert, who was in foster care his entire life. She indicated that Robert was close to his foster parents, he was happy and that the foster parents were willing to adopt Robert.

¶4 With respect to Brandi and Nia, they were placed together in a foster home and doing well. When the children were originally removed from Zenobia's care, Zenobia had supervised visits, but the visits were stopped after Zenobia hit Brandi during one of the visits.

¶5 Dr. Kenneth Sherry conducted a psychological evaluation of Zenobia on September 13, 2002, and a written summary of his evaluation was admitted during the dispositional hearing. He indicated that Zenobia blamed others, did not see herself at fault, was deceitful, and unlikely to cooperate. There was testimony that Zenobia was unable to maintain a job or a residence. At the conclusion of the testimony, the trial court reviewed the standards and factors of WIS. STAT. § 48.426 (2001-02).² The trial court then ordered termination of Zenobia's parental rights to all three children. Zenobia now appeals.

II. DISCUSSION

¶6 Zenobia contends that the trial court erroneously exercised its discretion in terminating her parental rights and that she did have a substantial relationship with the two older children. Zenobia argues that she was doing everything she could to be able to see her children and have them returned to her. This court's review of a trial court's termination decision is limited. This court will reverse the trial court only if the trial court erroneously exercised its discretion. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). This court will find an erroneous exercise of discretion only if the trial court failed to apply the pertinent facts to the correct law to reach a reasonable determination. *Sheboygan Co. DHSS v. Julie A.B.*, 2002 WI 95, ¶43, 255 Wis. 2d 170, 648 N.W.2d 402. Applying this standard, this court cannot conclude that the trial court erroneously exercised its discretion.

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶7 The record demonstrates that the trial court considered the pertinent legal authority in addressing the factors enunciated under WIS. STAT. § 48.426(3):

(3) FACTORS. In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(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.

The trial court applied each of these standards to the facts of this case and rendered a reasonable conclusion. Zenobia seems to only challenge whether the substantial relationship factor weighs in favor of termination. She argues that Brandi and Nia had a substantial relationship as they were not removed from her care until they were seven and four years old, respectively. The trial court, however, did address this relationship, noting that Brandi and Nia did have "a relationship" with Zenobia. Nevertheless, the trial court found that the relationship was not "substantial." Thus, severing the relationship would not be harmful to the children. Those findings are not clearly erroneous. Although the girls had been in Zenobia's care for seven and four years, respectively, the

evidence demonstrated that at the time of their removal, they were left at a home in poor conditions, and without any adult supervision. They have been in foster care for two years following removal, are doing well, and have a substantial relationship with their foster parents. It is likely that Brandi and Nia will be adopted following termination, and they will have a stable and permanent family relationship. During the two years in foster care, the relationship with Zenobia was limited. Weekly supervised visits were scheduled. Sometimes Zenobia would not keep the visits and, during one visit, she hit Brandi. After that, visitation was not allowed. Zenobia sent occasional letters and gifts to the girls through the social worker. The trial court found that this relationship, however, was not of a substantial nature. This court cannot conclude that the limited relationship the girls maintained with Zenobia, post-removal, renders the trial court's termination decision erroneous. Even if this factor weighed against termination, all of the remaining factors support termination. The trial court's decision was reasonable.

¶8 Zenobia also contends that termination may result in Brandi and Nia losing touch with Robert because he was placed in a separate foster home. The foster parents, however, indicated a willingness to continue contact between the siblings. The trial court is entitled to rely on that representation. *State v. Margaret H.*, 2000 WI 42, ¶29, 234 Wis. 2d 606, 610 N.W.2d 475.

¶9 Based on the foregoing, this court concludes that the trial court did not erroneously exercise its discretion in ordering termination of Zenobia's parental rights to these three children.

By the Court.—Orders affirmed.

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

