COURT OF APPEALS
DECISION
DATED AND FILED

August 21, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1316 **Cir. Ct. No. 2004TP559**

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO TYVAUN V. A/K/A RODNEY M., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

KARON E.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: CARL ASHLEY, Judge. *Affirmed.*

¶1 FINE, J. Karon E. appeals the circuit-court order terminating his parental rights to Tyvaun V., also known as Rodney M. He contends that the

circuit court erred by not considering his wife and, essentially, his extended family as potential adoption resources. We affirm.

I.

¶2 Rodney was born in October of 2000. Ultimately, the social-welfare authorities determined that Karon E. was the boy's biological father, and that Cozetta V. was the boy's biological mother. Karon E. and Cozetta V. were never married, and, apparently, Karon E. did not know that Rodney existed until he was contacted by social-welfare workers. He is currently incarcerated in Illinois with a possible parole in December of 2008.

¶3 Cozetta V. testified that she could not care for Rodney, and, accordingly, gave him to Sharron F.-J., on the recommendation of Cozetta V.'s sister, who was related to Sharron F.-J. Sharron F.-J. apparently abandoned Rodney, who was then taken by another woman, with whom he was removed by social-welfare workers. Rodney has been living with his foster parents, identified in the Record as John and Jane Doe, since the end of July of 2004. The Does want to adopt Rodney.

¶4 Although Karon E.'s wife, Lotonya E., said she, too, wanted to adopt Rodney, and that she would have help from her and Karon E.'s extended family, the social-service workers did not investigate whether they would be an appropriate adoptive resource because Rodney was already thriving with the Does and that, in the social-service workers' views, it would not be in Rodney's best interests to remove him from what one of them testified was the "stability" and "nurturing" of the Does' home and place him with persons who were "essentially strangers" to him.

¶5 Termination of parental rights is a two-step process. First, a fact-finder decides whether there are facts that justify governmental interference in whatever relationship there is between the birth-parent and his or her child. WIS. STAT. §§ 48.415, 48.424. If there are grounds to terminate a person's parental rights to a child, the trial judge then determines whether those rights should be terminated. WIS. STAT. §§ 48.424(3), (4); 48.426; 48.427. Here, Karon E. bypassed the first step by agreeing that the State could prove that there were grounds for the circuit court to terminate his parental rights to Rodney. He did not, however, give up his right to the second step: "I specifically do not give up my right to a second hearing in this matter which I have been advised is commonly known as the 'best interest' hearing."

¶6 Karon E. and Lotonya E. both testified at the best-interests hearing, as did social-service workers assigned to Rodney's case, Jane Doe, and, as noted, Cozetta V. None of the testimony even alleged that the Does were not providing Rodney with a loving, nurturing, stable, and supportive home. And, concomitantly, nothing was presented at the hearing that removing Rodney from the Does' home would be good for *him* beyond unsupported assertions that he would be better off with "family." Karon E. does not challenge his waiver of the first phase, and Cozetta V.'s rights, if any, are not the subject of this appeal.

II.

¶7 The point that Karon E. misses is that, as the circuit court recognized, once a termination-of-parental-rights case moves to the disposition phase, the birth parents have no special claim to the children. ***Richard D. v. Rebecca G.***, 228 Wis. 2d 658, 672–673, 599 N.W.2d 90, 97 (Ct. App. 1999). As

the circuit court correctly noted, its "emphasis" had to be on "what is best for Rodney."

¶8 Whether circumstances warrant termination of parental rights is within the circuit court's discretion. ***Brandon S.S. v. Laura S.***, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993); ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855, 857 (Ct. App. 1996). We will not reverse a circuit court's discretionary decision if it applied the relevant facts to the correct legal standard in a reasonable way. ***Brandon S.S.***, 179 Wis. 2d at 150, 507 N.W.2d at 107. We review *de novo* whether the circuit court has applied the correct legal standard. *See* ***Kerkvliet v. Kerkvliet***, 166 Wis. 2d 930, 939, 480 N.W.2d 823, 826 (Ct. App. 1992).

¶9 WISCONSIN STAT. § 48.426(3) sets the principles that, if appropriate, the circuit court should consider in exercising its discretion in deciding whether parental rights should be terminated. It provides:

> 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.

Karon E. does not contend that the circuit court did not consider these factors, as appropriate to this case. Rather, as we have seen, he only argues that the social-service agencies and the circuit court should have given him and his family a chance to show that they could provide for Rodney. The circuit court, however, was correct, and certainly by any stretch of the imagination did not erroneously exercise its discretion, in deciding that Rodney came first, and that the known quality of the loving care given to him by the Does clearly outweighed the risk of once again uprooting Rodney's life and placing him with persons whom Rodney did not know. We affirm.

By the Court.—Order affirmed.

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