

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 19, 2009

David R. Schanker
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. 2009AP581, 2009AP582
2009AP583, 2009AP584**

**Cir. Ct. Nos. 2007TP338, 2007TP339
2007TP343, 2007TP344**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

APPEAL NO. 2009AP581

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO JESSE P., PERSONS UNDER
THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LATOYA P.,

RESPONDENT-APPELLANT.

APPEAL NO. 2009AP582

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO JOHN T., JR., PERSONS
UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LATOYA P.,

RESPONDENT-APPELLANT.

APPEAL NO. 2009AP583

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO KAVEIONA P., PERSONS
UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LATOYA P.,

RESPONDENT-APPELLANT.

APPEAL NO. 2009AP584

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO MAKAYLA P., PERSONS
UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LATOYA P.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JANE V. CARROLL, Judge. *Affirmed.*

¶1 BRENNAN, J.¹ Latoya P. appeals from orders terminating her parental rights to four children: Jesse P. (born 12/15/98), John T. (born 2/3/03), Kaveiona P. (born 6/27/05) and Makayla P. (born 10/9/06).² Latoya claims the trial court erroneously exercised its discretion when it terminated her parental rights because it failed to adequately address each of the factors set forth in WIS. STAT. § 48.426(3) (2007-08).³ Because the trial court addressed each of the required statutory factors, it properly exercised its discretion and this court affirms.

BACKGROUND

¶2 In March 2006, a petition was filed alleging that Jesse, John and Kaveiona were children in need of protection or services. The Bureau of Milwaukee Child Welfare (Bureau) had previously set up services to help keep the children in their home. Latoya's home, however, was in "deplorable" condition and roach infested. Latoya repeatedly left Jesse home alone after school. When his mother was not home, he would push the buttons of all the apartments until

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² There are four separate orders, one for each child, which were consolidated for purposes of briefing and disposition of this appeal.

³ Although the fathers' parental rights to these children were also terminated, none of the fathers are appealing the trial court's decision.

someone would buzz him into the building. Latoya did not seem to understand that she had a responsibility to be home for her child.

¶3 The children were placed in foster care and dispositional orders were entered setting conditions for the return of her children. The orders required that Latoya maintain a safe, suitable and stable home, cooperate and communicate with her social worker, complete individual therapy, family counseling, parenting and nurturing programs, have regular visits with the children and demonstrate that she is capable of caring for and supervising her children.

¶4 Latoya failed to satisfy these conditions, did not communicate with her case worker for months at a time, failed to complete the required parenting programs, was sporadic at best with her therapy and never established a safe, suitable and stable home. The initial visits with the children went well, but then deteriorated. During one visit, Latoya grabbed John by the collar and started yelling at him.

¶5 In addition, Latoya failed to inform the Bureau that she was pregnant with Makayla. When Makayla was born, she was immediately detained and placed in foster care.

¶6 In December 2007, the State filed a petition seeking to terminate Latoya's parental rights to all four children on the grounds that all four children were in continuing need of protection or services and that Latoya had failed to assume parental responsibility of Makayla. The State had previously terminated the parental rights to Latoya's first-born child, Joshua, during proceedings in 2004 and 2005.

¶7 In January 2008, Latoya appeared for the initial hearing on the petition and was referred to the State Public Defender to obtain legal counsel. She was advised that she must appear at all court proceedings or risk being found in default. In February 2008, Latoya again appeared with her appointed counsel and told the court she was contesting the petition. She was again warned that she must appear for every court date or she would be found in default. On the next court date in March 2008, Latoya failed to appear. The court ordered Latoya to appear on April 8, 2008, which she did. Latoya waived her right to a jury trial and the final pretrial date of July 15, 2008 and trial date of July 21, 2008 were scheduled. Latoya was warned again about defaulting.

¶8 On July 15, 2008, Latoya failed to appear, the trial court struck her contest posture and found her in default, subject to the State proving that grounds existed for termination of her parental rights. A hearing for the State to prove that grounds existed was set for September 17, 2008. Latoya was not present when the September hearing began, but showed up during the time the case worker was testifying. Despite the default finding, the trial court allowed her to cross-examine the case worker and testify on her own behalf.

¶9 After the hearing concluded, the trial court found grounds existed for termination and that it would be in the children's best interests to terminate Latoya's parental rights. An order was entered to that effect and Latoya appeals from that order.

DISCUSSION

¶10 Latoya's sole argument on appeal is that the trial court erroneously exercised its discretion because it did not sufficiently address each of the factors set forth in WIS. STAT. § 48.426(3). The State and the guardian *ad litem* respond

that the trial court adequately addressed each factor and the record supports the trial court's findings. This court affirms.

¶11 This court reviews a trial court's decision on termination of parental rights under the erroneous exercise of discretion standard. *See Rock County Dep't of Social Servs. v. C.D.K.*, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). If the trial court considered the relevant facts, applied the pertinent law set forth and adequately explained a reasonable basis for its decision, this court will uphold the decision. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

¶12 In *Sheboygan County DHHS v. Julie A.B.*, 2002 WI 95, ¶29, 255 Wis. 2d 170, 648 N.W.2d 402, our supreme court held that the trial court *must* consider the six factors set forth in WIS. STAT. § 48.426(3):

- (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.

¶13 Latoya concedes that the trial court referenced each statutory factor, but complains that the reference was too abbreviated and cursory to be adequate. *See State v. Margaret H.*, 2000 WI 42, ¶35, 234 Wis. 2d 606, 610 N.W.2d 475 (“[T]he record should reflect adequate consideration of and weight to each factor.”). This court rejects her argument. Although the trial court did not go over each of the statutory factors in great detail, this court concludes that it adequately addressed each statutory factor and therefore, it did not erroneously exercise its discretion in ordering termination of Latoya’s parental rights.

¶14 The trial court addressed each factor delineated in § 48.426(3): (1) “[t]he likelihood of the child’s adoption after termination”: the trial court found that the children were all in pre-adoptive homes, had bonded with those families, considered those homes to be their own and that they were likely to be adopted; (2) “[t]he 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”: the trial court found that the children were healthy and young, and listed each child’s age; (3) “[w]hether 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”: the trial court addressed this ground by noting that the relationship the two oldest children had with Latoya was bad and noted that neither Jesse nor John wanted to have any more visits with her. The trial court also referred to the children’s relationship with the maternal grandmother, but found that that relationship was not significant; (4) “[t]he wishes of the child”: the older two children expressed that they no longer wanted to visit with Latoya, and all the children seemed to treat their adoptive families as their own; (5) “[t]he duration of the separation of the parent from the child”: the trial court found that the separation was a significant period of time; (6) “[w]hether the child will be able to

enter into a more stable and permanent family relationship as a result of the termination....”: the trial court found that all four children would be adopted and able to enter into a more stable and permanent family relationship.

¶15 In addition, the testimony from the case worker, upon which the trial court relied in making its decision to terminate Latoya’s parental rights, supported the trial court’s findings and its ultimate determination that it was in the best interests of the children to terminate Latoya’s parental rights. The case worker testified that all four children were likely to be adopted, had bonded with their adoptive families and considered the adults in those homes to be their parents and the children in those homes to be their siblings. The children’s health was good and there were no substantial relationships that would be harmed by termination. The adoptive families were maintaining contact with each other so the four children could continue to have relationships with one another. The three older children had been out of Latoya’s care for at least three years, and Makyala had been in her foster home all of her life. The likelihood of adoption was high and the children would be given a permanent family relationship.

¶16 The guardian *ad litem* also points out the psychological evaluation of Latoya, from October 2005, which indicated that Latoya “does not have adequate cognitive abilities to provide a safe and nurturing environment for a child.” The examiner opined that based on these cognitive limitations, Latoya would never be able to properly parent a child.

¶17 Moreover, Latoya elected to forgo filing a reply brief to refute the State and guardian’s position that the trial court’s consideration of the statutory factors was adequate. This failure to reply results in a concession to the State’s and guardian’s position. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525

N.W.2d 99 (Ct. App. 1994) (we may take as a concession the failure in a reply brief to refute a proposition asserted in a response brief). Based on the record as a whole, this court cannot say that the trial court erroneously exercised its discretion in ordering termination.

By the Court.—Orders affirmed.

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

