COURT OF APPEALS
DECISION
DATED AND FILED

September 10, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2013AP1503
2013AP1504

Cir. Ct. Nos. 2012TP58
2012TP57

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SAMANTHA S.,

RESPONDENT-APPELLANT,

DEONTE H.,

RESPONDENT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SAMANTHA S.,

RESPONDENT-APPELLANT.

APPEALS from an order of the circuit court for Milwaukee County: JOHN J. DI MOTTO, Judge. *Affirmed*.

¶1 FINE, J. Samantha S. appeals the order terminating her parental rights to Angel S. and Deonte H. Both children had previously been determined to be in need of protection or services. *See* WIS. STAT. §§ 48.13, 48.33, 48.335, 48.345. A jury found that Samantha S. had, in connection with both children, not satisfied the conditions set for their return to her, and that there was a "substantial likelihood" that she would "not meet those conditions within" a nine-month period following the trial. *See* WIS. STAT. § 48.415(2) (a child's "continuing need of protection or services" is a ground that justifies the trial court's consideration of whether termination of parental rights to that child is warranted). The jury also found that Samantha S. did not assume parental responsibility for each of the children. *See* WIS. STAT. § 48.415(6) (a parent's failure to assume parental responsibility for a child is a ground that justifies the trial court's consideration of whether termination of parental rights to that child is warranted). Samantha S. claims that the trial court erred in three respects, all in connection with the guardian *ad litem*'s closing argument to the jury. She complains that: (1) the trial court did not sustain Samantha S.'s objection to what she contends was the guardian *ad litem*'s improper "golden rule" argument; (2) the trial court did not sustain Samantha S.'s objection to what she contends was the guardian *ad litem*'s

improper appeal that the jury consider the best interests of the children; and (3) the trial court's limiting instruction in connection with the guardian *ad litem*'s alleged best-interests argument did not address what Samantha S. contends was the "golden rule" aspect of what the guardian *ad litem* told the jury. We affirm.

¶2 This appeals turns on the following part of the guardian *ad litem*'s closing argument to the jury during the first phase of the proceedings, right after the guardian *ad litem* reminded the jury of evidence that Samantha S. had not kept appointments for visiting the children:

> The two children who needed her the most because they're in foster care, Angel and Deonte, obviously are confused by her absence. Confused by the inconsistency in her visits. Have become -- are becoming attached to the care -- to their caregivers.

Samantha S. objected, calling what the guardian *ad litem* had just made an "[i]nappropriate argument." The trial court rejected the lawyer's request for a sidebar and overruled the objection, but cautioned the jury that it should not base its verdicts on any consideration of what the jurors may believe was in the children's best interests:

> But ladies and gentlemen of the jury, I do want to tell you this. Is that you decide what the facts are from all the evidence, and you decide the answer to the questions on the special verdict based on the evidence in this case. And as I indicated to you, your focus is on the evidence and with respect to whether the State has proven the grounds alleged. You should not construe any of the arguments, as you should make a decision as to what you think is best for the children. Best interest of the children is not your concern. That's something that the court gets concerned with later in the case. Your goal, your focus is looking at the conduct in light of the facts, answering the questions on the special verdict. Once again, best interest of the children should not be considered by you in any manner, shape, or form in the decision that you make in answering those questions.

As noted, Samantha S. claims that what the guardian *ad litem* said to the jury: (1) was an improper "golden rule" argument; (2) was an improper appeal that the jury consider the best interests of the children; and (3) that the trial court's limiting instruction was inadequate. We disagree.

A. *Alleged "Golden Rule" Argument.*

¶3 Both parties recognize that an appeal for a jury to place themselves in a party's position can be an improper "golden rule" argument. *See* ***Rodriguez v. Slattery***, 54 Wis. 2d 165, 170, 194 N.W.2d 817, 819–820 (1972). A "golden rule" argument asks the jurors to put themselves "in another's place and decide what he would want for a particular injury or damage to himself or his child." ***Id.***, 54 Wis. 2d at 170, 194 N.W.2d at 819. The guardian *ad litem* did not say anything that even came close to being a "golden rule" argument.

B. *Alleged Appeal to Have the Jury Consider the Best Interests of the Children.*

¶4 Both parties also agree that a jury considering whether there are grounds that warrant moving to the best-interests phase of the proceeding should not consider whether termination of parental rights would be in the children's best interests; that, as the trial court correctly told the jury is a matter that the court decides and not something the jury may consider. *See* ***Waukesha County Department of Social Services v. C.E.W.***, 124 Wis. 2d 47, 61, 368 N.W.2d 47, 54 (1985). Samantha S.'s argument that the trial court erred is without merit.

¶5 First, nothing in the excerpt about which she complains asked the jury to consider the children's best interests. Rather, the guardian *ad litem* merely pointed out what *Samantha S.* should have realized: namely, that the visits were

important to the children and also that they were important components of concerned parenting. Thus, the trial court did not erroneously exercise its discretion in overruling the objection. *See* ***State v. Lenarchick***, 74 Wis. 2d 425, 457, 247 N.W.2d 80, 97 (1976) (trial courts have broad discretion over closing arguments).

¶6 Second, the trial court fully instructed the jury to limit their consideration of the missed visits to the issues that the jury did have to decide. We assume that juries follow jury instructions, *see* ***State v. Truax***, 151 Wis. 2d 354, 362, 444 N.W.2d 432, 436 (Ct. App. 1989), and Samantha S. points to nothing in the Record that indicates that the jury here did not heed what the trial court told it.

C. *Alleged Inadequacy of the Trial Court's Limiting Instruction.*

¶7 This argument, too, is without merit because, as we have seen, the guardian *ad litem* never made a "golden rule" argument.

By the Court.—Order affirmed.

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