COURT OF APPEALS
DECISION
DATED AND FILED

April 9, 2014

Diane M. Fremgen
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. 2013AP1071
2013AP1072

Cir. Ct. Nos. 2011GN23
2011GN24

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

IN THE MATTER OF THE GUARDIANSHIP OF LUCAS S.:

CATHERINE D.,

PETITIONER-APPELLANT,

V.

JERAMIE S. AND KASEY D.,

RESPONDENTS-RESPONDENTS.

IN THE MATTER OF THE GUARDIANSHIP OF JEALENE S.:

CATHERINE D.,

PETITIONER-APPELLANT,

V.

JERAMIE S. AND KASEY D.,

RESPONDENTS-RESPONDENTS.

APPEAL from orders of the circuit court for Oneida County: MICHAEL H. BLOOM, Judge. *Affirmed*.

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. In these consolidated appeals, Catherine D. appeals from circuit court orders terminating her WIS. STAT. ch. 54 (2011-12) guardianships over her two grandchildren. We affirm.

¶2 In May 2011, Catherine D., the maternal grandmother, filed petitions in Oneida County circuit court seeking guardianship over her two grandchildren on the grounds that the mother's whereabouts were unknown and the father, Jeramie S., was incarcerated. At the June 2011 guardianship hearing, the circuit court noted that Jeramie S. had been recently released from custody and intended to put himself in a position to care for his children. However, because neither parent could care for the children at the time of the guardianship hearing, the Oneida court created the guardianships. The court observed that family court matters involving Jeramie S. and the children were pending in the Portage County circuit court, and the Portage court would be a better venue in which to address matters involving the children.

¶3 In November 2011, Jeramie S. petitioned the Oneida court to terminate Catherine D.'s guardianships. The December 23, 2011 hearing on Jeramie S.'s request to terminate the guardianships provides necessary context for Catherine D.'s appeal from the subsequent orders terminating her guardianships. At the December 23 hearing, the Oneida court again observed that the Portage court had broad authority over the children with regard to custody, placement and support, and the Portage court should act when appropriate. In addressing Jeramie S.'s request to terminate the guardianships, the Oneida court considered whether

Jeramie S. was unfit or whether there were compelling reasons for a guardianship with someone other than the parent. The court observed that "[t]he law clearly indicates that parents have custody and placement of the children unless they are unfit or there are compelling reasons to deny them custody and placement." The court found that while Jeramie S. was making progress toward regaining custody and placement of his children, the Portage court had not yet entered an order placing the children with Jeramie S.

¶4 The Oneida court determined that continuing the guardianships would facilitate a potential transition of the children to Jeramie S. The Oneida court specifically stated that it would yield its jurisdiction to any family court proceeding, remarking "[t]hat the guardianship will be dismissed in Oneida County when a court with family court jurisdiction enters a superseding order." The court observed that "[t]here's no way if [Jeramie S.] continues to make progress and ends up with a real good situation into which the children can be cared for that this court can continue to [sic] guardianship."

¶5 In March 2013, Jeramie S. submitted a parenting plan to the Portage court, which the court approved. The Portage court granted Jeramie S. sole custody and primary physical placement of the children. The Portage court order stated that the arrangements pursuant to Jeramie S.'s parenting plan would take effect upon dismissal of the Oneida guardianships.

¶6 In April 2013, Jeramie S. again petitioned the Oneida court to terminate the guardianships, citing the March 2013 Portage court order as grounds. A successor Oneida judge noted the following: (1) the December 23, 2011 Oneida order yielded jurisdiction to the family court; (2) at the December 23 hearing, the predecessor Oneida judge envisioned that the guardianships would be dismissed

when a family court entered a superseding order; and (3) the March 2013 Portage court order approved Jeramie S.'s parenting plan and stated that Jeramie S.'s arrangements would take effect upon dismissal of the Oneida guardianships, permitting an inference that the Portage court was aware of the December 23 Oneida order yielding jurisdiction to Portage. The Oneida court found that the December 23 proceeding expressed the court's view of the interrelationship between the Oneida guardianship cases and the Portage family court case. The court found that the March 2013 Portage order was the type of superseding order contemplated by the Oneida court when it declined to dismiss the guardianships in December 2011. Based on the foregoing, the Oneida court terminated the guardianships and declined to reconsider. Catherine D. appeals.[1]

¶7 WISCONSIN STAT. ch. 54 guardianships are governed by the third-party guardianship standards set out in ***Barstad v. Frazier***, 118 Wis. 2d 549, 348 N.W.2d 479 (1984). ***Cynthia H. v. Joshua O.***, 2009 WI App 176, ¶¶37-39, 50, 322 Wis. 2d 615, 777 N.W.2d 664. Where a third party seeks custody of children as against a parent, the "parent is entitled to custody of his or her children unless the parent is either unfit or unable to care for the children or there are compelling reasons for awarding custody to a third party." ***Barstad***, 118 Wis. 2d at 568. Compelling reasons include "extraordinary circumstances that would drastically affect" the child's welfare. ***Id.***

¶8 Decisions regarding custody are within a circuit court's discretion. ***Cynthia H.***, 322 Wis. 2d 615, ¶33. We will reverse only if the circuit court's

[1] We note that the Portage court later granted Catherine D. grandparent visitation with the children.

findings of fact are clearly erroneous or if the circuit court made an error of law. ***Id.***

¶9 On appeal, Catherine D. argues that in terminating the guardianships, the Oneida court misconstrued the December 23, 2011 order. We disagree. The December 23 order created the framework for the future of the guardianships: a Portage court order would supersede the guardianships. Catherine D. does not cite any authority for her suggestion that the December 23 order could not be given effect by the successor Oneida judge once the Portage court approved Jeramie S.'s parenting plan.[2]

¶10 Catherine D. next argues that the Oneida court had to consider Jeramie S.'s current parental fitness or compelling reasons before terminating the guardianships. The Oneida court properly applied the ***Barstad*** compelling reason rule to the question of whether to terminate Catherine D.'s guardianships. ***Barstad***, 118 Wis. 2d at 568.

¶11 In December 2011, when the Oneida court declined to terminate the guardianships, it did so for a compelling reason: the Portage court had not yet entered an order addressing Jeramie S.'s rights to custody and placement, and terminating the guardianships would have left the children without a responsible party, necessitating the involvement of a social services agency. In March 2013, the Portage court approved Jeramie S.'s parenting plan and granted him custody

[2] Catherine D. argues that the Portage court did not consider the competing interests of the guardian and the parent. The Portage matter is not before us and is outside the scope of this appeal.

and placement. As of April 2013, the compelling reason for the guardianships no longer existed because the Portage court had entered an appropriate, superseding order. Seen in this context, the Oneida court properly terminated the guardianships in April 2013 once the children's custody and placement was resolved by the Portage court.

¶12 The Oneida court applied the correct law and its findings are not clearly erroneous. WIS. STAT. § 805.17(2) (2011-12). We affirm the court's discretionary decision to terminate Catherine D.'s WIS. STAT. ch. 54 guardianships over her grandchildren.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).