COURT OF APPEALS DECISION DATED AND FILED

September 10, 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 No. 2014AP780

Cir. Ct. No. 2013TP17

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO SAMUEL D. L., A PERSON UNDER THE AGE OF 18:

SHEBOYGAN COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

PHILLIP L.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Sheboygan County: TERENCE T. BOURKE, Judge. *Affirmed*.

¶1 REILLY, J.[1] Phillip L. appeals the denial of his motion to withdraw his no-contest plea at the fact-finding stage of his termination of parental rights (TPR) proceeding. Phillip alleges the circuit court committed a technical error in taking his plea in that the court did not take sworn testimony. As Phillip has not alleged that the court's error resulted in any prejudice or any lack of understanding on his part as to the plea he entered, we affirm.

¶2 Sheboygan County Department of Health and Human Services filed a petition to terminate Phillip's parental rights to Samuel D. L. on the ground that Phillip had failed to assume parental responsibility. Phillip waived his right to a fact-finding trial by entering a no-contest plea to the grounds for termination asserted by the County in its petition. The circuit court signed an order terminating Phillip's parental rights following a dispositional hearing. Phillip subsequently moved to withdraw his plea. He asserted that he was entitled to plea withdrawal based on the court's failure to hear testimony in support of the County's petition at the plea hearing, contrary to WIS. STAT. § 48.422(3). The court determined that its plea-taking procedure had been deficient, but found that Philip had not alleged sufficient facts to establish that he had been prejudiced so as to entitle him to withdraw his plea. Phillip appeals.

¶3 A parent's challenge to the circuit court's acceptance of a plea in a TPR proceeding is analyzed pursuant to ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). ***Kenosha Cnty. Dep't of Human Servs. v. Jodie. W.***, 2006 WI

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

93, ¶24 n.14, 293 Wis. 2d 530, 716 N.W.2d 845. "Under that analysis, the parent must make a prima facie showing that the circuit court violated its mandatory duties and must allege the parent did not know or understand the information that should have been provided at the hearing." ***Oneida Cnty. Dep't of Soc. Servs. v. Therese S.***, 2008 WI App 159, ¶6, 314 Wis. 2d 493, 762 N.W.2d 122. If the parent fails to make this prima facie showing, the court need go no further and may deny the motion for plea withdrawal. *See* ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, ¶43, 233 Wis. 2d 344, 607 N.W.2d 607. Whether Phillip presented such a prima facie case in his motion for plea withdrawal is a question of law that we review independently. ***Therese S.***, 314 Wis. 2d 493, ¶7.

¶4 Phillip argues that the taking of testimony to support the allegations in the TPR petition is independent from whether his plea is entered knowingly, intelligently, and voluntarily, and therefore he is entitled to withdrawal of his plea regardless of whether he knew or understood the information that was not taken under oath. We disagree.

¶5 Phillip's confusion apparently stems from the supreme court's discussion in ***Steven H.*** where, despite asserting that ***Steven H.*** did not make a prima facie showing under ***Bangert*** and its inquiry could end, the court went on to satisfy itself that the error was not prejudicial by "teas[ing] out" sworn testimony to support the allegations in the TPR petition from other parts of the record. *See* ***Steven H.***, 233 Wis. 2d 344, ¶¶43, 51, 56-60. ***Steven H.*** was a unique, precedent-setting case that involved review of "whether a parent's no contest plea was knowingly made, even though he had not filed a post-judgment motion to withdraw the plea." ***Jodie W.***, 293 Wis. 2d 530, ¶28. ***Steven H.*** did not depart from the ***Bangert*** requirement that a party moving for plea withdrawal in a TPR proceeding must make a prima facie showing that he or she did not know or

understand the information that should have been provided at the hearing. *See* ***Jodie W.***, 293 Wis. 2d 530, ¶26. Although applying ***Bangert*** to the "factual basis" portion of a court's plea acceptance procedure can be "an awkward fit," a motion for plea withdrawal must still allege that the moving party lacked knowledge or understanding of the information omitted from the plea hearing before relief may be granted. *See* ***State v. Lackershire***, 2007 WI 74, ¶¶48, 51-55, 301 Wis. 2d 418, 734 N.W.2d 23. As Phillip's motion failed to do so, it was properly denied.

By the Court.—Orders affirmed.

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