

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 4, 2015

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. 2015AP1460

Cir. Ct. No. 2011TP000232

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO T. C., A PERSON UNDER THE
AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

L. C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MARK A. SANDERS, Judge. *Affirmed.*

¶1 BRENNAN, J.¹ L.C. appeals from an order of the circuit court terminating her parental rights to her son T.C. L.C. claims that the circuit court failed to consider all the factors set forth in WIS. STAT. § 48.426(3) when it concluded that it was in T.C.’s best interests to terminate L.C.’s parental rights. She claims that the circuit court did not give proper weight to the bond that exists between T.C., L.C., and most of T.C.’s siblings and the resulting “emotional and psychological damage” she believes T.C. will undergo if her parental rights are terminated. Because the circuit court properly exercised its discretion, we affirm.²

BACKGROUND

¶2 T.C. was born to L.C. on May 12, 2007. He was removed from L.C.’s home on September 11, 2009, after police found that T.C. and his siblings had been left home for hours without adult supervision. Thereafter, T.C. was found to be a child in need of protection or services on December 7, 2009. On July 19, 2011, the State filed a petition to terminate L.C.’s parental rights; at that time, T.C. was four years old and had been living in his current foster home since age two. The TPR petition alleged three grounds existed to terminate L.C.’s parental rights to T.C.: continuing-need-of-protection-or-services, failure-to-assume-parental-responsibility, and abandonment. *See* WIS. STAT. § 48.415(2), (6) and (1a).

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² T.C.’s father’s parental rights were terminated along with L.C.’s. We affirmed the order terminating the father’s parental rights in *State v. K.C.*, No. 2015AP1353-NM, unpublished slip op. (WI App Sept. 2, 2015).

¶3 The grounds trial was adjourned several times over the course of a year and a half. Many of those adjournments resulted from L.C.'s incarceration and the fact that she was facing criminal charges. L.C. was arrested on March 12, 2012, after she hit four cars in a Walgreens parking lot. When police found her she was intoxicated and had an infant without a car seat in the car.

¶4 The State eventually amended the TPR petition to add a second three-month period of abandonment pursuant to WIS. STAT. § 48.415(1). The State alleged that L.C. had failed to have contact with T.C. or his siblings for over three months while she was incarcerated following her March 12 arrest. On October 28, 2013, L.C. entered a no-contest plea to the TPR ground of abandonment. The court received evidence supporting the abandonment ground, found L.C. to be an unfit parent, and dismissed the continuing-CHIPS and failure-to-assume grounds.

¶5 Like the TPR grounds proceedings, the disposition or "best interest" proceedings stretched over several months. In all, the disposition included eleven hearing dates, beginning in March 2014, and finally concluding in November 2014.

¶6 The undisputed testimony at the disposition hearing included evidence that T.C. had been in foster care for five of his seven years, and that he had not lived with L.C. since his initial removal from L.C.'s home in 2009. Since 2010, when T.C. was two years old, he had been continuously living with a foster family who had cared for him and had been addressing his special needs. According to his foster mother, T.C. required therapy for behavioral issues but that, with encouragement and after-school tutoring, T.C. was progressing in school and was otherwise thriving. After being raised most of his life by his current

foster parents, T.C. referred to his foster parents as “mom” and “dad” and, according to his foster mother, T.C. referred to L.C. as his “other mom.”

¶7 The disposition was somewhat unusual in that it involved only two of L.C.’s five children: T.C. and T.C.’s 15-year-old sister P.C.³ As a result, the disposition included discussion of whether and how T.C. would maintain relationships with four older siblings who had not been in the same foster home in which T.C. was raised. Addressing the sibling relationships, T.C.’s foster mother testified both that she was committed to adopting T.C. and that, if she adopted T.C., she and her husband would continue to support T.C. maintaining a relationship with his siblings.

¶8 Donna Lee, a Legal Aid Society social worker who interviewed T.C. on behalf of the guardian ad litem, also testified that T.C. wanted to stay with his foster parents. Lee testified that T.C. understood the nature of his relationship with both his foster family and his natural family, and that T.C. appeared to have a stronger relationship with his foster family than with his biological family. According to Lee, T.C. spoke primarily of his foster family in the course of a one-hour interview and it appeared to Lee that T.C. viewed his foster parents as his psychological parents.

¶9 In November 2014, the circuit court issued its decision finding that termination of L.C.’s parental rights was in T.C.’s best interest. The court

³ After the circuit court found that it was in both T.C.’s and P.C.’s best interest that L.C.’s parental rights be terminated and while appeals were pending but proceedings stayed, the State dismissed the TPR as to P.C. At the time of disposition, P.C. was fifteen years old, substantially older than T.C., and had lived with L.C. for a much longer period of time. Prior to the disposition hearing the State had also dismissed TPR cases as to three more of T.C.’s older siblings, each of whom also had longer care relationships in L.C.’s home.

reviewed the testimony of the significant witnesses and individually addressed the six enumerated disposition factors of WIS. STAT. § 48.426(3): the likelihood of adoption, the child's age and health, the child's substantial relationships, the child's wishes, the duration of separation between parent and child, and finally, whether the child would be able to enter a more permanent and stable family relationship if parental rights were terminated.

¶10 In addressing the best interest factors, the circuit court noted that T.C. was almost certain to be adopted by his current foster parents, who had been approved for adoption and who remained strongly committed to adoption. The court particularly noted T.C.'s age as a factor distinguishing T.C. from his siblings who returned to L.C. T.C. was two years old when he began living with his foster parents, was seven years old at the time of trial, and had not lived with his siblings in the intervening five years, although he had visited with them. Moreover, T.C. was still young and would adapt well to adoption, particularly in light of T.C.'s wish to be adopted and the substantial relationship formed over years with his foster parents. According to the court, T.C. wanted to stay with his foster family "because he feels safe, he feels comfortable, he feels cared for" in that home. Finally, the court noted T.C.'s positive and stable life with his foster family and that he was more likely to have long-term stability if adopted, rather than living with L.C. whose life had not been stable. According to the court, consideration of these factors weighed in favor of terminating L.C.'s parental rights.

¶11 The circuit court acknowledged T.C.'s substantial relationship with his siblings and with L.C. and considered whether guardianship instead of termination of parental rights might be a preferable alternative. The court acknowledged that L.C. had improved her ability to take care of her children and that L.C. had established a relationship with T.C. And, the court also

acknowledged that there was a risk of harm if T.C.'s relationships with L.C. and his siblings were severed. However, the court found that the lengthy duration of T.C.'s separation from L.C., the majority of his life, tipped the scale in favor of terminating L.C.'s parental rights. In particular, the court found "that the stability in his current home, that the length of time in his current home, that his age from age two until age seven in that home contributes significantly" to the termination decision. In addition, the court acknowledged that T.C. could still maintain relationships with his siblings after being adopted with T.C.'s foster parents' support and that termination of L.C.'s parental rights gave T.C. "a higher degree of stability than would guardianship."

¶12 The circuit court found that even though there could be some harm to T.C. if he lost contact with his siblings and L.C., because T.C. had "been in his current home for a very long period of time, a significant majority of his life," the termination of L.C.'s parental rights is "to be in his best interests." The court held that "the permanence offered through termination outweighs the potential benefits of guardianship and is in his best interests." The stability and consistency of adoption in the home he has known resulted in termination being in T.C.'s best interest. As such, the court entered an order terminating L.C.'s parental rights to T.C., and L.C. now appeals.

DISCUSSION

¶13 L.C. argues on appeal that the circuit court erroneously exercised its discretion when it concluded that termination of L.C.'s parental rights was in T.C.'s best interest. She claims that the circuit court did not properly take into consideration the bond that exists between T.C. and his siblings who still live with L.C. and the "emotional and psychological damage" L.C. believes T.C. will suffer

if L.C.'s parental rights to T.C. are severed but her parental rights to the other children are not. The record belies her assertion.

¶14 The circuit court's decision whether to terminate parental rights is discretionary. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Generally speaking, "[a] circuit court acts within its discretion when it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach." *Bank Mut. v. S.J. Boyer Constr., Inc.*, 2010 WI 74, ¶20, 326 Wis. 2d 521, 785 N.W.2d 462. When terminating parental rights, the circuit court's exercise of discretion requires the court to focus on the child's best interests. WIS. STAT. § 48.426(3). In doing so, the court should consider any relevant evidence but must consider six statutory factors:

- (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.

See id.; *Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶¶28-29, 255 Wis. 2d 170, 648 N.W.2d 402; *Gerald O.*, 203 Wis. 2d at 153-54.

¶15 L.C. only complains that the circuit court failed to take into consideration WIS. STAT. § 48.426(3)(c), that is, “[w]hether [T.C.] has substantial relationships with [L.C.] or other family members, and whether it would be harmful to [T.C.] to sever these relationships.” However, the record plainly shows that the circuit court did take this factor and all of the other § 48.426(3) factors into consideration.

¶16 In assessing the first factor, the circuit court found that T.C. was almost certain to be adopted by his current foster parents who were committed to adopting T.C. and who were approved to adopt. The court also addressed T.C.’s age when he was removed from L.C.’s home—two—and his age at the time of disposition—seven—and remarked that T.C. had been out of L.C.’s care for “a long time.” The second factor—T.C.’s health—was not a concern.

¶17 The circuit court also explicitly addressed the third factor, that is, whether T.C. had a substantial relationship with L.C. or other family members. In doing so, the court acknowledged that T.C. had a substantial relationship with L.C., but also found that T.C. refers to L.C. as his “other mom.” The court also expressly acknowledged that T.C. has substantial relationships with many of his siblings.

¶18 Having found that T.C.’s relationships with L.C. and many of his siblings were “substantial,” the circuit court then went on to consider “whether it would be harmful to [T.C.] to sever these relationships.” See WIS. STAT. § 48.426(3)(c); see also *State v. Margaret H.*, 2000 WI 42, ¶26, 234 Wis. 2d 606, 610 N.W.2d 475 (“The statute directs focus on the legal severance resulting from a termination of parental rights and requires courts to assess the harmful effect of this legal severance on the emotional and psychological attachments the child has

formed with his or her birth family.”). The circuit court expressly found that T.C. could be harmed by severing those relationships, and was concerned that T.C.’s foster parents would not work to maintain those relationships because of the admittedly strained relationship between L.C. and T.C.’s foster parents.

¶19 The circuit court also considered factor four, T.C.’s wishes. The court noted that the testimony showed that T.C. wished to remain in his foster home, where he had lived for the majority of his life because he feels safe, cared for, and comfortable in his foster parents’ home. Considering the fifth factor, the circuit court recognized that T.C. had been separated from L.C. for the vast majority of his life.

¶20 When addressing the final factor—whether T.C. will be able to enter into a more stable and permanent family relationship as a result of the termination—the circuit court considered L.C.’s unstable life, her recent improvement in her ability to care for her children, and the risk that L.C.’s progress would not continue. The court thoughtfully considered a transfer of guardianship of T.C. to his foster parents, rather than a termination of parental rights, to preserve T.C.’s relationship with L.C. and his siblings. However, even though the court acknowledged that severing those relationships could be harmful, the court concluded that T.C.’s lengthy separation from L.C. tipped the scale in favor of termination of L.C.’s rights. The court concluded that “the permanence offered through termination outweighs the potential benefits of guardianship and is in [T.C.’s] best interests.”

¶21 L.C.’s argument that the circuit court erroneously exercised its discretion by failing to properly consider the bond that exists between T.C., L.C., and many of T.C.’s siblings is no more than a disagreement with how the circuit

court exercised its discretion. It is plain from the record that the circuit court was greatly concerned with how severing those relationships would affect T.C. emotionally and psychologically, noting that the substantial relationships T.C. had with L.C. and many of his siblings “complicated” the analysis of what was in T.C.’s best interest. However, after weighing all of the factors—and placing great emphasis on the duration of time T.C. had been out of L.C.’s care—the circuit court concluded that termination of L.C.’s parental rights was in T.C.’s best interest. In doing so, the circuit court “examine[d] the relevant facts, applie[d] a proper standard of law, and, using a demonstrated rational process, reache[d] a conclusion that a reasonable judge could reach.” *Bank Mut.*, 326 Wis. 2d 521, ¶20.

¶22 At its core, L.C.’s argument really is a complaint about the *weight* the circuit court gave to the importance to T.C. of stability and permanence in his family placement as opposed to his bond with his siblings. But we defer to the circuit court about the weight it gives to the various factors and affirm as long as the circuit court properly examined each factor. *See id.* As such, we must affirm.

By the Court.—Order affirmed.

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

