

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 10, 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. 2015AP1937

Cir. Ct. No. 2014TP9

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

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

ADAMS COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

D. S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Adams County:
CHARLES A. POLLEX, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ D.S. appeals a circuit court order terminating her parental rights to her daughter, J.S. D.S. contends that the Adams County Department of Health and Human Services (the County)² violated her substantive due process rights by imposing conditions of return that were impossible for her to meet and impermissibly relying on D.S.’s “poverty” in support of the County’s allegation that D.S. failed to satisfy the conditions of return of J.S. D.S. also contends that the circuit court erred in concluding that termination of D.S.’s parental rights was in J.S.’s best interests. For the reasons explained below, we reject D.S.’s arguments and affirm.

BACKGROUND

¶2 D.S. is the mother of J.S. In 2013, J.S. was removed from her parents’ care³ and the circuit court found J.S. to be a child in need of protective services (CHIPS). A dispositional hearing was held, at which the circuit court informed the parents of the potential grounds for termination of their parental rights and of the conditions necessary for J.S. to be returned to the parents’ home. J.S. has been placed outside of the parental home since October 11, 2013.

¶3 In 2014, the County filed a petition seeking to terminate D.S.’s parental rights on the grounds that J.S. is in continuing “need of protection and

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 For ease of reference, we refer to the Adams County Department of Health and Human Services and its agents, including the social worker testifying at trial, collectively as “the County.”

³ The parental rights of both parents were terminated at the same hearing. With respect to J.S.’s father, the court had previously determined that he was in default.

services” pursuant to WIS. STAT. § 48.415(2). D.S. contested the petition and the case proceeded to a jury trial in 2015. At the close of evidence, the jury found that grounds existed to terminate D.S.’s parental rights. A disposition hearing was subsequently held and the court entered an order terminating D.S.’s parental rights to J.S. D.S. filed a timely notice of intent to pursue postdisposition relief. D.S. appeals.

DISCUSSION

I. Substantive Due Process

¶4 D.S. first argues that the conditions of return, “as they were interpreted” by the County, violated her substantive due process rights in three ways: (1) the conditions “were not narrowly[]tailored to their statutory purpose;” (2) the conditions “did not take into account D.S.’[s] specific characteristics”; and (3) the conditions “became impossible for D.S. to fulfill.” We view these arguments as overlapping and therefore we consider them together in our analysis below. For the reasons we will explain, we conclude that D.S. has not demonstrated that the County violated her substantive due process rights in the setting and application of the conditions for return of J.S. to D.S.

¶5 To establish a substantive due process claim, an individual must demonstrate that he or she has been deprived of a liberty or property interest that is constitutionally protected. *Thorp v. Town of Lebanon*, 2000 WI 60, ¶46, 235 Wis. 2d 610, 612 N.W.2d 59. Substantive due process requires that when a statute adversely affects fundamental liberty interests, the statute must be narrowly tailored to advance a compelling interest that justifies interference with fundamental liberty interests. *Kenosha Cnty v. Jodie W.*, 2006 WI 93 ¶39, 293 Wis. 2d 530, 716 N.W.2d 845. Whether an individual’s substantive due process

rights have been violated presents a question of law subject to independent appellate review. *Monroe Cnty. DHS v. Kelli B.*, 2004 WI 48, ¶16, 271 Wis. 2d 51, 678 N.W.2d 831.

¶6 D.S.’s substantive due process argument rests on three grounds. Specifically, D.S. argues that the County acted impermissibly when: (1) as one of the conditions of return, the County “indirect[ly]” required D.S. to live in Adams County, which was impossible for D.S. to meet; (2) as one of the conditions of return, the County required D.S. to move into housing where she paid the rent and was on the lease, which failed to take into consideration D.S.’s “economic reality;” and (3) the County relied on D.S.’s “poverty” “as the reason D.S. allegedly did not satisfy the conditions of return.” As to the third ground, D.S. asserts that the County equated D.S.’s ability to meet J.S.’s basic needs with whether D.S. was able to provide financially for J.S. D.S.’s substantive due process argument suffers from several fatal flaws.

¶7 First, D.S. does not explain how her substantive due process rights were violated, even assuming that the above three grounds existed. That is, D.S. does not apply the substantive due process standard to the allegedly impermissible actions of the County and then explain how her constitutional rights were violated.

¶8 The second flaw with D.S.’s argument is that she undercuts her own contention that the County required her to live in Adams County as one of the conditions of return by conceding that the condition was only “indirect[ly]” imposed. Our reading of the circuit court’s dispositional order in the CHIPS proceeding supports D.S.’s concession that the conditions of return do not require D.S. to live in Adams County. And D.S. does not direct us to any authority that provides substantive due process protections for conditions of return that have not

been imposed. A similar analysis applies to D.S.'s argument that the County required as a condition of return for her to obtain housing where she pays rent and is on a lease. Our review of the dispositional order reveals that it does not impose these conditions of return. It is true that the County points to D.S.'s failure to find stable housing, which the County indicates is demonstrated by D.S. failing to pay rent or be on the lease, however, these are merely factors that the County took into consideration in determining whether D.S. met the condition of return that she establish a stable home for herself and J.S.

¶9 D.S.'s argument that the County impermissibly relied on her "poverty" is also fatally flawed. D.S. fails to understand that the ability to meet a child's basic needs is often tied to a parent's ability to provide adequate housing, food, clothing, and basic health care for the child. We understand from the record that the County properly took into account D.S.'s financial status in considering whether she is able to meet J.S.'s needs. The record does not support D.S.'s argument that her poverty, standing alone, was a basis for terminating her parental rights to J.S. In any event, D.S.'s argument is undeveloped and therefore we do not consider it further. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may decline to address inadequately developed arguments).

II. Termination Challenge

¶10 D.S. argues that the circuit court erred in concluding that termination was warranted in this case because there was "ample evidence in the record that a substantial relationship existed between D.S. and J.S.," a factor for the court to consider in determining the best interests of the child. *See WIS. STAT. § 48.426(3)*. In determining the best interests of the child, the court must consider the six

factors enumerated in § 48.426(3).⁴ Whether the child has a substantial relationship with the parent and whether it would be harmful to sever that relationship is just one factor. The record reflects that the court did consider all six statutory factors, as demonstrated by the court's substantial discussion of D.S.'s relationship with J.S. The court ultimately concluded that, although a substantial relationship existed "given the circumstances of the case" it was in J.S.'s best interests to terminate D.S.'s parental rights.

¶11 We conclude, based on our review of the record, that the circuit court properly considered all six WIS. STAT. § 48.426(3) factors and that it examined the relevant facts, applied a proper standard of law and, using a

⁴ WISCONSIN STAT. § 48.426(3) reads:

In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(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.

demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

CONCLUSION

¶12 Based on the foregoing reasons, we affirm.

By the Court.—Order affirmed.

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

