COURT OF APPEALS DECISION DATED AND FILED

August 5, 2016

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. 2015AP858
2015AP859
2015AP860
2015AP861

Cir. Ct. Nos. 2011TP213
2011TP214
2013TP145
2014TP45

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

A. L.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

A. L.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

A. L.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

A. L.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County: JOHN J. DiMOTTO, REBECCA G. BRADLEY, and DAVID SWANSON, Judges. *Affirmed*.

¶1 CURLEY, P.J.[1] A. L. appeals from orders terminating her parental rights to four of her children—S. R. L. ("Sean"), S. M. L. ("Sarah"), S. R. L. ("Simone"), and S. C. L. ("Stacy")—as well as the order denying her motion for postdisposition relief.[2] A. L. first argues that her no contest pleas during the grounds phase of the termination of parental rights (TPR) proceedings were not knowing, voluntary, and intelligent and that the postdisposition court erred when it denied her request to withdraw her pleas. She next argues that she was denied her

[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.

Additionally, pursuant to WIS. STAT. RULE 809.107(6)(e), this court is required to issue a decision resolving TPR appeals within thirty days after the filing of the reply brief. In an order dated June 14, 2016, we explained that our review revealed that the record was incomplete and directed appellate counsel to supplement the record with the additional necessary transcripts. We also informed the parties that because the record was incomplete, the decisional deadline would not begin to run until we received the supplemental return. *See* WIS. STAT. RULE 809.107(6)(e), WIS. STAT. RULE 809.82(2)(a), and ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995). We received the supplemental return on July 6, 2016.

[2] In an order dated May 14, 2015, we consolidated these appeals for briefing and dispositional purposes. In this decision, we have assigned A. L.'s four children pseudonyms in accordance with WIS. STAT. RULE 809.19(1)(g). This should also facilitate ease of reading given the children's similar initials.

The Honorable John DiMotto presided over the no contest pleas and the dispositional hearing and entered oral rulings terminating A. L.'s parental rights to the four children. The Honorable Rebecca G. Bradley signed the written orders terminating A. L.'s parental rights. The Honorable David Swanson entered the order denying A. L.'s postdisposition motion.

statutory right to TPR counsel when she testified at J. S.'s trial without her attorney being present.[3] For the reasons that follow, we affirm.

BACKGROUND

¶2 These cases have a long and somewhat complicated history; however, in light of the issues raised on appeal, only a brief background is necessary.

¶3 A. L. is the mother of Sean, Sarah, Simone, and Stacy. On April 27, 2010, Sean and Sarah, who respectively were approximately two years old and nine months old at the time, were detained after the grandmother they had been left with could not provide for them. It was later determined that A. L. was on a seventy-two hour psychiatric hold at the time, and a Child in Need of Protection or Services ("CHIPS") order placing the children outside of the home was entered on September 27, 2010. On June 28, 2011, the State filed involuntary Petitions for Termination of Parental Rights ("TPR") as to Sean and Sarah asserting that they remained in need of protection or services. A. L. appeared with counsel on August 31, 2011.

¶4 While the TPR actions as to Sean and Sarah were pending, A. L. gave birth to her third child, Simone, in January 2012. Simone was born with THC in her system, the State detained her shortly after birth, and a CHIPS dispositional order was entered on May 22, 2012. On April 5, 2013, the State filed an involuntary TPR petition seeking to terminate A. L.'s parental rights to Simone

[3] J. S. is the father of A. L.'s third child, Simone. J. S.'s parental rights to Simone were also terminated, and the termination of his parental rights was affirmed in appeal number 2015AP707. Termination of his rights is not at issue in this appeal.

on multiple grounds, including that she remained a child in need of protection or services.

¶5 While the TPR actions for the three older children remained pending, A. L.'s fourth child, Stacy, was born in 2013. A. L. tested positive for THC at the time of Stacy's birth; however, she refused to allow Stacy to be tested for substances. Stacy was detained from the hospital and a CHIPS dispositional order was entered on July 31, 2013. On February 28, 2014, the State filed a TPR petition seeking to involuntarily terminate A. L.'s parental rights to Stacy.

¶6 After a series of adjournments, a jury trial regarding the TPR petitions for Sean, Sarah, and Simone was finally scheduled and A. L. appeared on February 3, 2014. At that time, A. L. informed the court she wished to proceed with a court trial; however, because the Guardian ad Litem ("GAL") requested a jury trial, the matters were set for jury trial on February 4, 2014.

¶7 A. L. appeared with counsel on February 4, 2014, and advised the court that she wished to enter a no contest plea on the continuing CHIPS ground as to Sean, Sarah, and Simone.[4] The court engaged in an extensive colloquy with A. L. and thereafter approved her plea. After then hearing testimony from the family case manager in a "prove up," the court found there was sufficient evidence to support the no contest plea regarding the continuing CHIPS ground by clear and convincing evidence and found A. L. statutorily unfit as required by WIS. STAT. § 48.424(4).[5]

---

[4] Only the petitions for Sean, Sarah, and Simone were set for trial at that time, as the petition to terminate A. L.'s parental rights to Stacy was not filed until February 28, 2014.

[5] Any additional grounds cited in the TPR petitions were dismissed.

¶8 A. L. was then ordered to appear the following day, February 5, 2014, as a potential witness in J. S.'s jury trial regarding the petition seeking to terminate his parental rights to Simone. A. L. appeared and was eventually called as a witness during J. S.'s trial; however, her TPR counsel was not present. During her testimony, A. L. testified, *inter alia*, that she had issues with marijuana in the past, that she and J. S. had engaged in arguments and that a restraining order had been put in place, and that she and J. S. had violated the restraining order.

¶9 On February 28, 2014, the State filed a petition seeking to involuntarily terminate A. L.'s parental rights to her fourth child, Stacy, alleging that she remained a child in need of protection or services and that A. L. had failed to assume parental responsibility. A. L. appeared with counsel on March 20, 2014. Ultimately, on June 30, 2014, A. L. advised the court she wished to enter a no contest plea as to the continuing CHIPS ground. The court engaged in a thorough colloquy, accepted the no contest plea, and, after the State's "prove up," found sufficient evidence supporting grounds by clear and convincing evidence and declared that A. L. was statutorily unfit.

¶10 The dispositional hearing as to all four children occurred on September 5, 2014. After considering the relevant standards and factors set forth in WIS. STAT. § 48.426, the court determined it was in the children's best interests to terminate A. L.'s parental rights. Written orders terminating A. L.'s parental rights to Sean, Sarah, Simone, and Stacy were entered on September 8, 2014.[6]

---

[6] A. L. incorrectly states that her parental rights were terminated on September 30, 2014.

¶11 A. L. filed a Notice of Appeal on April 28, 2015. Upon her request, we remanded the matter to the trial court for fact-finding, and postdisposition remand hearings occurred on September 18, 2015, and November 6, 2015. At the postdisposition hearings, A. L. sought to withdraw her no contest pleas as not having been voluntarily, knowingly, and intelligently entered, and she also argued that her statutory right to counsel was violated when she was called to testify as a witness in J. S.'s jury trial regarding his parental rights to Simone without her attorney present.[7] The remand court orally denied A. L.'s motion, and a written order to that effect was signed and filed on November 24, 2014. This appeal follows.

ANALYSIS

¶12 On appeal, A. L. argues that: (1) she should be allowed to withdraw her no contest pleas as to the grounds phase of the TPR proceedings because they were not knowing, intelligent, and voluntary; and (2) her statutory right to counsel was violated when her attorney was not present when she testified at J. S.'s fact-finding hearing regarding termination of his parental rights to Simone. We begin by addressing A. L.'s argument that she should be allowed to withdraw her pleas.

[7] To the extent A. L. raised an ineffective assistance of counsel claim before the postdisposition court, she appears to have abandoned any such claim on appeal because she did not brief that issue. We therefore deem any such ineffective assistance of counsel argument, and any other argument raised before the postdisposition court but not presented on appeal, abandoned. *See, e.g.*, ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491-92, 588 N.W.2d 285 (Ct. App. 1998) (issues raised before the trial court but not raised on appeal are deemed abandoned).

I. A. L. is not entitled to withdraw her no contest pleas because she entered them knowingly, intelligently, and voluntarily.

¶13 Termination of parental rights cases consist of two phases: a grounds phase, at which the factfinder determines whether there are grounds to terminate a parent's rights, and a dispositional phase, at which the factfinder determines whether termination is in the child's best interest. *See* ***Sheboygan Cty. DHHS v. Julie A.B.***, 2002 WI 95, ¶¶24-28, 255 Wis. 2d 170, 648 N.W.2d 402. During the grounds phase, "'the parent's rights are paramount.'" *See* ***id.***, ¶24 (citation omitted). "If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit." WIS. STAT. § 48.424(4). "Once the court has declared a parent unfit, the proceeding moves to the second, or dispositional phase, at which the child's best interests are paramount." ***Steven V. v. Kelley H.***, 2004 WI 47, ¶26, 271 Wis. 2d 1, 678 N.W.2d 856.

¶14 To be constitutionally sound, a no contest plea in a TPR proceeding must be entered knowingly, voluntarily, and intelligently. *See* ***Kenosha Cty. DHS v. Jodie W.***, 2006 WI 93, ¶24, 293 Wis. 2d 530, 716 N.W.2d 845. This is so because a parent entering a no contest plea to grounds in a TPR proceeding is "giving up valuable protections and must have knowledge of the rights being waived by making the plea," *see* ***Brown County DHS v. Brenda B.***, 2011 WI 6, ¶34, 331 Wis. 2d 310, 795 N. W.2d 730, and the parent must understand the "direct consequences" of the plea, *see* ***Oneida County DSS v. Therese S.***, 2008 WI App 159, ¶11, 314 Wis. 2d 493, 762 N.W.2d 122.

¶15 When a parent enters a no contest plea that a ground exists to terminate parental rights at the grounds phase, WIS. STAT. § 48.422(7) requires the trial court to:

> (a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.
>
> (b) Establish whether any promises or threats were made to elicit an admission ….
>
> (bm) Establish whether a proposed adoptive parent of the child has been identified….
>
> (br) Establish whether any person has coerced a birth parent [into making an admission].
>
> (c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

See also WIS. STAT. § 48.422(3) ("If the petition is not contested the court shall hear testimony in support of the allegations in the petition, including testimony as required in sub. (7)."). The parent must also have knowledge of the constitutional rights being given up by the plea. *See* ***Jodie W.***, 293 Wis. 2d 530, ¶25. These rights include: (1) the right to counsel; (2) the right to a jury trial; (3) the right to have the State prove the parent's unfitness by clear and convincing evidence; and (4) the right to a fact-finding hearing on fitness. *See* ***Brenda B.***, 331 Wis. 2d 310, ¶¶42-44. However, the trial court need not inform a parent of every detail implicated by the no contest plea, as such a requirement would be unduly burdensome. *See* ***Therese S.***, 314 Wis. 2d 493, ¶17.

¶16 When reviewing a claim that a no contest plea in a TPR proceeding was not knowing, voluntary, and intelligent, we follow the analysis set forth in ***State v. Bangert***.[8] *See* ***Therese S.***, 314 Wis. 2d 493, ¶6. The parent must make a *prima facie* case establishing that the trial court violated its mandatory duties

[8] ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

under WIS. STAT. § 48.422(7) and that the parent did not know or understand the information the trial court should have provided. ***Therese S.***, 314 Wis. 2d 493, ¶6. If the parent makes a *prima facie* showing, the State must then show by clear and convincing evidence that the parent knowingly, voluntarily, and intelligently waived the right to contest the allegations in the petition. ***Waukesha Cty. v. Steven H.***, 2000 WI 28, ¶42, 233 Wis. 2d 344, 607 N.W.2d 607, *modified on other grounds by* ***St. Croix Cty. DHHS v. Michael D.***, 2016 WI 35, 368 Wis. 2d 170, 880 N.W.2d 107. If the parent fails to establish a *prima facie* case, the court need go no further and may deny the motion for plea withdrawal. *See* ***Steven H.***, 233 Wis. 2d 344, ¶43.

¶17 Whether a parent has presented a *prima facie* case by pointing to deficiencies in the plea colloquy and sufficiently alleging she did not know or understand the information that should have been provided in the trial court's colloquy is a question of law this court reviews *de novo*. ***Therese S.***, 314 Wis. 2d 493, ¶7. We look to the entire record and the totality of the circumstances to determine whether the trial court's actions were sufficient. ***Steven H.***, 233 Wis. 2d 344, ¶42.

¶18 Two no contest pleas are at issue here: (1) the plea A. L. entered on February 4, 2015, as to Sean, Sarah, and Simone ("the February plea"); and (2) the plea A. L. entered regarding Stacy on June 30, 2015 ("the June plea"). A. L. argues that her no contest pleas were not knowing, intelligent, and voluntary and that the plea colloquies were "constitutionally inadequate" for four reasons: (1) she was not informed that the burden of proof at the dispositional hearing was lower than at the fact-finding hearing; (2) she was not informed that the court would hear testimony she was not allowed to later challenge during the "prove up;" (3) she did not know she would be unable to challenge the finding of

unfitness; and (4) she entered her no contest pleas on a mistaken belief that she would not have been able to challenge a jury's decision on appeal. In addition to her four specifically identified arguments, A. L. also interjects an argument that the trial court violated her constitutional rights by accepting the pleas because "the actual basis for the plea was in dispute."

¶19 Based on our independent review of the record and the totality of the circumstances, for the reasons explained below, we agree with the postdisposition court that A. L. has failed to establish a *prima facie* case that her no contest pleas were not entered knowingly, intelligently, and voluntarily.

¶20 Before addressing A. L.'s specific arguments regarding the plea colloquies, however, we note that at the outset of both the February and June pleas, the trial court began its colloquy with A. L. by confirming, *inter alia*, the following: her age and educational background; that she can read and write English; that she had received copies of the TPR petitions for each child; that she had been prescribed certain prescription drugs, some of which she was not taking; that she had not used alcohol or illegal drugs in the preceding twenty-four hours; that she was not experiencing any mental illness or emotional problems at that time of the pleas; that she had discussed her decision to plead no contest with her trial counsel and that she had sufficient time to do so; that she understood that entering a no contest plea meant she was giving up the right to a jury trial and that she was giving up the right to a contested court trial; that she was giving up the right to cross-examine the State's witnesses and her right to testify during the grounds phase; that she was not forced or threatened to enter the pleas; and she was not promised money or bribed to enter the pleas. We will now address A. L.'s specific arguments as to why she should be allowed to withdraw her pleas.

A. A. L. was not misinformed as to the burden of proof at the grounds and dispositional stages.

¶21 A. L. first argues that her no contest pleas were not voluntary, knowing, and intelligent because neither her trial counsel nor the court informed her that "the burden of proof at the dispositional hearing was lower than that of fact finding." The record belies this assertion, and A. L. concedes in her brief that during each of the two colloquies, the trial court "made mention of best interests in the context of the dispositional hearing." She takes issue, however, with what she claims is the trial court's failure to explain that best interests was not the standard at the fact-finding stage.

¶22 Despite A. L.'s contention, the trial court did explain to A. L. in both plea colloquies that at the grounds phase, the burden of proof required the State to prove grounds for a finding of parental unfitness by clear and convincing evidence and that by entering a no contest plea, A. L. was giving up the right to make the State meet its burden. During both colloquies, A. L. confirmed that she understood. The trial court also clearly explained the nature of the acts alleged in the TPR petitions on both occasions, explaining exactly what the State would need to prove by clear and convincing evidence to establish grounds.

¶23 The trial court also confirmed with A. L. during both pleas that she understood that if the court accepted her no contest plea, it would find her to be an unfit parent as required by statute and that the ultimate issue of whether to terminate her rights would occur at a later dispositional hearing at which the trial court would focus on the children's best interests. Moreover, at the postdisposition hearing, trial counsel confirmed that prior to A. L.'s no contest pleas, both he and the trial court explained the burden shift in the dispositional

phase and the shift in focus to the children's best interests once grounds are established.

¶24 We see no error in the trial court's colloquy on this point. The trial court explained at both plea hearings that by pleading no contest, A. L. was agreeing she would not contest that the State could establish grounds by clear and convincing evidence, and A. L. confirmed her understanding. Likewise, the trial court explained at both hearings that if A. L. pled no contest to grounds, the court would find her unfit as required by statute and that at the dispositional hearing, the court would determine whether parental rights should be terminated based on what was in the children's best interest. This was sufficient. *See, e.g.*, ***Brenda B.***, 331 Wis. 2d 310, ¶¶43-44 (explaining that a parent must understand that by pleading no contest, she is waiving the right to make the State prove unfitness by clear and convincing evidence, that the acceptance of the plea will result in a finding of unfitness, and that disposition is determined based on the child's best interests).

B. A. L.'s pleas were not rendered unknowing, unintelligent, and involuntary by the State's "prove up" testimony.

¶25 A. L. next argues that her no contest pleas were not knowing, intelligent, and voluntary because she was not aware that after entering her no contest plea, the trial court would hear "prove up" testimony from the State that A. L. would not be able to contest.[9] Thus, she claims this process creates a

[9] In her brief-in-chief, A. L. challenges the "prove up" procedure as part of her argument that her plea was not knowing, intelligent, and voluntary. Essentially, she argues that the procedure is "problematic" because it "requires a parent to enter a no contest plea based upon a 'factual record' to be later established by testimony of the social worker that the parent cannot contest," and therefore, she claims, a parent cannot enter a knowing, intelligent, and voluntary no contest plea under such circumstances. For the first time in her reply brief, A. L. argues that this "prove up" procedure "presents an ongoing procedural and substantive violation of a parent's due process rights in the context of no contest pleas accepted in Milwaukee County in termination of
(continued)

scenario wherein a parent enters a no contest plea based upon a factual record that is established by a social worker's testimony that the parent cannot challenge. We disagree.

¶26 During each of A. L.'s colloquies, the trial court explained to her that if she entered a no contest plea to grounds, she would not be able to confront or cross-examine the State's witnesses and she indicated she understood. For example, during the February plea hearing, A. L. confirmed her understanding that entering a no contest plea meant she was giving up her right to a jury trial and to a contested court trial. At that hearing, the court then immediately asked A. L. whether she understood "that when you do a no contest plea, what you're doing is you're giving up your right to see, to confront, and cross-examine the State's witnesses as it bears upon the grounds phase." When A. L. responded that she did not understand, the court offered A. L. the following additional explanation:

> If you were having a jury trial or a court trial, the State would call all their witnesses. You could see them. Your lawyer could cross-examine them, but when you do a no contest plea, you're saying, Judge, *I'm not going to contest the continuing CHIPS ground*. So we don't have to bring in all of these witnesses in to the courtroom.

---

parental rights cases." Arguments raised for the first time in a reply brief are in violation of WIS. STAT. RULE 809.19 and will not be considered. *See* ***Northwest Wholesale Lumber v. Anderson***, 191 Wis. 2d 278, n.11, 528 N.W.2d 502 (Ct. App. 1995). Accordingly, we address A. L.'s argument related to the "prove up" procedure only in the context in which she raised the argument in her brief-in-chief.

Moreover, we further note that to the extent A. L. argues that this "prove up" procedure violates procedural and substantive due process rights, her argument is undeveloped, and we do not address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (stating that the court "may decline to review issues inadequately briefed" and that "[a]rguments unsupported by references to legal authority will not be considered.").

(Emphasis added.) A. L. then confirmed she understood. The court also explained that by entering a no contest plea, A. L. would not be calling witnesses against the State's position but that she could do so during the dispositional phase of the hearing. Again, A. L. confirmed she understood. A. L. also confirmed she understood that by entering a no contest plea to grounds, she could still fight against termination during the dispositional phase. Finally, the court asked A. L. if she understood that by pleading to grounds, "[a]ll you're doing is you're saying I'm not going to contest the State's evidence only in the grounds phase, Judge, as to continuing CHIPS." A. L. responded "[y]es."[10]

¶27 The trial court then went on to explain to A. L. at the February plea hearing exactly what it was she was not contesting:

> [Court]: Now, do you understand when you're doing a no contest plea to continuing CHIPS, what you're not contesting is this. You're not contesting that there is a dispositional order with respect to all three children. That all three kids are placed outside of your home, and the dispositional order or any extension order contained termination of parental rights warnings.
>
> You're not contesting that the Bureau of Milwaukee Child Welfare has made reasonable efforts to provide Court-ordered services. You're not contesting that the kids have been outside of your home for a total period of six months or longer under the Court orders. You're not contesting that you have failed to meet the conditions established for safe return of the children as of the date the

[10] The June plea colloquy was substantially the same. For example, A. L. confirmed her understanding that by entering a no contest plea, she was giving up her right to a jury trial and a court trial and that she was giving up her right "to see, confront, and to cross-examine the State's witnesses with respect to the grounds phase…. You're giving up the right to make the State prove at least one of the two grounds in a contested hearing by clear, convincing, and satisfactory evidence." Likewise, she confirmed her understanding that entering a no contest plea did not mean she was "agreeing that [her] rights should be terminated" and that all she was saying was that she was "not going to contest the fact that [the State] can prove the continuing CHIPS, but I want to have that contested dispositional hearing where I fight against termination."

> petitions were filed, and you're not contesting that there is a substantial likelihood you won't meet the conditions within the next nine months. Do you understand that's what you're not contesting? Do you understand that?
>
> [A. L.]: Yes.

¶28 The State then called one of the case workers to the stand for the "prove up" to establish that grounds existed, as WIS. STAT. § 48.422(3) requires the trial court to hear testimony supporting the petition when a TPR petition is not contested. The trial court explained to A. L. that the State "h[as] to prove up the continuing CHIPS by calling a witness …. So these are things that aren't being contested." The trial court then asked A. L. if she understood, and she responded "[y]es." After hearing the witness's testimony, the court confirmed again that A. L. was "not contesting what the State has produced," and A. L.'s trial counsel stated "[t]hat's correct." The court then found that a factual basis for the allegations in the petition existed and entered a finding of statutory unfitness.

¶29 The June plea colloquy was nearly identical, with the trial court explaining that A. L. was waiving her right to a contested jury trial and court trial by entering a no contest plea, and that she was waiving the right to cross-examine and challenge the State's witnesses during the grounds phase. As with the February plea colloquy, the trial court also explained exactly what facts and elements the State would have to prove by clear and convincing evidence if A. L. did not enter a no contest plea. A. L. confirmed that she understood. The court then offered A. L. an opportunity to ask any questions "about what [A. L. is] doing here today," and A. L.'s only response was to ask the trial court to look through the entire case history prior to making a decision.

¶30 After accepting her June plea, the court entered a statutory finding of unfitness and then asked the parties if the "prove up" that occurred on April 28

could be incorporated by reference.[11] Although A. L.'s trial counsel indicated agreement to incorporate the April 28 "prove up" testimony by reference, A. L. asked to hear the case manager's testimony because she had not been present at the April 28 hearing. At A. L.'s request, the court then heard testimony from the case manager. At the conclusion of the case manager's testimony, the court asked A. L. if it could use the information in the CHIPS documents and the case manager's testimony "not as an admission but for factual basis purposes." Trial counsel responded yes, but A. L. stated that she "would like to cross-examine to be honest" because she did not believe all of the case manager's testimony was true. A. L. then explained the specific testimony she took issue with, clarified her position to the court, and then, with that clarification, agreed that the court could "use the facts and circumstances, not as an admission, but [as] the factual basis."

¶31 Despite arguing she should be allowed to withdraw her no contest pleas because she was unaware she would not be able to contest the testimony offered during the "prove up," the record clearly establishes that the trial court adequately explained to A. L. that entering a no contest plea meant she was not contesting the allegations in the TPR petitions, that she was waiving her right to make the State prove the continuing CHIPS ground by clear and convincing evidence, and that she would not be able to cross-examine the State's witnesses. Moreover, *after* hearing the "prove up" testimony, A. L. agreed that the court could use the testimony not as an admission, but as a factual basis. Importantly,

---

[11] A. L. did not appear at the April 28, 2014 final pretrial hearing regarding the TPR petition filed as to Stacy. The trial court found A. L. in default, conducted a "prove up," and entered a statutory finding of unfitness. The trial court later granted trial counsel's oral motion to reopen the default judgment as to Stacy after determining that A. L. had a good reason for having failed to appear on April 28.

the trial court allowed A. L. to clarify the specific case manager testimony she disagreed with at the June plea hearing, and the court accepted A. L.'s clarification before entering its findings. Accordingly, A. L. has failed to establish that the "prove up" process, or any of the testimony presented during the "prove up" renders her no contest plea unknowing, unintelligent, and involuntary.

C. A. L.'s alleged lack of knowledge that she could not challenge an unfitness finding after entering a no contest plea does not render her plea unknowing, unintelligent, and involuntary.

¶32 A. L. next alleges that her no contest pleas were not knowing, intelligent, and voluntary because she was unaware she would not later be able to challenge a finding of statutory unfitness if she entered a no contest plea. As with her prior arguments, she fails to establish how this alleged lack of knowledge renders her no contest pleas unknowing, unintelligent, and involuntary.

¶33 As we have already explained, when challenging a no contest plea, the challenger must show "that the [trial] court violated its mandatory duties of informing the party of his or her rights, and the party must allege that the party, in fact, did not know or understand the rights he or she was waiving." *See* ***Jodie W.***, 293 Wis. 2d 530, ¶26.

¶34 While A. L. alleges that neither the trial court nor counsel informed her that she would not be able to challenge a finding of unfitness after entering a no contest plea, her argument on this point is wholly undeveloped, as she does nothing more than make this general statement and has otherwise failed to develop an argument that the trial court had a duty to inform her of this. We decline to develop A. L.'s argument for her and will not consider this argument further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (stating that the court "may decline to review issues inadequately briefed" and that

"[a]rguments unsupported by references to legal authority will not be considered."). We do note, however, that the trial court clearly explained to A. L. that by accepting her no contest plea, it would be required to enter a statutory finding of unfitness and that the proceeding would then move to the dispositional phase, which she could contest, and A. L. confirmed her understanding.

D. A. L.'s no contest pleas were not unknowing, unintelligent, and involuntary where she mistakenly believed she would not be able to appeal a jury verdict.

¶35 Fourth, A. L. argues that her no contest pleas were not knowing, intelligent, and voluntary because she mistakenly believed she would not have been able to appeal a jury's decision on grounds. Again, we disagree.

¶36 WISCONSIN STAT. § 48.422(7) identifies the specific information the trial court must address in a plea colloquy in a TPR case, and to satisfy due process concerns, the court must "determine on the record that parents understand the direct consequences of their pleas." *See* ***Therese S.***, 314 Wis. 2d 493, ¶11. Here, the trial court addressed the requirements set forth in § 48.422(7), and the trial court took great care in confirming that A. L. understood that if she entered a no contest plea, the court would be required to find that she was an unfit parent, that the proceeding would then move to the dispositional stage, that A. L. could enter evidence and fight for her parental rights at the dispositional stage, and that at the dispositional stage, the court would determine whether termination of A. L.'s parental rights would be in her children's best interests. While A. L.'s specific appellate rights may not have been addressed during the plea colloquies, A. L. fails to cite any controlling law obligating the trial court to inform her whether she could or could not appeal a jury verdict. Without establishing that the trial court violated its mandatory duties, A. L. cannot establish that her no contest

plea was not knowing, voluntary, and intelligent. *See* ***Jodie W.***, 293 Wis. 2d 530, ¶26.

¶37 Moreover, despite A. L.'s argument that she would have made a different decision and would not have entered no contest pleas had she understood that she could have challenged a jury's finding that grounds existed, the record establishes that A. L.'s decision to waive the jury trials was strategic and considered. At the February plea hearing, for example, A. L. confirmed that she had sufficient time to discuss the no contest plea with her attorney, stating "I had time enough to discuss strategy and what's in the best interests and what it looks like and what don't look good. So I had time to think." A. L. confirmed at the June plea hearing that she again had sufficient time to discuss her options with trial counsel before she made the decision to enter a no contest plea as to Stacy. While A. L. claims she would have proceeded with a jury trial had she known that she could appeal a jury's decision as to grounds, that is insufficient to establish that her no contest pleas were not knowing, intelligent, and voluntary.

E. The trial court did not violate A. L.'s constitutional rights because the basis for the plea was not in dispute.

¶38 Finally, A. L. interjects a paragraph into the middle of her argument that her pleas were not knowing, voluntary, and intelligent asserting that the trial court violated her constitutional right when it accepted her no contest plea even though A. L. disputed the basis for her plea. We disagree.

¶39 Our review of the record confirms that the factual basis was not only *not* in dispute, but also that A. L. confirmed multiple times at both the February plea hearing and the June plea hearing that she was not contesting the factual basis for her pleas. First, as already discussed, the trial court explained to A. L. in great

detail at both hearings exactly what it was she was not contesting—for example, that the Bureau had made reasonable efforts—and A. L. confirmed she understood. Second, after hearing the "prove up" testimony at each hearing, A. L. confirmed that the trial court could rely on the paperwork filed and the "prove up" testimony—with A. L.'s requested modifications at the June plea hearing—as the basis for its finding. A. L. simply fails to acknowledge that she agreed to what was not being contested when questioned by the trial court and that after hearing the case manager's testimony at both of the hearings, the court confirmed that it could use the testimony and supporting documents as a factual basis for finding grounds and provided A. L. with an opportunity to indicate any disagreement. To the extent A. L. disagreed with the testimony, the trial court allowed A. L. to explain her disagreement, which the trial court then accepted and considered.

¶40 While A. L. may now regret her decision to enter a no contest plea to the grounds asserted in the TPR petitions, she has failed to establish a *prima facie* case that the trial court's plea colloquies were deficient, that she did not know or understand the information that should have been provided during the colloquies, or that the trial court violated A. L.'s constitutional rights. Accordingly, the postdisposition court did not err in denying her postdisposition motion to withdraw her no contest pleas.

II. A. L.'s statutory right to TPR counsel was not violated when her attorney was not present during her witness testimony at J. S.'s fact-finding jury trial.

¶41 A. L. next argues that she was denied her WIS. STAT. § 48.23(2) statutory right to counsel when her attorney was not present when she testified as a witness during J. S.'s fact-finding jury trial regarding grounds for termination of

J. S.'s parental rights to Simone. She asserts that the absence of her attorney amounts to structural error requiring automatic reversal. It does not.

¶42 A. L. does not dispute that she entered a no contest plea as to grounds for termination of her parental rights to her three older children and that she had subsequently been found unfit under WIS. STAT. § 48.424(4) prior to testifying during J. S.'s fact-finding hearing as to *J.S.*'s parental rights to Simone, their shared child.[12] Accordingly, we must determine whether A. L.'s statutory right to counsel in *her* TPR proceedings extended to her appearance as a witness in *J. S.*'s fact-finding trial, which occurred after the grounds phase pertaining to A. L.'s parental rights to her three oldest children but before the disposition hearing. We conclude that under these circumstances, it did not.

¶43 Although civil in nature, TPR proceedings "require heightened legal safeguards against erroneous decisions." ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶21, 246 Wis. 2d 1, 629 N.W.2d 768. Thus, a parent in a TPR proceeding has a statutory right to counsel pursuant to WIS. STAT. § 48.23(2), which provides, in relevant part, that "[i]n a proceeding involving … an involuntary termination of parental rights, any parent [18 years old or older] who appears before the court shall be represented by counsel." We have previously recognized that this means that "*a person whose parental rights are at stake* must be represented by counsel, unless the person knowingly waives that right." ***State v. Shirley E.***, 2006 WI App 55, ¶6, 290 Wis. 2d 193, 711 N.W.2d 690, *aff'd,* ***State v. Shirley E.***, 2006 WI 129,

[12] While A. L. argues on appeal that her no contest plea was not entered knowingly, intelligently, and voluntary, we have already concluded that her no contest plea was valid.

298 Wis. 2d 1, 724 N.W.2d 623 (emphasis added).[13] "[A] termination of parental rights proceeding cannot reliably serve its function" where a parent is deprived of her statutory right to counsel in a TPR proceeding. *See* ***Shirley E. II***, 298 Wis. 2d 1, ¶63. This is so because the absence of counsel in such circumstances "place[s] the fairness and integrity of the judicial proceedings in doubt." *See* ***State v. Travis***, 2013 WI 38, ¶61, 347 Wis. 2d 142, 832 N.W.2d 491.

¶44 A. L. relies heavily on the ***Shirley E.*** decisions; however, this case is distinguishable because there, Shirley E.'s parental rights were actually at stake during the proceedings at which her attorney did not—and was ordered not to—participate. *See* ***Shirley E. II***, 298 Wis. 2d 1, ¶16-18. Here, to the contrary, A. L.'s parental rights were not at stake during J. S.'s hearing, and there is no indication that the absence of counsel during a hearing where her rights were not at stake placed the fairness and integrity of the TPR action as to her parental rights in doubt. While A. L. remained a party to the TPR action regarding Simone because the dispositional hearing had not yet occurred, A. L.'s parental rights were not at stake during J. S.'s fact-finding hearing—only J. S.'s parental rights were at stake at that time.

¶45 We simply are not convinced that the principle that "a person whose parental rights are at stake must be represented by counsel," *see* ***Shirley E. I*****,** 290 Wis. 2d 193, ¶6, extends the statutory right to counsel in a TPR proceeding mandated by WIS. STAT. § 48.23(2) to include a right to counsel when testifying as a witness during the other parent's fact-finding hearing where, as here, the

---

[13] As context requires, we hereinafter refer to our ***Shirley E.*** appellate decision as "***Shirley E. I***" and we refer to our supreme court's opinion as "***Shirley E. II***."

witness's parental rights are not actually at stake. A. L. likewise does not direct our attention to any controlling case establishing that her statutory right to counsel in *her* TPR proceeding extends under such circumstances.

¶46 Even assuming that A. L.'s statutory right to counsel did extend to her witness testimony at J. S.'s fact-finding hearing, the absence of her attorney would not qualify as structural error requiring automatic reversal in this case, as A. L. argues. "A structural error is a defect that upsets the framework within which trial proceeds; it is not merely an error in the trial process." ***Shirley E.***, 298 Wis. 2d 1, ¶62. Structural errors "are so fundamental that they are considered per se prejudicial," and therefore require reversal without a showing of actual prejudice. ***Id.***, ¶¶62-64. As previously explained, the only time A. L. argues her attorney was not present was when she testified as a witness during J. S.'s fact-finding hearing, and at that time, A. L. had already entered a no contest plea to grounds. The absence of her attorney when she testified at J. S.'s fact-finding hearing thus did not "upset[] the framework" of the TPR proceedings as to A. L.'s parental rights.

¶47 At its core, we recognize A. L.'s primary complaint as being that the trial court allegedly relied upon her witness testimony during J. S.'s trial—for example, her testimony that she had used drugs in the past, violated an existing injunction related to J. S., and that she engaged in violent behavior with J. S.—at the later dispositional hearing. She argues that had her counsel been present, such testimony would not have been elicited and brought to the court's attention.

¶48 While the record reflects that A. L. did make such statements during her witness testimony, the record also reflects that that information was not news to the trial court. To the contrary, A. L. had previously admitted to drug use,

stating during an early 2012 hearing that she had been "high" "half of the time" she went to meet with a doctor for a psychological evaluation. Moreover, it is undisputed that Simone was born positive for marijuana, and although A. L. claimed it was the result of second-hand smoke exposure, she also stated at the early 2012 hearing that she had "been clean since [she] found out [she] was pregnant," indicating she may have used drugs prior to learning she was pregnant. It is also undisputed that A. L. herself tested positive for marijuana when she gave birth to Stacy. Similarly, that A. L. and J. S. had a history of violating no contact orders and had engaged in violent behavior was made known to the trial court other than only through A. L.'s witness testimony during J. S.'s trial. Thus, the information elicited during A. L.'s witness testimony at J. S.'s fact-finding trial is not information that would have remained shielded from the trial court's knowledge had her attorney been present.

¶49 Based on the foregoing, we conclude that the absence of A. L.'s attorney when she testified as a witness in J. S.'s trial—after she had already entered a no contest plea as to grounds for termination of *her* parental rights as to the TPR petitions pending at that time—did not violate her statutory right to counsel in her TPR proceedings because her parental rights were not at stake during J. S.'s hearing.[14]

By the Court.—Orders affirmed.

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

[14] Like the postdispositional court, however, we agree that the best practice would have been for A. L.'s attorney to have been present at that time.