

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 6, 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. 2016AP817
2016AP818**

**Cir. Ct. Nos. 2014TP22
2014TP23**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

N. T.,

RESPONDENT,

J. M.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

N. T.,

RESPONDENT,

J. M.,

RESPONDENT-APPELLANT.

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

¶1 KESSLER, J.¹ J.M. appeals the order terminating her parental rights to two of her children, S.T.M. and J.T.M. J.M. contends that the circuit court erroneously exercised its discretion in finding that the children were in continuing need of protection or services and that J.M. failed to assume parental responsibility because there was insufficient evidence as to both grounds. She also contends that the circuit court erroneously exercised its discretion in finding that termination was in the children's best interests. We affirm.

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

BACKGROUND

¶2 S.T.M. and J.T.M. were born on May 8, 2009, and April 9, 2011, respectively. The children were removed from J.M.'s home following an incident on June 3, 2012, in which J.M.'s youngest child was taken to the hospital with serious injuries. The youngest child had nineteen fractures, subdural hemorrhaging in the brain, damage to her eyes, injuries to her stomach, and cocaine in her system.² The children were removed from the home the following day. All three children were found to be in need of protection or services on August 29, 2012, and dispositional orders as to all three of the children were entered on September 25, 2012. On February 10, 2014, the State filed petitions to terminate J.M.'s parental rights alleging that the children were in need of protection or services and that J.M. failed to assume parental responsibility.

¶3 Multiple witnesses testified at the grounds hearing. Sarah Goldman, J.M.'s former case manager through Children's Hospital of Wisconsin Community Services, testified that when she became J.M.'s case manager, J.M. was having supervised visits with the children and had been recommended for a recovery service due to J.M.'s history of alcohol and drug abuse. Goldman testified that while J.M. was regular about her visits with her children, J.M. was discharged from the Family Reunification Program for being uncooperative. Goldman stated that the goal of the program was to provide parenting assistance and resources that were culturally appropriate, as J.M. is from Puerto Rico. Goldman testified that

² The children's father was convicted for causing the injuries to the youngest child. J.M.'s parental rights to the youngest child, also referred to by the parties as S.T.M., were also terminated; however, J.M. is not appealing the circuit court's decision to terminate her rights to the younger S.T.M.

J.M. did not engage in appropriate discipline of the children, even if the children put themselves in dangerous situations. Goldman testified about the numerous other services offered to J.M., including random urinalysis screens, domestic violence assistance, and individual therapy.

¶4 Nicole Jensen, J.M.'s most recent case manager, testified that while J.M. attended her visits, it would be unsafe for J.M. to have unsupervised visits with her children because J.T.M. runs out of the house and into the street.

¶5 Amanda Livingston, the long-term family support specialist working with J.M., testified that she worked with J.M. multiple times a week for hours at a time attempting to teach J.M. appropriate parenting methods; however, J.M. failed to show consistency in her parenting techniques. Livingston stated that J.M.'s lack of consistency is indicative of a "lack of motivation." She testified that J.T.M. has low verbal skills and exhibits highly aggressive behaviors, which Livingston has attempted to teach J.M. to deal with; however, J.M. is unable to consistently parent J.T.M. in an appropriate manner and is unable to meet the children's emotional needs.

¶6 Dr. Daniela Jaramillo, a psychologist, testified that she conducted a psychological evaluation of J.M. Dr. Jaramillo said that J.M. admitted that her ex-husband (the children's father) was physically abusive. Dr. Jaramillo testified that after J.M.'s initial psychological evaluation, Dr. Jaramillo agreed to serve as J.M.'s individual therapist; however, J.M. was discharged after four sessions because J.M. was not able to make significant progress.

¶7 At the conclusion of the grounds phase, the circuit court found that the State proved by clear and convincing evidence that both children were in

continuing need of protection or services and that J.M. failed to assume parental responsibility.

¶8 At the dispositional hearing, Goldman and Jensen again testified, telling the court that the children are well-adjusted in their foster homes. Goldman testified that both children are in therapy and to her knowledge, J.M. does not participate in their sessions, despite efforts to get J.M. involved. Goldman stated that the foster parents have expressed interest in adopting the children. Jensen testified that while S.T.M. gets along well with J.M., she seems more comfortable and bonded with her foster family.

¶9 In a lengthy oral decision, the circuit court ultimately found that termination was in the best interests of the children. This appeal follows.

DISCUSSION

¶10 On appeal, J.M. argues that the circuit court erroneously exercised its discretion when it terminated her parental rights because there was insufficient evidence to support the grounds for termination. She also contends that the circuit court erred in finding that termination was in the best interests of the children.

¶11 The circuit court's decision whether to terminate parental rights is discretionary. See *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.

Sufficiency of the Evidence

¶12 “When considering the sufficiency of the evidence, we apply a highly deferential standard of review.” *See Jacobson v. American Tool Cos.*, 222 Wis. 2d 384, 389, 588 N.W.2d 67 (Ct. App. 1998). We will not set aside a circuit court’s findings of fact unless we conclude they are clearly erroneous. *See id.* at 389-90.

¶13 To establish the continuing CHIPS ground for termination, the State must prove that: (1) the child has been adjudged to be a child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders; (2) the agency responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the court; (3) the child has been outside the home for a cumulative total period of six months or longer pursuant to such orders; (4) the parent has failed to meet the conditions established for the safe return of the child to the home; and (5) there is a substantial likelihood that the parent will not meet the conditions within the nine-month period following the fact-finding hearing. WIS. STAT. § 48.415(2)(a).

¶14 It is undisputed that the children have remained out of their maternal home since June 2012 and that they were adjudged to be children in need of protection or services. The circuit court heard from multiple witnesses who testified about the various efforts made by Children’s Hospital of Wisconsin Community Services to foster reunification between J.M. and her children, including supervised visitation, drug and alcohol services, therapy, and drug screenings. Multiple witnesses testified that while J.M. regularly attended her visits with the children, she did not actively engage the children during those

visits. J.M.'s case workers testified that J.M. failed to meet the conditions necessary for the children's safe return and would likely not do so within the nine-month period following the hearing. The court found the witnesses credible. Accordingly, we conclude that sufficient evidence supports the circuit court's finding and the court did not erroneously exercise its discretion.

¶15 Failure to assume parental responsibility is established by proof that the parent has not had a substantial parental relationship with the child. WIS. STAT. § 48.415(6)(a); *State v. Bobby G.*, 2007 WI 77, ¶45, 301 Wis. 2d 531, 734 N.W.2d 81. "Substantial parental relationship" is defined by statute as "the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child." WIS. STAT. § 48.415(6)(b). Section 48.415(6)(b) provides:

In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

¶16 "[A] fact-finder must look to the totality-of-the-circumstances to determine if a parent has assumed parental responsibility." *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶22, 333 Wis. 2d 273, 797 N.W.2d 854. Further, "[w]hen applying [the totality-of-the-circumstances] test, the fact-finder should consider any support or care, or lack thereof, the parent provided the child throughout the child's entire life." *Id.*, ¶73.

¶17 Here, the court heard testimony that J.M. struggled to provide her children with consistency, could not meet their emotional needs, and seemed disinterested in disciplining her children. The court also heard testimony indicating that the children are well-bonded with their foster families, to the extent that J.T.M. no longer looks forward to visits with his mother. Under the totality of the circumstances, the circuit court did not err in finding that J.M. failed to assume parental responsibility.

Best Interests of the Children

¶18 J.M. also contends that the circuit court erred in determining that termination was in the best interests of the children because the court failed to properly consider the children's bond with their mother and maternal grandmother. We disagree.

¶19 WISCONSIN STAT. § 48.426(3) sets forth the principles that the circuit court should consider in deciding whether parental rights should be terminated. It provides:

FACTORS. 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.

¶20 In a lengthy, thoughtful oral decision, the circuit court addressed each of the factors. As to the factor J.M. complains of, whether the children have substantial relationships with J.M. or members of her family, the court noted that while the children do have a substantial relationship with J.M., “[t]hat does not mean that they don’t have substantial relationships or more substantial relationships with others.” The court stated that the children’s relationships with their foster family are the most substantial relationships in the children’s lives. The court recognized that the foster family facilitates contact with J.M. and J.M.’s mother but ultimately determined that while severing the children’s relationship with J.M. would be “painful,” the harm would “be significantly mitigated by [the] ongoing contact.” Accordingly, the circuit court did not erroneously exercise its discretion in determining that termination of J.M.’s parental rights is in the children’s best interests.

By the Court.—Order affirmed.

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

