COURT OF APPEALS
DECISION
DATED AND FILED

July 11, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP2077 **Cir. Ct. No. 2014TP249**

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

V.C., JR.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: MARK SWANSON and LAURA GRAMLING PEREZ, Judges. Affirmed.

¶1 Before DUGAN, J.[1] V.C., Jr. ("V.C.") appeals the trial court's order terminating his parental rights to his son, J.T.C.,[2] and the postdispositional

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] J.T.C.'s mother, A.S.F. also appeals separately from orders terminating her parental rights and denying her postdispositional motion.

court's order denying his postdispositional motion[3] alleging that he was denied his right to counsel at the plea hearing, that trial counsel was ineffective because he did not object to the foster parent's testimony that promised future contact between J.T.C. and the biological family, if termination were to occur (the "future contact testimony"), and requesting a new trial in the interest of justice.[4]

¶2 On appeal, V.C. argues that (1) he was denied his right to counsel at the plea hearing because facts were incorporated into the record that had been presented at A.S.F.'s ground trial (the "trial") where neither V.C. nor his attorney were present, and (2) trial counsel was ineffective for failing to object to the future contact testimony. He also requests a new trial in the interest of justice.

¶3 For the reasons stated below, we agree with the postdispositional court that V.C. was not denied his right to counsel at the plea hearing and he cannot establish that trial counsel was ineffective for failing to object to the future contact testimony. As to the denial of right to counsel claim, the record establishes that no evidence from A.S.F.'s trial was admitted at V.C.'s prove-up. As to the denial of effective assistance of counsel claim, ***Darryl T.-H. v. Margaret H.***, 2000 WI 42, ¶29, 234 Wis. 2d 606, 610 N.W.2d 475, holds that future contact testimony is admissible; therefore, V.C. has not shown deficient performance. We also deny the request for a new trial.

[3] The motion is titled a "postremand" motion. We refer to it as a postdispositional motion.

[4] The Honorable David Swanson presided over the litigation of the petition for termination of parental rights and entered the order terminating V.C.'s parental rights. The Honorable Laura Gramling Perez presided over the postdispositional motion hearing and entered the order denying that motion. For clarity, the court refers to Judge Swanson as the trial court, and Judge Gramling Perez as the postdispositional court.

BACKGROUND

¶4 The following background of the case provides context for the issues V.C raises. Additional relevant facts are included in the discussion section.

¶5 J.T.C. is a five-year-old boy. He was born on August 7, 2012. V.C. was seventeen years old and A.S.F was fifteen years old. A.S.F. was under a Child In Need of Protective Services ("CHIPS") order and living in a group home when J.T.C. was born. For the first six months of J.T.C.'s life, A.S.F. raised him.

¶6 On March 14, 2013, J.T.C. was found to be a Child In Need of Protective Services. A dispositional order placing him outside of his parental home was entered on July 2, 2013. The placement was made because V.C. and A.S.F. displayed diminished protective capacity because they not did not perceive that J.T.C. could be in danger when they physically fought with each other. V.C. had physically assaulted A.S.F. several times causing injury to her while J.T.C. had been in the room. Also, J.T.C. needed a strict feeding schedule due to his failure to thrive and V.C. and A.S.F. were not complying with the doctor's requests regarding that strict schedule.

¶7 The Bureau of Milwaukee Child Welfare ("BMCW") made an initial foster care placement. BMCW changed the placement due to issues that the foster parent had with V.C. and A.S.F. In October 2013, BMCW placed J.T.C. with A.S. (the "foster parent"). That placement continued with the foster parent being the adoptive resource as of the March 16, 2016 dispositional hearing.

¶8 A petition to terminate the parental rights of V.C. and A.S.F. was filed on September 22, 2014.[5] The grounds alleged, with respect to V.C., were continuing CHIPS, based on the assertion that V.C. failed to meet the goals set forth in the July 2, 2013 dispositional order, and the failure to assume parental responsibility.

¶9 At the March 6, 2015 final pretrial conference, the trial court adjourned the trial until July 2015 for good cause because V.C. and A.S.F. were making progress towards reunification. Subsequently, based on the parties' reunification progress, the trial court converted the July 2015 trial date to a proceeding to dismiss the petition to terminate the parental rights and extend the dispositional order. Later, when V.C. was arrested, the trial was rescheduled for October 26, 2015.

¶10 However, on October 26, 2015, V.C. entered a no-contest plea to the continuing CHIPS ground in the petition to terminate his parental rights. The trial court determined that V.C.'s plea was knowing and voluntary and accepted the no-contest plea. Additionally, although the State requested that the prove-up be delayed, the trial court proceeded with the prove-up and found that the continuing CHIPS ground had been proven by clear, convincing and satisfactory evidence. The trial court also found that V.C. was statutorily unfit as a parent.

¶11 The trial court conducted a five-day court trial as to grounds regarding A.S.F. At the trial's conclusion on October 30, 2015, the trial court held

[5] Wisconsin has a two-part statutory procedure for an involuntary TPR. ***Steven V. v. Kelley H.***, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. In the grounds phase, the petitioner must prove by clear and convincing evidence that at least one of the twelve grounds enumerated in WIS. STAT. § 48.415 exists. *See* WIS. STAT. § 48.31(1); ***Steven V.***, 271 Wis. 2d 1, ¶¶24-25. In the dispositional phase, the court must decide if it is in the child's best interest that the parent's rights be permanently extinguished. *See* WIS. STAT. *§* 48.426(2); ***Steven V.***, 271 Wis. 2d 1, ¶27.

that there was clear, convincing and satisfactory evidence to support the continuing CHIPS and the failure to assume parental responsibility grounds as to A.S.F. and that she was statutorily unfit as a parent. The trial court scheduled a dispositional hearing and tolled the time limits for good cause.

¶12 At the start of the January 8, 2016 dispositional hearing, the State proceeded with a prove-up as to V.C. However, the trial court interjected that the prove-up had occurred on October 26, 2015. The State and the guardian *ad litem* disagreed and trial counsel stated that he had no objection to the State calling its witness. The trial court allowed the State to call its witness, J.T.C.'s case manager, Donna Mueller, and then affirmed its finding that V.C. was unfit as a parent.

¶13 The dispositional hearing for J.T.C. continued on January 22, and March 16, 2016. On March 16, 2016, the trial court found that, taking all of the standards and factors in WIS. STAT. § 48.426 into consideration, it was in the best interests of J.T.C. that V.C.'s parental rights be terminated. It entered a written order on March 17, terminating V.C.'s parental rights to J.T.C.

¶14 On March 22, 2016, V.C. filed notice of intent to pursue postdispositional relief. A notice of appeal was filed, by postdispositional counsel, on October 20, 2016. Postdispositional counsel filed a motion for remand raising several issues. This court remanded the matter for a fact-finding hearing to consider those issues. V.C filed a postdispositional motion raising various issues including whether V.C. was denied his right to counsel because the trial court admitted evidence from A.S.F's trial at V.C.'s prove-up and whether trial counsel was ineffective for failing to object to the future contact testimony. V.C. also requested a new trial in the interests of justice.

¶15 On February 24, 2017, the postdispositional court held an evidentiary hearing on V.C.'s motion. At the conclusion of the hearing, the postdispositional court denied V.C.'s motion. This appeal followed.

DISCUSSION

I. V.C. was Not Denied His Statutory Right to Counsel.

¶16 V.C. contends that he was denied the right to counsel because the trial court admitted evidence from A.S.F.'s trial as a part of the January 8, 2016 plea prove-up. The State asserts that V.C. is misreading the record.

A. Statutory Right to Counsel and Standard of Review.

¶17 WISCONSIN STAT. § 48.23(2) provides that any parent who appears before the trial court in an involuntary termination of parental rights proceeding shall be represented by counsel. ***State v. Shirley E.***, 2006 WI 129, ¶30, 298 Wis. 2d 1, 724 N.W.2d 623. Depriving a parent of the statutory right to counsel in a termination of parental rights proceeding is prejudicial *per se*. ***Id.***, ¶¶63-64.

¶18 Whether a trial court has afforded a parent his or her statutory right to counsel is a question of law that we review *de novo*. *See* ***id.***, ¶21. "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [postdispositional] court to judge the credibility of the witnesses." WIS. STAT. § 805.17(2).

B. Both the No-contest Plea and the Prove-up Were Completed on October 26, 2015.

1. The Postdispositional Court found that the Prove-up Was Completed on October 26, 2015.

¶19 At the close of the evidentiary hearing testimony, the postdispositional court rendered an oral decision finding that the trial court did not consider any evidence presented during A.S.F.'s trial during the factual prove-up related to V.C.'s plea.

> But on October 26th, [the trial court] accepted …. [V.C.'s] no[-]contest plea. There was then an explicit discussion regarding using the petition in the case as a factual basis for acceptance of the plea. The [trial court] referenced the petition…. [V.C.] stated that … he had read and understood the factual allegations in the petition. And [the trial court] explicitly stated that he was using the petition at that time to find that there was a sufficient factual basis for acceptance of the plea. [The trial court] went on to state that in fact there were grounds for termination of [V.C.'s] parental rights and that [V.C.] was unfit.

¶20 The postdispositional court then noted that there was confusion at the January 8, 2016 hearing whether the prove-up had been completed on October 26 and went on to conclude:

> But in fact, the [c]ourt had, back on October 26th, established a factual basis, done everything that was necessary under the statute to determine that the no[-] contest plea was made freely and voluntarily. And in fact, found that there were grounds and that [V.C.] was unfit.

¶21 The postdispositional court found that a factual basis for the ground was established and V.C. was found to be unfit to parent J.T.C. on October 26, 2015, before A.S.F.'s trial took place.

2. This Court Finds that the Trial Court Accepted V.C.'s No-Contest Plea and Prove-Up on October 26, 2015, Before A.S.F.'s Trial Occurred.

¶22 In asserting that the admission of evidence at the prove-up from A.S.F.'s trial violated his right to counsel, V.C. states that "[i]t is simply not accurate ... that the [trial] court had established a full factual basis on the date of the original plea." In support of this contention, V.C. merely cites the fact that the State told the trial court that it made more sense to do the prove-up after A.S.F.'s trial. However, we agree with the postdispositional court's analysis that a full factual basis for V.C.'s plea was established at the October 26, 2015 hearing.

¶23 In arguing the denial of his right to counsel, V.C. does not mention what happened on October 26, 2015, after the State requested that the prove-up be delayed until A.S.F.'s trial was finished. However, as found by the postdispositional court, the record establishes that the prove-up was completed and accepted that day.

¶24 At the October 26, 2015 plea proceeding, V.C. waived his right to contest the continuing CHIPS ground and the State dismissed the failure to assume parental responsibility ground. The trial court asked V.C. a series of questions including: (1) if he had talked about the continuing CHIPS ground with trial counsel; (2) if he understood the allegations; (3) if he understood that he was giving up his right to contest the factual allegations in the petition and was "agreeing that the State could prove its case with clear, convincing and satisfactory evidence as to V.C. if the case went to trial;" and (4) if he understood that in the event the trial court accepted his plea and found that the ground existed, it would have to declare V.C. unfit as a parent with respect to J.T.C. V.C. responded with a "yes" or "yeah" to the foregoing questions.

¶25 The trial court also asked trial counsel a series of questions including whether V.C. "understands the grounds as alleged in the petition as to the continuing CHIPS ground [and] the consequences that could flow from a finding of grounds and the relationship between the conduct of grounds and possible consequences." Trial counsel responded, "[y]es, I'm satisfied." After questioning both V.C. and trial counsel, the trial court determined that V.C.'s plea was knowing and voluntary and accepted the no-contest plea.

¶26 The State requested that the prove-up be delayed until after A.S.F.'s trial, but the trial court expressly discussed, with V.C., using the petition as the factual basis for the plea. The trial court stated that V.C. had "indicated [he had] read the petition, [and] that the petition made certain allegations as to what [he] did or did not do in this case." The trial court asked V.C. if "by entering this plea, do you understand you're agreeing that the State could prove its case by clear, convincing and satisfactory evidence if the case went to trial?" V.C. responded, "[y]es." The trial court also explicitly stated that it was using the petition to find a sufficient factual basis for the plea and asked whether V.C. agreed "that the facts as alleged in the petition with regard to those specific grounds are substantially true and correct" and if he wanted a minute to talk to trial counsel. Trial counsel added that the record should reflect V.C.'s failure to complete anger management counseling twice, and that V.C. was currently in custody awaiting serious felony charges, making it unlikely that he would be able to continue with any substantial visitation or establish a household for his son while awaiting trial. V.C.'s trial counsel stated that there was "more than sufficient factual evidence" to support V.C.'s no-contest plea. Then the trial court asked V.C. whether "as to those specific facts that [trial counsel] just referred to, [whether V.C. believed that they were] substantially true and correct?" V.C. responded, "[y]es."

¶27 Then, finding that there was a sufficient factual basis for the allegations in the petition and based on V.C.'s no-contest plea, the trial court found that the ground had been proven by clear, convincing and satisfactory evidence and V.C. was unfit as a parent.

¶28 Moreover, at the beginning of the dispositional hearing, the trial court expressed its belief that the prove-up was completed at the October 26, 2015, hearing. When the State called a witness to testify regarding the prove-up, the trial court interjected saying it was already done on October 26, 2015. When trial counsel said there was no objection to the testimony, the trial court allowed the State to proceed. However, the trial court had expressed its belief that the prove-up had been completed.

¶29 The record refutes V.C.'s contention that the factual predicate for the plea was not established as of the October 26 plea proceeding. We agree with the postdispositional court's determination the plea proceeding was completed at that time. Therefore, the January 8 prove-up was duplicative and not necessary.

C. Even if the Trial Court did not Complete the Prove-up on October 26, 2015, V.C. Fails to Show that the Trial Court Considered Any Evidence from A.S.F.'s Trial at the January 8, 2016 Hearing.

1. The Postdispositional Court found that at the January 8, 2016 Hearing the Trial Court found that a Factual Basis for the Plea was Established a Second Time and Without any Evidence from A.S.F's Trial being Considered.

¶30 The postdispositional court found that a factual basis for V.C.'s no-contest plea was established for a second time on January 8, 2016, using the extensive testimony from Mueller. It stated that "when the parties appeared again

in front of [the trial court] everybody seems to have forgotten" that the prove-up happened, "literally forgotten that that happened." The postdispositional court noted that the trial court stated that it had looked at CCAP[6] and said, "I think we've already established a factual basis. CCAP says I've found grounds." The postdispositional court then noted that "all of the counsel said, no, no, I don't think that that's the case. And so based on that … the [trial] [c]ourt proceeded to hear testimony from the case manager."

¶31 The postdispositional court stated that although the State "made a sort of belt and suspenders request that the [trial court] consider the testimony provided during [A.S.F.'s] trial and nobody objected ... But the [trial court] did not in fact ever consider any of that information in making any decisions regarding [V.C.]." The postdispositional court noted that V.C. did not "point to any testimony that was provided during [A.S.F.'s] trial that formed a factual basis for any decision that [the trial court] made regarding V.C." The postdispositional court found that a factual basis for V.C.'s no-contest plea was established for a second time on January 8, 2016, using extensive testimony from the case manager.

2. This Court Finds that V.C. Fails to Show that the Trial Court Considered Any Evidence from A.S.F.'s Trial at the January 8, 2016 Hearing.

¶32 At the start of the January 8, 2016 dispositional hearing, the State indicated that it was ready to proceed with the prove-up in support of V.C.'s no-contest plea and called Mueller as a witness. Preliminary to questioning Mueller, the State asked that "evidence that was admitted during the … trial [of A.S.F.] also

[6] CCAP, which stands for Consolidated Court Automation Programs, is "a case management system provided by Wisconsin Circuit Court Access program (WCCA). It provides public access online to reports of activity in Wisconsin circuit courts for those counties that use CCAP." ***State v. Bonds***, 2006 WI 83, ¶6, 292 Wis. 2d 344, 717 N.W.2d 133.

be admitted into evidence for purposes of prove-up." The trial court asked if there was any objection. Trial counsel for V.C. responded, "No." The trial court granted the motion that "evidence be entered into the dispositional hearing as well from the … trial." The postdispositional court describes the State's request as a "sort of belt and suspenders request" and concluded that the trial court "did not in fact ever consider any of that information in making any decisions regarding [V.C.]."

¶33 The State questioned Mueller regarding the CHIPS dispositional order dated July 2, 2013. Mueller testified that V.C. had complied with ground/goal four of the dispositional order which required that he meet with Mueller to complete the family assessment process. However, she testified that he had not complied with grounds/goals five through seven as set forth in the dispositional order and specifically described how V.C. had not complied with those goals.

¶34 With respect to goal five relating to V.C. demonstrating an understanding of how his engaging in physical abuse affected his parental capacities and J.T.C.'s safety and well being, Mueller testified that V.C. had repeatedly not completed services or supports that would assist him in making behavioral changes and had continued in unhealthy relationships, placed himself in unhealthy areas and made impulsive decisions although services had been made available to him. With respect to goal six that V.C. not engage in domestic violence or use illegal substances, Mueller testified that V.C. continued to engage in domestic violence behaviors citing an incident with A.S.F. and stating that V.C. was unable to understand his triggers and that, although V.C. had enrolled in the domestic violence program three times, each time he had been discharged without completing the program.

¶35 Goal seven required V.C. do the following: (1) actively participate in J.T.C.'s life including attending visitation, and participating in daycare and medical appointments; (2) follow the medical recommendations of J.T.C.'s doctors; (3) not engage in unlawful behaviors leading to any additional police contact; (4) resolve current legal charges; (5) show he could eliminate impulsive conduct; and (6) provide for his child and pay child support. With respect to goal seven, Mueller testified that V.C. had sporadic visits with J.T.C., did not attend all medical appointments, and, although V.C. was no longer on probation, V.C. continued to engage in unlawful activity and had more legal issues. Mueller also stated that there had been accusations V.C. was continuing to use marijuana but she had no direct knowledge regarding that alleged conduct. Mueller also testified that V.C. was not providing a safe, suitable and stable home for J.T.C. and it was unlikely V.C. would be able to meet the conditions for safe return in the next nine months.

¶36 The trial court then asked V.C.'s trial counsel and V.C., individually, whether V.C. agreed that there were sufficient facts in the record to establish the factual basis for the plea. Both responded "yes." Neither the trial court nor any of the parties mentioned any evidence from A.S.F.'s trial.

¶37 The trial court then found that there was a factual basis for V.C.'s no-contest plea and for the allegations in the petition against him. Based on V.C.'s agreement at the hearing that there were sufficient facts in the record to establish the ground, the trial court found the continuing CHIPS ground for the termination of parental rights had been proven by clear, convincing and satisfactory evidence and found V.C. unfit as a parent.

¶38 We conclude that even if the January 8, 2016 prove-up was considered, V.C. has not established that evidence admitted then deprived him of his statutory right to counsel. Although the trial court granted the State's request that evidence from A.S.F.'s trial be admitted at the prove-up, V.C. has not cited any portion of the record showing that any evidence previously admitted at A.S.F.'s trial was actually mentioned, let alone, relied upon by the State at the prove-up or actually considered by the trial court. V.C. merely relies on the trial court's ruling and does not develop the argument. In short, V.C. has done no more than to state the proposition without any elaboration. He has not developed or presented an argument telling us why we should accept his conclusory statement. We need not address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶39 For the foregoing reasons, we conclude that V.C. has not shown he was deprived of his statutory right to counsel during the prove-up portion of the plea proceedings. His contention lacks support in the record.

II. Future Contact Testimony is Admissible; Therefore Trial Counsel was not Ineffective.

¶40 V.C. contends that trial counsel was ineffective because he did not object to future contact testimony at the dispositional hearing. He asserts that such statements are not enforceable, illusory, subject to possible manipulation, and allow the court to avoid its statutory duty to determine whether the child has substantial relationships with the parent and other family members, and whether it would be harmful to the child to sever these relationships. He also adds that such testimony should never be admitted because it is more prejudicial than probative, citing WIS. STAT. § 904.03, and is against public policy.

¶41 The State argues that pursuant to ***Margaret H.***, 234 Wis. 2d 606, ¶29, future contact testimony is admissible. Therefore, V.C. has not shown deficient performance by trial counsel nor prejudice.

A. Standard of Review and Termination of Parental Rights Proceedings.

¶42 "Wisconsin has adopted the United States Supreme Court's two-pronged ***Strickland*** [***v. Washington***, 466 U.S. 668 (1984)] test to analyze claims of ineffective assistance of counsel." ***State v. Williams***, 2015 WI 75, ¶74, 364 Wis. 2d 126, 867 N.W.2d 736, *cert. denied*, 136 S. Ct. 1451 (2016). Wisconsin has extended the ***Strickland*** test to involuntary termination of parental rights proceedings. *See* ***A.S. v. State***, 168 Wis. 2d 995, 1005, 485 N.W.2d 52 (1992). "To prevail under ***Strickland***, a defendant must prove that counsel's representation was both deficient and prejudicial." ***Williams***, 364 Wis. 2d 126, ¶74.

¶43 "The standard of review of the ineffective assistance of counsel components, deficient performance and prejudice, is a mixed question of law and fact." ***State v. Johnson***, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). "Thus, the [postdispositional] court's findings of fact, 'the underlying findings of what happened,' will not be overturned unless clearly erroneous." ***Id.*** (citations omitted). "The ultimate determination of whether counsel's performance was deficient and prejudicial to the defense are questions of law which this court reviews independently." ***Id.*** at 128. "[C]ourts may reverse the order of the two tests or avoid the deficient performance analysis altogether if the defendant has failed to show prejudice." ***Id.***

¶44 As previously stated, at the dispositional phase of a termination of parental rights proceeding, the trial court must determine whether it is in the

child's best interests to terminate parental rights. *See* WIS. STAT. § 48.426(2); ***Steven V. v. Kelley H.***, 2004 WI 47, ¶27, 271 Wis. 2d 1, 678 N.W.2d 856. At a minimum, six factors set forth in WIS. STAT. § 48.426(3) must be considered by the trial court in deciding what is in the child's best interests. *See* ***Steven V.***, 271 Wis. 2d 1, ¶27. The only factor that V.C. raises as an issue is 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. *See* WIS. STAT. § 48.426(3)(c); ***Steven V.***, 271 Wis. 2d 1, ¶27.

B. Future Contact Testimony at the Dispositional Hearing.

¶45 At the January 8, 2016 portion of the dispositional hearing, Mueller testified regarding several of the foster parent's future contact statements. In addition, the foster parent testified that she was willing to allow J.T.C. to have contact with V.C. and V.C.'s family members following adoption so long as the contacts were appropriate, and that it would be important for J.T.C. to maintain a relationship with A.S.F. and his brother.

C. Because Future Contact Testimony is Admissible Trial Counsel's Failure to Object to the Foster Parent's Future Contact Testimony was not Deficient.

¶46 Given Wisconsin law on the subject, we conclude that V.C. has not demonstrated that trial counsel was deficient because he did not object to the future contact testimony. The Wisconsin Supreme Court has stated that,

> [WISCONSIN] STAT. § 48.426(3)(c) requires only that the [trial] court examine the impact of a legal severance on the broader relationships existing between a child and his or her family. In its discretion, *the* [*trial*] *court may afford due weight to an adoptive parent's stated intent to continue visitation with family members*, although we cannot mandate the relative weight to be placed on this factor.

Margaret H., 234 Wis. 2d 606, ¶29 (emphasis added). The court further stated that the trial court could "certainly choose to examine the probability that [the foster parent] will be faithful to [that] promise, at the same time bearing in mind that such promises are legally unenforceable once the termination and subsequent adoption are complete." ***Id.***, ¶30.

¶47 ***Margaret H.*** explains what trial courts *must* consider in termination proceedings and what trial courts *may* consider in termination of parental rights proceedings with respect to whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever those relationships. *See* ***id.***, ¶29. ***Margaret H.*** states that trial courts may consider future contact testimony. Therefore, an objection would have lacked merit. In other words, V.C. has not established that trial counsel's performance was deficient. *See* ***State v. Swinson***, 2003 WI App 45, ¶59, 261 Wis. 2d 633, 660 N.W.2d 12 (holding counsel is not deficient for failing to raise a losing objection or bring a meritless motion).

¶48 V.C. argues that such portions of ***Margaret H.*** are *dicta*. However, "[t]he supreme court is the only state court with the power to overrule, modify or withdraw language from a previous supreme court case." ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). This court cannot dismiss any statements from an opinion by our supreme court on the ground that the statements are *dicta*. *See* ***Zarder v. Humana Ins. Co.***, 2010 WI 35, ¶58, 324 Wis. 2d 325, 782 N.W.2d 682. Based on the foregoing, V.C. cannot establish his ineffective assistance of trial counsel claim.

III. V.C. has not Shown a Reason for a New Trial in the Interest of Justice.

¶49 V.C. also contends that, even if some errors he has raised are not properly preserved, this court should reverse pursuant to WIS. STAT. § 752.35 because the full controversy was not fully and fairly tried. His conclusory argument in support of this contention is a reformulation of the other claims that we have rejected. V.C. has not shown that this is an "exceptional case" warranting the exercise of our discretionary reversal power. *See* ***State v. Sugden***, 2010 WI App 166, ¶37, 330 Wis. 2d 628, 795 N.W.2d 456.

CONCLUSION

¶50 For the reasons stated above, we conclude that V.C. was not denied his right to counsel at his plea hearing and that trial counsel was not ineffective by not objecting to the future contact testimony. We also deny his request for a new trial. Therefore, we affirm the trial court and the postdispositional court's orders.

By the Court.—Orders affirmed.

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