COURT OF APPEALS
DECISION
DATED AND FILED

December 27, 2017

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. 2017AP1952
2017AP1953

Cir. Ct. Nos. 2016TP178
2016TP179

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

M.K.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

M.K.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed*.

¶1 BRASH, J.[1] M.K. appeals from orders terminating her parental rights for two of her biological children, B.A. and L.K.[2] She asserts that the trial court did not appropriately exercise its discretion in granting the termination of her parental rights because it did not sufficiently consider the statutory standard and factors relating to termination. She therefore seeks to vacate the termination of parental rights orders for the children. We affirm.

BACKGROUND

¶2 M.K. is the biological mother of B.A., born February 21, 2013, and L.K., born March 2, 2014. The children's great-grandmother, D.K., had filed for temporary guardianship of L.K. and J.K.,[3] M.K.'s other child, in August 2014. D.K. took this action after M.K. had gone to California with A.A., the biological father of both B.A. and L.K. D.K. subsequently followed M.K. to California to retrieve and care for the children after M.K. and A.A. broke up. L.K. and J.K. were placed with D.K., while B.A. remained with his mother.

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

[2] L.K. is also known by the initials L.A.

[3] J.K. was not included in the Petition for Termination of Parental Rights that is at issue in this appeal; he has been placed with his biological father and is currently living in Texas.

¶3 As a result of this guardianship case, it was brought to the attention of the Bureau of Milwaukee Child Welfare (BMCW)[4] that M.K. was homeless, living in either a motel or her car, with no job or money to provide for her children. On November 18, 2014, a social worker from BMCW went to the motel where M.K. was staying to investigate the situation. She was told by the motel owner that B.A. had not been seen with M.K. for several days, that a syringe had been found outside of M.K.'s door the day before, and that the conditions of M.K.'s motel room were "deplorable." Upon making contact with M.K., the social worker noted that M.K. appeared to be under the influence of drugs, dozing off during their conversation. Furthermore, the motel room looked as though it had been "ransacked," with food and miscellaneous household items thrown about; a broken window was also observed, with the broken glass in a bag by the door.

¶4 B.A. was not in the motel room when the social worker got there and M.K. indicated that he was staying with her friend, Jack. The social worker advised M.K. to call Jack and have him return B.A. to the motel immediately. Upon his arrival at the motel, B.A. was observed to have no socks, shoes, or winter coat, and his clothes were soiled. Jack stated that M.K. had asked him four days prior to watch B.A. "for a couple of hours" and had never returned. Moreover, M.K. had not provided Jack with clothing, food, or diapers for B.A.

¶5 Additionally, BMCW discovered that there was a history of domestic violence between M.K. and A.A. In fact, A.A. was incarcerated during

[4] The Bureau of Milwaukee Child Welfare (BMCW) has since been renamed The Division of Milwaukee Child Protective Services. Since the agency was still the BMCW at the time of these proceedings, all references will be to the BMCW.

these proceedings because he violated a no-contact order with M.K. while on probation for a domestic violence altercation between them.

¶6 B.A. was removed from M.K.'s care and placed in foster care because of the immediate dangers he faced due to the living conditions of M.K. At that time, L.K. had already been placed with D.K. Upon that placement, D.K. had asked her daughter, Mch.K.—M.K.'s mother and the children's grandmother—to move in with her to assist with L.K.'s care. However, there was an incident in January 2015 where D.K. frantically called BMCW because Mch.K. had left the house with L.K. in the morning and had not returned by late afternoon. BMCW suspected that Mch.K. had taken L.K. for unapproved contact with M.K. BMCW also had concerns about Mch.K.'s mental health based on its previous contact with her; BMCW had also been unaware that Mch.K had moved in with D.K. For those reasons, L.K. was removed from the care of D.K., who was unable to care for L.K. on her own due to D.K.'s physical limitations. L.K. was then placed in the same foster home as B.A.

¶7 Children in Need of Protection or Services (CHIPS) petitions were filed for B.A. and L.K. in May 2015, with dispositional orders on those petitions going into effect on November 4, 2015. Those orders set forth conditions that were to be met by M.K. before the children could be returned to her. These conditions included demonstrating control of her alcohol or drug addiction, controlling her mental health issues, eliminating domestic violence from her home, and demonstrating the ability to appropriately supervise her children. A visitation plan with the children was also required to be established, and M.K. was to consistently follow that schedule.

¶8 M.K. failed to satisfactorily meet the conditions of the CHIPS order. For example, she participated in Alcohol and Other Drug Abuse (AODA) assessment and treatment but was not truthful with the assessor and denied that she had used drugs during the previous year. This answer directly conflicted with the fact that L.K. had been born positive for THC and that M.K. had appeared to be under the influence of drugs on multiple occasions. Additionally, drug paraphernalia—needles and two crack pipes—had been found in M.K.'s possession. Furthermore, M.K. completed a psychological evaluation but was deemed to be untruthful by the evaluator, rendering the results invalid. She failed to follow through with a re-evaluation, and only attended two therapy sessions. She also failed to complete a domestic violence program and a parenting program. Additionally, she was unable to maintain a stable residence. She was also "uncooperative or non-responsive" to the BMCW for a "significant portion of time throughout the history of the case." Finally, she failed to consistently maintain a visitation schedule with the children, at times going several months without seeing them.

¶9 As a result, petitions for the Termination of Parental Rights (TPR) of M.K. was filed on June 2, 2016, with regard to B.A. and L.K. In the petitions, the State alleged two grounds for termination: (1) continuing need of protection or services, pursuant to WIS. STAT. § 48.415(2); and (2) failure to assume parental responsibility, pursuant to WIS. STAT. § 48.415(6). M.K. entered a no contest plea as to the first count of each TPR petition—the continuing need of protection and services—on November 7, 2016; the second count of failure to assume parental responsibility was dismissed.

¶10 The dispositional hearing was held on February 10, 2017. M.K. did not appear, and her trial counsel was informed that day that there was a warrant

out for her arrest in Sheboygan County. However, Mch.K. appeared at the hearing after filing a Declaration for Custody of B.A. and L.K. Mch.K. had previously agreed to undergo a psychological evaluation as part of the investigation into the possibility of placing B.A. and L.K. with her. That evaluation indicated that Mch.K. had several mental health issues.

¶11 Additionally, BMCW noted that Mch.K. and M.K. had a "conflictual relationship." Furthermore, a social worker testified that Mch.K. "does not have a substantial relationship with either of these children" and that she did not think that either child "would even know who she is." For all of these reasons, Mch.K. was ruled out as a potential placement provider.

¶12 In a written decision filed February 13, 2017, the trial court granted the TPR petitions for both children. The court noted a number of "danger factors," including drug and alcohol use, domestic violence, mental health issues, and the continuing criminal histories of both M.K. and A.A., and stated that these factors "have rendered their relationship with their children a highly dangerous and damaging influence in the children's lives." Consequently, the trial court deemed the termination of their parental rights "a necessary protective measure for these children." This appeal follows.

DISCUSSION

¶13 M.K.'s argument on appeal is that the trial court failed to sufficiently consider the standard described in WIS. STAT. § 48.426(2): that the best interests of the children are the prevailing factor to be considered by the court in making a determination regarding parental rights. M.K. also argues that the trial court failed to sufficiently consider the factors set forth at § 48.426(3) in its decision to terminate M.K.'s parental rights; specifically, she contends that the trial court did

not consider subsection (c) regarding the existing substantial relationships between the children and their birth family members.

¶14 "The ultimate determination of whether to terminate parental rights is discretionary with the [trial] court." ***State v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. We will uphold the trial court's decision to terminate parental rights "if there is a proper exercise of discretion." *See* ***id.***, ¶32. This requires that the trial court apply the correct standard of law to the facts of the case. ***Id.***

¶15 In making its determination, "the best interests of the child is the paramount consideration" for the trial court. ***Id.***, ¶33. To establish this, the trial court should reference the factors set forth in WIS. STAT. § 48.426(3), and any other factors it relied upon, in explaining on the record the basis for the disposition. ***Sheboygan Cty. DHHS v. Julie A.B.***, 2002 WI 95, ¶30, 255 Wis. 2d 170, 648 N.W.2d 402.

¶16 Although the trial court may not have explicitly cited in its written decision the standard and all of the factors of WIS. STAT. § 48.426(2) and (3), we find that the court sufficiently considered them. In the first place, the trial court's discussion relating to the dangerous environment the children were exposed to while in the custody of M.K., and the "necessary protective measure" of removing them, was clearly a reference to the standard regarding the children's best interests, in accordance with WIS. STAT. § 48.426(2).

¶17 M.K. also argues that the trial court failed to consider the factor set forth at WIS. STAT. § 48.426(3)(c): "[w]hether the child[ren] [have] substantial relationships with the parent or other family members, and whether it would be harmful to the child[ren] to sever these relationships." We disagree.

¶18 The trial court in its written decision discusses at length the relationship between M.K. and her children, noting the dangers the children faced while in her custody. There was also evidence that M.K. had gone for several months without visiting the children. The trial court further recognized that she had not appeared at the disposition hearing because she was apparently "on the run," facing possible incarceration.

¶19 With regard to other family members, the court discussed the investigation into the placement of the children with their grandmother, Mch.K., stating that "[f]or very valid reasons"—specifically, Mch.K.'s mental health issues and the conflictual nature of her relationship with M.K.—this placement was not effectuated. The court had heard testimony that Mch.K. did not have a substantial relationship with the children.

¶20 The court further noted that the children's father, A.A., "faces the prospect of continued incarceration." Additionally, the court had received evidence of the inability of the children's great-grandmother, D.K., to care for them, as well as the fact that their older brother, J.K., had been placed with his biological father in Texas.

¶21 The trial court concluded that the actions of the children's parents and grandmother had triggered their placement in foster care, resulting in the children's relationships with their foster family "becoming the foundational relationships in the children's lives." Under these circumstances, the court found that "the children's relationship to their birth family [had] becom[e] highly attenuated."

¶22 In sum, the court found that "there is no credible evidence suggestive that any of the other negative influences in [the parents'] lives have

been ameliorated." It therefore determined that, after weighing the dangers the children faced when living with their parents, particularly in comparison to the "safety, stability, nurturance, love and support" that they receive at their foster home, granting the TPR was in the children's best interests.

¶23 We find that the trial court applied the correct standard of law to the facts of this case, and thus properly exercised its discretion in granting this TPR. *See* ***Margaret H.***, 234 Wis. 2d 606, ¶32. We therefore affirm.

By the Court.—Orders affirmed.

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