COURT OF APPEALS
DECISION
DATED AND FILED

February 4, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2415 **Cir. Ct. No. 2011TP353**

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SHYMIKA S. W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: PEDRO COLON, Judge. *Affirmed*.

¶1 FINE, J. Shymika S. W. appeals the circuit court order terminating her parental rights to LaMayra, who was born in July of 2008. Shymika S. W.'s focus is on the circuit court's reasons; she does not dispute the fact predicates to

the circuit court's consideration of whether termination of her parental rights to LaMayra was in the child's best interests. *See* WIS. STAT. § 48.01(1) ("[T]he best interests of the child or unborn child shall always be of paramount consideration."); § 48.426(2) ("The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter."). Rather, she contends that the circuit court erroneously exercised its discretion in evaluating two of the factors that the legislature says circuit courts should consider if appropriate. Inasmuch as neither party disputes the facts underlying the circuit court's explanation as to why it determined that Shymika S. W.'s parental rights to LaMayra should be terminated, Shymika S. W. has a very high hurdle to clear. *See* ***Darryl T.-H. v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 620, 610 N.W.2d 475, 481 ("The ultimate determination of whether to terminate parental rights is discretionary with the circuit court."); ***State v. Cesar G.***, 2004 WI 61, ¶42, 272 Wis. 2d 22, 41, 682 N.W.2d 1, 10 (A circuit court acts within its discretion if it "'examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'") (quoted source omitted). Shymika S. W. has not cleared that hurdle. Accordingly, we affirm.

¶2 WISCONSIN STAT. § 48.426 governs what the circuit courts should consider, if applicable in a particular case, in assessing whether termination of a parent's parental rights to a child is in that child's best interests. It reads in full:

> **(1)** COURT CONSIDERATIONS. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

> **(2)** STANDARD. The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.
>
> **(3)** 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.

¶3 Shymika S. W. contends that the circuit court erroneously exercised its discretion in considering factors (a) and (f), but, significantly, as we have noted, does not challenge any of the circuit court's findings of fact in connection with its evaluation of the appropriate factors. *See* WIS. STAT. RULE 805.17(2) (circuit court's findings of fact must be upheld on appeal unless "clearly erroneous").

¶4 LaMayra's young life has been fraught with trauma, and, sadly, many of the foster-care placements and proposed adoptive resources have been, to say the least, less than ideal. Indeed, the circuit court recognized this in its thoughtful eight-page written decision, noting that the "ongoing case manager"

testified "that LaMayra had been in 5 placements since she was detained and that she was abused in a home of foster home." [*sic*] Further, the circuit court also recognized that a pre-adoptive placement with another family had not worked out because, as the circuit court found, LaMayra had "severe special needs and was not 'fitting in' with family." Nevertheless, Catherine Swessel who, as the Director of Policy and Accreditation at Children's Hospital of Wisconsin Community Services, "supervise[s] [their] Special Needs Adoption Program in the southern region" of Wisconsin, and who testified that she "spent [her] entire career in child welfare in areas of foster care and adoption," opined that, despite the problems, LaMayra was "adoptable" and that "we would have numerous families that would be interested in adopting her." She explained why:

> She is a younger child. As I mentioned before, children nine and older generally are harder to adopt. She's much younger than that.
>
> She is an outgoing child, which helps us place her in a family setting, helps her adjust, helps the family adjust.
>
> She does not have major medical issues.
>
> And I think she has indicated a desire to be in a family, which would also assist in the adjustment of going to a new family.

¶5 She also testified that LaMayra's periodic "acting out" was a fairly normal reaction to the child's circumstances: "That that behavior has increased and decreased at various times during the time she has been in care; and that she feels less secure in a placement, we see that behavior increase." Swessel told the circuit court that "at least four, if not five, home studies" were being reviewed and they could locate a potential appropriate adoptive home in "four to six weeks." She said that she did not, as phrased by the State on direct-examination, "see any obstacles finding an adopting resource" for LaMayra. The circuit court wrote in

its written decision, that Swessel recognized, as phrased by the circuit court, that "any adoptive resource could potentially fail in the future." Nevertheless, the circuit court opined that, in light of Shymika S. W.'s severe and continuing parenting failures, which significantly, Shymika S. W. does not challenge on this appeal, it was in LaMayra's best interests for Shymika S. W.'s parental rights to her to be terminated:

> While the evidence indicates that LaMayra has not had a permanent home through pre adoptive placements, she is still young enough to be adopted by another potential foster home. [Shymika S. W.] has done very little to meet the basic requirements of permanency. As of this hearing, the likelihood of permanence with an adoptive home, even if one is not readily available at the time of this hearing is more permanence than that which [Shymika S. W.] has been able to show. Giving [Shymika S. W.] additional time will not likely yield a more permanent home for LaMayra as [Shymika S. W.] has refused or incapable of meeting the basic requirements of a permanent home for LaMayra.

¶6 The circuit court fully and thoughtfully applied the realities of this sad case; it did not by any stretch of the imagination ignore the "adoptability" factors upon which Shymika S. W. rests her entire appeal. Accordingly, we affirm.

By the Court.—Order affirmed.

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