COURT OF APPEALS
DECISION
DATED AND FILED

April 1, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1382 **Cir. Ct. No. 2012TP119**

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

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

MAREZA L.,

PETITIONER-APPELLANT,

V.

KIM M. P. AND PETER D. P.,

INTERVENORS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: JOHN J. DIMOTTO, Judge. *Affirmed*.

¶1 KESSLER, J.[1] Mareza L. appeals the order denying her motion to reopen a judgment for termination of parental rights. We affirm.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

BACKGROUND

¶2 At issue in this appeal is whether the circuit court erroneously denied Mareza L.'s motion to reopen a judgment terminating her parental rights to Joseph L., in which Mareza L. sought to withdraw her voluntary consent to termination. On May 1, 2012, Mareza L. filed a private petition to terminate her parental rights to Joseph L. The circuit court held a hearing on the petition on May 24, 2012.

¶3 At the hearing, Mareza L.'s counsel told the circuit court that prior to giving birth to Joseph L., Mareza L. had an adoption plan in place and had chosen adoptive parents for her son. However, after Joseph L.'s birth, Mareza L. faced pressure from her mother to keep the baby, and brought Joseph L. home rather than go forward with the adoption. Mareza L.'s counsel told the court that after several months of keeping Joseph L., Mareza L. felt that she made the wrong decision and wanted to again move forward with an adoption. Counsel indicated that the original adopting couple was still willing to adopt Joseph L. Mareza L.'s mother and her mother's attorney were also present at the hearing, but were asked by the circuit court to leave after Mareza L. expressed discomfort with her mother's presence.[2]

¶4 Mareza L.'s counsel engaged Mareza L. in a series of questions to establish Mareza L.'s understanding of the proceedings and her voluntariness in terminating her parental rights. Mareza L. indicated that she understood the purpose of the hearing, and that she understood that a termination of her parental rights "ends any right [she] would have to raise Joseph," and "end[s] any right

[2] Mareza L.'s mother filed a petition for guardianship and was present at the hearing with an attorney. The attorney that represented Mareza L.'s mother now represents Mareza L. on appeal.

[her] family members would have to raise Joseph." Mareza L. also indicated that she understood her right to ask for an adjournment of the proceedings in order to rethink her petition, stating "I will go ahead today." She also stated that she understood she had the option of placing Joseph L. in foster care in order to give herself more time to make a decision, but stated that she did not wish to do so. Mareza L. also told the court that she understood the permanency of her decision and that she was limited to a 30-day window if she sought to reopen the termination judgment.

¶5 Mareza L. explained to the court that she had multiple meetings with representatives from Adoption Services, Inc. to establish an adoption placement plan for Joseph L. However, she chose to keep Joseph L. after his birth because her mother "started to cry" and Mareza L. "couldn't disappoint [her mother] anymore." Mareza L. said that after telling her mother that she planned to contact Adoption Services to again place Joseph L. with the original adopting couple, her mother "was yelling and cussing," and "being really mean," prompting Mareza L. to move out of her mother's home. Mareza L. stated that despite her mother's reaction, and despite subsequent threats she received from family members, she thought adoption was in Joseph L.'s best interest.

¶6 Mareza L. further articulated her reasons for filing the termination petition, telling the court:

> I promise you. I would not be doing this if I did not feel comfortable in my head.
>
> ….
>
> I brought him home because I was like, you know what, I disappointed [my mother] once. I don't want to disappoint her again…. I went to college pregnant. I finished high school. I did everything. I was working, and I just don't want to be a single mom like all them single moms, all of

> them. Nobody has their dad[.]… And I know my mom loves my son but I just want to give him more.

¶7 The circuit court granted Mareza L.'s petition, stating that it "is satisfied that Mareza [L.] is making a knowing and voluntary consent to have her parental rights voluntarily terminated." The circuit court entered a judgment terminating Mareza L.'s parental rights.

¶8 Almost one year later, on May 7, 2013, Mareza L., represented then by the attorney who previously represented her mother, filed a motion to reopen the judgment on the grounds that she did not voluntarily consent to terminating her parental rights. Mareza L. argued that: (1) her plea was the result of mistake and reasonable neglect and she is entitled to relief under WIS. STAT. § 806.07(1)(a); (2) there are extraordinary circumstances that entitle her to relief under WIS. STAT. § 806.07(1)(h); and (3) WIS. STAT. § 48.46(2),[3] the statute limiting a parent's opportunity to reopen a termination judgment to 30 days, is unconstitutional as applied to the facts of her case.

¶9 The factual basis for Mareza L.'s motion was her contention that Joseph L.'s father, Joshua T., threatened to contact immigration officials and

[3] WISCONSIN STAT. § 48.46(2) provides, as relevant:

> A parent who has consented to the termination of his or her parental rights under s. 48.41 or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the grounds specified in s. 806.07(1)(a), (b), (c), (d) or (f). Any such motion shall be filed within 30 days after the entry of the judgment or order terminating parental rights, unless the parent files a timely notice of intent to pursue relief from the judgment under s. 808.04(7m), in which case the motion shall be filed within the time permitted by s. 809.107(5). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights.

inform them of Mareza L.'s and her mother's illegal immigration statuses. Mareza L. alleged that Joshua T. was aware of her status as an illegal foreign national, as were the representatives at Adoption Services. Mareza L. argued that her failure to call the threats to the circuit court's attention was excusable neglect, but that Adoption Services had an obligation to inform the court that it was aware of the threats. Consequently, the circuit court's acceptance of Mareza L.'s plea was a result of "mistake."[4]

¶10 The circuit court denied Mareza L.'s motion, finding that Mareza L. did not comply with the requirements of WIS. STAT. § 48.46(2), which provides a 30-day window for a party to seek relief from a termination judgment on the basis of one of the provisions provided by WIS. STAT. § 806.07(1)(a)-(f). The court stated:

[4] After obtaining numerous extensions of time, the United Mexican States filed an amicus curiae brief in support of Mareza L. on March 14, 2014. The amicus argues that it has an interest in this case because: (1) it involves a Mexican citizen and a Mexican-American minor; (2) many Mexican citizens reside in Wisconsin; (3) Wisconsin courts are increasingly adjudicating the parental rights of Mexican citizens; and (4) Mexico seeks to protect the rights of its citizens by ensuring that they are awarded the full protections of international and applicable domestic laws.

The amicus does not support any of its claimed interests in this case with facts from the record, nor does the amicus identify any specific international law violations. Rather, the amicus puts forth multiple statements of opinion not supported by the record or by any authority of which we may take judicial notice. The amicus opines that Mareza L. and all undocumented mothers in the United States are "uniquely vulnerable," and "effectively controlled" by the threat of deportation. The amicus's opinion ignores the entirety of the record and bases its opinions only on Mareza L.'s current claims.

We acknowledge that, like any sovereign country, the amicus has an interest in protecting the rights of its citizens. However, in this particular case, the amicus ignores the extensive record which includes a careful inquiry by the circuit court, Mareza L.'s own testimony, and the testimony of the adoption agency agents with whom Mareza L. had extensive communication. Based on the full record before us, we are not convinced by the amicus that Mareza L.'s decision to terminate her parental rights was not knowing and voluntary. Accordingly, the amicus curiae brief does not persuade us that there is any reason to reverse the circuit court and effectively overturn Joseph L.'s adoption.

> The limitation set forth in 48.46(2), was enacted by the State legislature to ensure absolute finality to the termination of parental rights judgment as well as to the adoption judgment which follows the termination. In this case, all of the requirements of [WIS. STAT. §] 48.41 and case law discussing these requirements were met by [the circuit court's] detailed colloquy with [Mareza L.] and the entirety of the record as it pertains to [Mareza L.'s] decision. [Mareza L.'s] remorse over her decision is unfortunate and sad, but her remorse does not trump the requirements of 48.46(2).

¶11 This appeal follows.

DISCUSSION

¶12 On appeal Mareza L. contends that: (1) WIS. STAT. § 48.46(2) is inapplicable to her case because she did not willfully consent to terminating her parental rights, resulting in a violation of her due process rights; (2) section 48.46(2) is unconstitutional under the facts of her case; (3) the circuit court erroneously exercised its discretion in refusing to reopen the termination judgment pursuant to WIS. STAT. § 806.07(1)(a); and (4) Mareza L. is entitled to relief pursuant to WIS. STAT. § 806.07(1)(h). We disagree.

I. Standard of Review.

¶13 "In proceedings to terminate parental rights, the legal conclusion of voluntary and informed consent is derived from and intertwined with the [circuit] court's factual inquiry during which the [circuit] court has had the opportunity to question and observe the witnesses; the [circuit] court is thus better prepared to reach a just and accurate conclusion than is an appellate court." ***T.M.F. v. Children's Serv. Soc'y of Wis.***, 112 Wis. 2d 180, 188, 332 N.W.2d 293 (1983). "Furthermore, public policy favors finality of the [circuit] court's conclusion as to the nature of the parent's consent. Thus, on review of a [circuit] court's

conclusion that the parental consent is voluntary and informed 'the appellate court should give weight to the [circuit] court's decision, although the [circuit] court's decision is not controlling.'" ***Id.*** (citation omitted).

II. The circuit court properly applied WIS. STAT. § 48.46(2) to deny Mareza L.'s motion to reopen her termination judgment.

¶14 At the heart of Mareza L.'s appeal is her contention that her voluntary termination was not, in fact, voluntary; therefore, she argues, the confines of WIS. STAT. § 48.46(2) do not apply to the facts of her case.

¶15 WISCONSIN STAT. § 48.46(2) provides, as relevant:

> A parent who has consented to the termination of his or her parental rights under s. 48.41 or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the grounds specified in s. 806.07(1)(a), (b), (c), (d) or (f). Any such motion shall be filed within 30 days after the entry of the judgment or order terminating parental rights, unless the parent files a timely notice of intent to pursue relief from the judgment under s. 808.04(7m), in which case the motion shall be filed within the time permitted by s. 809.107(5). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights.

¶16 Mareza L. argues that a parent may request relief under WIS. STAT. §806.07(1)(a)-(f)[5] on grounds including mistake, inadvertence, surprise, excusable neglect or misrepresentation.

[5] WISCONSIN STAT. § 806.07(1) provides:

> On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;

¶17 The plain language of WIS. STAT. § 48.46(2) limits the time for *any* motion to reopen the termination judgment. In this case, Mareza L. brought a motion, which essentially contradicts her own sworn testimony, eleven months after the judgment was entered. The short time limit was adopted to facilitate permanent placements and adoptions of children. Mareza L.'s attempt to ignore these time limits would, if accepted by this court, leave Joseph L.'s adoption in a permanent state of uncertainty. We decline to ignore the obvious purpose of § 48.46(2) because Mareza L. had second thoughts nearly one year later.

¶18 Mareza L. contends that her failure to "tell the court of the threats that [Joshua T.] made to her" due to her "age and lack of sophistication" were excusable neglect, and that the circuit court's reliance on her colloquy and acceptance of her plea "demonstrates mistake." She argues that she was entitled to an evidentiary hearing on her grounds for requesting relief from the termination judgment because the limitations of WIS. STAT. § 48.46(2) are unconstitutional as

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> (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15(3);
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> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
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> (d) The judgment is void;
>
> (e) The judgment has been satisfied, released or discharged;
>
> (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
>
> (g) It is no longer equitable that the judgment should have prospective application; or
>
> (h) Any other reasons justifying relief from the operation of the judgment.

applied to her extraordinary circumstances. In essence, all of Mareza L.'s arguments turn on the question of whether her consent was indeed voluntary.

¶19 A review of the hearing transcript indicates that the circuit court carefully and thoroughly explored with Mareza L. all of the surrounding facts and circumstances. We note with interest that Mareza L.'s specific discussion of threats by family members and pressure from her mother, coupled with her clear and selfless reasons for terminating her parental rights to Joshua L., belie her belated claim of "lack of sophistication." The circuit properly exercised its discretion in finding Mareza L.'s termination plea voluntary and properly denied her motion to withdraw consent as untimely under WIS. STAT. § 48.46(2).

¶20 Prior to accepting a voluntary termination petition, the circuit court must undertake a personal colloquy with the parent in accordance with WIS. STAT. §48.422(7). *See* ***Kenosha County DHS v. Jodie W.***, 2006 WI 93, ¶25, 293 Wis. 2d 530, 716 N.W.2d 845. Subsection (7) provides:

> Before accepting an admission of the alleged facts in a petition, the court shall:
>
> (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 and alert all unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.
>
> (bm) Establish whether a proposed adoptive parent of the child has been identified....
>
> (br) Establish whether any person has coerced a birth parent or any alleged or presumed father of the child in violation of s. 48.63(3)(b)5. Upon a finding of coercion, the court shall dismiss the petition.

> (c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

In addition, the court must ensure that the parent knows the constitutional rights that he or she is waiving by entering such a plea. ***Jodie W.***, 293 Wis. 2d 530, ¶25.

¶21 Here, the circuit court conducted a lengthy voluntary consent colloquy with Mareza L., in which Mareza L. told the court that she understood the finality of her decision, that her opportunity to move for relief was limited to 30 days from the date of the judgment, and that she was not threatened or coerced into terminating her parental rights. Mareza L. actually indicted the opposite—that her mother and family members tried to coerce and threaten her to *keep* her child. Mareza L. told the circuit court that Joseph L.'s father was not supportive during her pregnancy and did not want to be a father, but at no point did she indicate that he threatened her. Although Mareza L. contends now that a change in her immigration status,[6] which eliminated the fear of deportation, prompted her to file her motion for relief, the circuit court's factual findings indicate that Mareza L.'s termination decision was purposeful and coherent. Mareza L. discussed in detail her desire to have Joseph L. raised in a two-parent, Catholic home, her desire to finish college, her positive relationship with Joseph L.'s adoptive parents

[6] Mareza L. contends that in the Spring of 2013 she obtained legal residency status in the United States.

Counsel for the adoptive parents filed a motion with this court asking us to strike multiple factual references—including references to Mareza L.'s new immigration status—from her reply brief. Counsel argued that the references were not supported by the record. We denied the motion, but stated that the motion would "be placed with the briefs for the court's consideration at the time of screening." After reviewing the parties' briefs and the record, we conclude that the portions of Mareza L.'s reply brief that counsel asks us to strike—portions pertaining to Mareza L.'s immigration status and alleged pressure placed on Mareza L. by the adopted parents and Adoption Services—are not relevant to our decision. Our decision turns on whether Mareza L.'s colloquy with the circuit court demonstrated voluntary termination. Because Mareza L. demonstrated a thorough and relatively sophisticated understanding of the proceedings and the rights she would be giving up, we need not address counsel's motion further.

and her desire to avoid single-motherhood. Mareza L.'s comprehension of the proceedings and her thoughtful answers do not reflect an iota of evidence of an involuntary or unknowing decision. Accordingly, the circuit court correctly found that Mareza L. did not comply with WIS. STAT. § 48.46(2) and is not entitled to relief pursuant to WIS. STAT. § 806.07(1)(a). While Mareza L. may now regret her decision, her motion is based, in essence, on nothing more than her present desire for a different outcome—one which would now disrupt the completed adoption of Joseph L. Section 48.46(2) does not provide relief, much less eleven months after a judgment is entered.[7]

III. Mareza L. is not entitled to relief pursuant to WIS. STAT. § 806.07(h).

¶22 Mareza L. also contends that the termination judgment should be reopened pursuant to WIS. STAT. § 806.07(1)(h). Subsection (1)(h) allows for the reopening of civil judgments for "[a]ny other reasons justifying relief from the operation of the judgment." However, WIS. STAT. § 48.46(2) specifically omits § 806.07(1)(h) from the list of grounds available to reopen a voluntary termination judgment. Presumably, the legislature purposefully omitted such an open-ended provision to promote the finality of voluntary terminations and thus secure placements and adoptions of children. *See* ***Oneida Cty. Dep't. of Soc. Servs. v. Nicole W.***, 2007 WI 30, ¶28, 299 Wis. 2d 637, 728 N.W.2d 652 ("The finality of a judgment in a termination of parental rights proceeding is even more critical because, as the legislature recognized, 'instability and impermanence in family relationships are contrary to the welfare of children.'") (citation omitted); ***Town of***

[7] Because we have concluded that the circuit court properly found Mareza L.'s termination voluntary, we need not reach the question of whether WIS. STAT. § 48.46(2) is constitutional as applied to the facts of this case. *See* ***Patrick Fur Farm, Inc. v. United Vaccines, Inc.***, 2005 WI App 190, ¶8 n.1, 286 Wis. 2d 774, 703 N.W.2d 707 ("[W]e decide cases on the narrowest possible grounds.").

Sheboygan v. City of Sheboygan, 2001 WI App 279, ¶9, 248 Wis. 2d 904, 637 N.W.2d 770 ("It is presumed that the legislature is cognizant of what language to include or omit when it enacts laws."). Accordingly, Mareza L. is not entitled to relief pursuant to § 806.07(1)(h).[8]

¶23 For the foregoing reasons, we affirm the circuit court.

By the Court.—Order affirmed.

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

[8] We note with appreciation that the guardian ad litem ("GAL") provided this court with a thorough, well-organized, account of the proceedings in this matter. The GAL's brief was of great assistance to this court.