COURT OF APPEALS
DECISION
DATED AND FILED

August 14, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1155 **Cir. Ct. No. 2012TP4**

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

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

GREEN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

BARRET W. S.,

RESPONDENT-APPELLANT,

STEVEN D. AND DEBORAH D.,

INTERESTED PARTIES-RESPONDENTS.

APPEAL from an order of the circuit court for Green County: THOMAS J. VALE, Judge. *Affirmed.*

¶1 LUNDSTEN, J.[1] Barret W.S. appeals the circuit court's order terminating his parental rights to Ella M.S. He argues that the circuit court erred by granting summary judgment against him on the "fact-intensive" grounds for termination in this case, allowing Ella's guardians to participate as a party, and selectively applying the rules of evidence during the dispositional phase. I reject Barret's arguments, and affirm.

Background

¶2 On November 16, 2012, the Green County Department of Human Services petitioned to terminate Barret's parental rights to Ella.[2] According to the petition allegations, Ella was six years old at the time and was living with her guardians, Steven and Deborah D. The circuit court granted a request by the guardians to participate as a party during both the grounds and dispositional phases of the proceedings.

¶3 In an amended petition, the County alleged three grounds for termination: three-month abandonment under WIS. STAT. § 48.415(1)(a)2.; six-month abandonment under § 48.412(1)(a)3.; and failure to assume parental responsibility under § 48.415(6). As set forth in the statutes, these three grounds require the County to show, respectively:

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

[2] The County sought termination of Ella's mother's parental rights in the same circuit court case. The circuit court terminated Ella's mother's parental rights after she consented to the termination, and she unsuccessfully appealed. *See generally* ***Green Cnty. Dep't of Human Servs. v. Ericka L.R.***, No. 2014AP1106, unpublished slip op. (WI App July 17, 2014).

> [1] That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356(2) or 938.356(2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.
>
> [2] The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.
>
> [3] [T]he parent … ha[s] not had a substantial parental relationship with the child.

WIS. STAT. § 48.415(1)(a)2. and 3. and (6). For the abandonment grounds, the County alleged multiple periods of abandonment.

¶4 The County filed a motion for summary judgment accompanied by evidentiary submissions, and asserted that there was no genuine issue of material fact as to any of the grounds. The circuit court agreed with the County, and granted the motion. After a dispositional hearing, the circuit court terminated Barret's parental rights to Ella.

¶5 I reference additional facts as needed below.

Discussion

¶6 Barret argues that the circuit court erred by granting summary judgment on "fact-intensive" grounds for termination, by allowing Ella's guardians to participate as a party, and by selectively applying the rules of evidence against him during the dispositional phase. I explain below my reasons for rejecting each of Barret's three arguments.

A. Summary Judgment On Termination Grounds

¶7 Barret asserts that, in ***Steven V. v. Kelley H.***, 2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 856, the "supreme court ... found that some grounds are amenable to resolution by summary judgment while others are not." Barret contends that grounds such as abandonment and failure to assume parental responsibility are not amenable to summary judgment, whereas so-called "paper grounds" that may be proven by documentary evidence, such as the ground of continuing court-ordered periods of physical placement, are generally appropriate for summary judgment. Barrett misreads ***Steven V.***

¶8 I begin by observing that I need not discuss both abandonment and failure to assume parental responsibility because either alone is a sufficient ground to support termination of Barret's parental rights. *See* WIS. STAT. § 48.415 ("Grounds for termination of parental rights shall be *one* of the following …." (emphasis added)). I focus on abandonment because, as we shall see, this ground is dispositive.

¶9 I return to Barret's argument that ***Steven V.*** creates a special rule for termination of parental rights cases by providing that some grounds are not amenable to resolution by summary judgment. In ***Steven V.***, the ground for termination was continuing court-ordered denial of periods of physical placement, which the court said could be proven by documentary evidence of a court order. ***Steven V.***, 271 Wis. 2d 1, ¶¶2, 37. In contrast to grounds proven by documentary evidence, the court stated that summary judgment "will ordinarily be inappropriate in TPR cases premised on ... fact-intensive grounds for parental unfitness," including abandonment, because in such cases "the determination of parental unfitness will require the resolution of factual disputes by a court or jury at the

fact-finding hearing." ***Id.***, ¶36. The court also said, however, that the court did not "mean to imply that the general categorization of statutory grounds ... represent a definitive statement about the propriety of summary judgment in any particular case. The propriety of summary judgment is determined case-by-case." ***Id.***, ¶37 n.4. "If a motion for summary judgment is made and supported as prescribed by WIS. STAT. § 802.08, the circuit court may properly conclude at the fact-finding hearing that there is no genuine issue of material fact in dispute and the moving party is entitled to partial summary judgment on parental unfitness as a matter of law." ***Id.***, ¶34.

¶10 Thus, ***Steven V.*** does not prescribe a different summary judgment rule for certain types of termination of parental rights cases. Rather, the ***Steven V.*** court simply makes the observation that, when applying normal summary judgment principles, it will often be true that a material factual dispute will prevent summary judgment in certain types of termination of parental rights cases. The summary judgment methodology used does not change and, therefore, I reject Barret's argument that reversal is required under ***Steven V.*** because of the type of grounds alleged in this case.

¶11 What remains of Barret's argument is his assertion that there is a material factual dispute as to whether Barret communicated with Ella through third parties during three of four alleged abandonment periods. He asserts that "[t]hird party contacts, if successfully delivered, allow a fact-finder to determine that a parent did not abandon his child." Barret does not argue that there is any other factual dispute as to the abandonment grounds.

¶12 Barret's factual dispute argument fails. As the County and guardians point out in their responsive briefs, the parties also litigated and the circuit court also ruled on the *fourth* abandonment period, during which Ella was placed with the guardians, May 27, 2011, to January 29, 2012, and Barret does not address this period of time in his brief-in-chief. I agree. As far as I can tell, Barret also fails to point to any evidence supporting an inference that, during that time period, he either visited with Ella or communicated with her, directly or through third parties, or that he attempted to do so.

¶13 I take Barret's failure to address the fourth period in his brief-in-chief as a concession that there is no material dispute of fact as to that period. I affirm the circuit court's grant of summary judgment on this basis. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (when appellant ignores ground for circuit court's ruling and appellant's briefing does not refute the ruling, court of appeals may take the matter as conceded).

¶14 In his appellate reply brief, Barret belatedly asserts that he does not concede that he abandoned Ella during the fourth period. This argument is too late and too little. I reject it because Barret raises the argument for the first time in his reply brief, which is too late. However, even if I ignored the concession implicit in his brief-in-chief with respect to the fourth time period, I would still reject his argument because it is too little.

¶15 Barret's argument as to abandonment and the fourth time period is based on the proposition that abandonment is not proven if the fact finder believes the parent communicated with a child through a third party. Barret contends that ***State v. Lamont D.***, 2005 WI App 264, 288 Wis. 2d 485, 709 N.W.2d 879, stands for the proposition that third-party contacts, if successfully delivered, allow a fact

finder to determine that a parent did not abandon his or her child. Assuming for purposes of this decision that Barret accurately summarizes the holding in ***Lamont D.***, Barret's argument still falls short because he does not point to evidence showing that he attempted to communicate with Ella through a third party, much less that he successfully did so, during the fourth time period.

¶16 Barret first points to a particular section in his deposition testimony which he asserts shows that he testified about "ongoing attempts to contact Steven and Deborah [Ella's guardians] following his release from prison in March of 2011." However, when I look to that section, Barret did not testify about *ongoing* attempts to contact Ella's guardians. More to the point, Barret did not testify about an attempt to communicate with Ella through the guardians. Rather, in this section of his deposition testimony, Barret describes a single conversation in which he communicated to the guardians his intent to be a part of Ella's life and to get his life in order.

¶17 Barret points to what he characterizes as confusing testimony about whether he telephoned the guardians on Father's Day 2011, or five months after his release from prison. According to Barret, regardless whether he spoke to the guardians on Father's Day 2011, or five months after his release from prison, either date falls within the fourth time period. I agree that it is reasonable to infer that this part of Barret's deposition testimony contains an assertion that he called the guardians during the fourth time period.[3] However, that testimony does not

[3] Later in his deposition, Barret clarified that he was "pretty sure" he did not call on Father's Day 2011, but rather on Father's Day the following year. This leaves Barret's assertion that he called five months after his release from prison, which would have fallen in the fourth time period.

support a factual finding that Barret attempted to communicate with Ella during the fourth time period. Barret did not assert that he asked to speak with Ella or that he asked the guardians to communicate anything to Ella on his behalf. At best, Barret avers that he expressed a desire to visit Ella some time in the future.

¶18 Finally, Barret points to two pages in his deposition where he asserts he called the guardians monthly from the time he was released from prison in March 2011 until the time of this termination of parental rights action. Barret acknowledges that the County disputes the assertion, but argues that it creates a factual dispute in need of resolution. I disagree. Even assuming that the confusing and disputed portion of the deposition that Barret points to contains an assertion that he telephoned the guardians monthly, it does not support a finding that Barret either communicated with Ella through the guardians or that he attempted to do so. Rather, in this part of Barret's deposition testimony, he said the purpose of these calls was to tell the guardians that he had employment and was in treatment.

¶19 In sum, even if I did not deem Barret to have conceded abandonment during the fourth time period, I would reject his merits argument because he fails to point to evidence supporting a finding that, during this time period, he either communicated with Ella through a third party or that he attempted to do so.

B. Guardians' Party Status

¶20 In granting the request by Ella's guardians to participate as a party in this termination of parental rights action, the circuit court acknowledged that WIS. STAT. ch. 48 does not expressly state that guardians are "parties" in a termination

proceeding. The court concluded, however, that the pertinent statutes support allowing the guardians to participate as a party throughout the proceedings.

¶21 Barret argues that the circuit court erred in interpreting WIS. STAT. ch. 48 to allow the guardians to participate as a party. The County, guardian ad litem, and the guardians all argue, in contrast, that the statutory scheme supports the circuit court's conclusion. Whether ch. 48 allows the guardians to participate as a party is a question of statutory interpretation that this court reviews de novo. *See* ***State ex rel. Steldt v. McCaughtry***, 2000 WI App 176, ¶11, 238 Wis. 2d 393, 617 N.W.2d 201.

¶22 I find much in the respondents' arguments to support the circuit court's conclusion and little in Barret's arguments to convince me otherwise. Based on the statutes the parties' address, I perceive three main points in support of the circuit court's conclusion. I discuss each of the three points below, along with my reasons for rejecting Barret's argument on each point.

¶23 The first point relates to WIS. STAT. § 48.42(2) and the supreme court's decision in ***David S. v. Laura S.***, 179 Wis. 2d 114, 507 N.W.2d 94 (1993). The guardian is one of a limited class of persons who are entitled to be served with a summons and petition under § 48.42(2). *See* § 48.42(2)(c). The others include a parent, a potential father as specifically defined by the statute, the guardian ad

litem, the "legal custodian," and the "Indian custodian." WIS. STAT. § 48.42(1) and (2)(a), (b), and (c).[4]

[4] "Legal custodian" is defined as "a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child." WIS. STAT. § 48.02(11). "Indian custodian" is defined as "an Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child." Section 48.02(8p).

WISCONSIN STAT. § 48.42(2) provides, more fully, as follows:

> **(2)** WHO MUST BE SUMMONED. Except as provided in sub. (2m), the petitioner shall cause the summons and petition to be served upon the following persons:
>
> (a) The parent or parents of the child, unless the child's parent has waived the right to notice under s. 48.41(2)(d).
>
> (b) Except as provided in par. (bm), if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and whose paternity has not been established:
>
> 1. A person who has filed an unrevoked declaration of paternal interest under s. 48.025 before the birth of the child or within 14 days after the birth of the child.
>
> 2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child unless that person has waived the right to notice under s. 48.41(2)(c).
>
> 3. A person who has lived in a familial relationship with the child and who may be the father of the child.
>
> (bm) If the child is a nonmarital child who is under one year of age at the time the petition is filed and who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and whose paternity has not been established and if an affidavit under sub. (1g)(a) is filed with the petition:
>
> 1. A person who has filed an unrevoked declaration of paternal interest under s. 48.025 before the birth of the child,

(continued)

¶24 In ***David S.***, the supreme court strongly implied—and arguably decided—that the persons who receive a summons and petition under WIS. STAT. § 48.42(2) are accorded party status. Specifically, the ***David S.*** court used the following pertinent reasoning in concluding that grandparents could not intervene as a party under the general intervenor statute, in part because that statute does not apply to termination proceedings:

> [I]t is clear from the statutes that the legislature intended sec. 48.42(2) prescribing who must be summoned in a termination of parental rights proceeding to be the exclusive statute on the subject. Bringing in *additional parties* in a ch. 48 proceeding through the intervenor statute is not consistent with the purposes and policies underlying the statutory proceedings set forth in ch. 48 ….

David S., 179 Wis. 2d at 143 (emphasis added). It is true that the court in ***David S.*** was not addressing the party status of guardians. It is also true that the court acknowledged that WIS. STAT. ch. 48 "pose[s] something of an interpretative riddle" as to who is a party. *See* ***id.*** at 145. On balance, however, § 48.42(2) and ***David S.*** provide strong support for the circuit court's conclusion here.

> within 14 days after the birth of the child, or within 21 days after a notice under sub. (1g)(b) is mailed, whichever is later.
>
> 2. A person who has lived in a familial relationship with the child and who may be the father of the child.
>
> (c) The guardian, guardian ad litem, legal custodian, and Indian custodian of the child.
>
> (d) Any other person to whom notice is required to be given by ch. 822 [the Uniform Child Custody Jurisdiction and Enforcement Act], excluding foster parents who shall be provided notice as required under sub. (2g).

¶25 Barret argues that the supreme court's analysis of another issue in ***David S.*** "illustrates that the right to receive a summons does not transform someone into a party." More specifically, Barret relies on the ***David S.*** court's conclusion that a WIS. STAT. ch. 767 guardian ad litem should have been served with a summons, but was not a party, in a termination proceeding involving the same child and a different guardian ad litem. *See* ***David S.***, 179 Wis. 2d at 122, 123-24, 128-29. However, the key to understanding this part of the court's decision is understanding the reason the ch. 767 guardian ad litem in ***David S.*** should have been served. The reason was not because the ch. 767 guardian ad litem was the "guardian ad litem" under WIS. STAT. § 48.42(2). *See* ***id.*** at 127-33. Rather, the court relied on fact-specific reasoning involving the ch. 767 guardian ad litem's duties to the child and other circumstances of the case. *See* ***id.*** at 130-33. Accordingly, although this part of ***David S.*** supports the general proposition that not everyone who receives a summons is a party, it also does not undercut my conclusion that the court in ***David S.*** elsewhere appeared to conclude that parties in termination proceedings are limited to those who are entitled to a summons under § 48.42(2).

¶26 The second point supporting the circuit court's conclusion is that WIS. STAT. ch. 48 contains provisions in addition to WIS. STAT. § 48.42(2) giving guardians procedural rights on par with the child and parent in a termination proceeding. WISCONSIN STAT. § 48.29(1) provides that the guardian, the child, the child's parent, and legal custodian have the right to request a substitution of the assigned judge and refers to someone making such a request as a "party." Similarly, WIS. STAT. § 48.31(1) and (2) provides that a guardian, child, parent,

and legal custodian have the right to demand a jury trial at the fact-finding hearing.[5]

¶27 Barret appears to argue that WIS. STAT. § 48.31 is a general statute that applies to other types of WIS. STAT. ch. 48 proceedings and, in particular, CHIPS proceedings. He argues, as I understand it, that § 48.31 does not plainly apply to guardians in termination proceedings but rather may be intended to apply to a guardian only when a guardian is defending against a CHIPS petition. If that is his argument, I see no support for it in the statutory language, and Barret provides no other support.

¶28 The third and final point supporting the circuit court's conclusion is that the statutory section describing the guardian's duties and powers shows that

[5] These statutes provide, more fully, as follows:

> **48.29 Substitution of judge. (1)** The child, the child's parent, guardian or legal custodian, the expectant mother or the unborn child by the unborn child's guardian ad litem, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named in the request.
>
> **48.31 Fact-finding hearing. (1)** In this section, "fact-finding hearing" means a hearing to determine if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate parental rights are proved by clear and convincing evidence….
>
> **(2)** The hearing shall be to the court unless the child, the child's parent, guardian, or legal custodian, the unborn child by the unborn child's guardian ad litem, or the expectant mother of the unborn child exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing.

those duties and powers are significant, and include responsibilities pertaining to legal matters. The pertinent section provides:

> [A] person appointed by the court to be the guardian of a child under this chapter *has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child* and *the duty to be concerned about the child's general welfare*, including but not limited to:
>
> ….
>
> **(2)** *The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child* but not the authority to deny the child the assistance of counsel as required by this chapter.
>
> ….
>
> **(4)** The rights and responsibilities of legal custody [with certain exceptions not relevant here].

WIS. STAT. § 48.023 (emphasis added).

¶29 Barret does not dispute that the guardians were properly appointed by a court under WIS. STAT. ch. 48 and that they have all the duties and powers set forth in WIS. STAT. § 48.023. Barret argues, however, that the guardians here are in reality representing *their* interests, not Ella's. Regardless whether this is true to some extent, all guardians under § 48.023 have not only the authority "to represent the child in legal actions and make other decisions of substantial legal significance concerning the child" but also the *duty* to "make important decisions in matters having a permanent effect on the life and development of the child." Accordingly, § 48.023 supports a conclusion that guardians should be allowed to participate as fully as possible in termination proceedings. As the statute provides, a guardian's participation cannot "deny the child the assistance of counsel as required by this chapter," which includes a guardian ad litem in any termination proceeding. *See*

WIS. STAT. § 48.235(1)(c) and (3)(a) (court "shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights," and guardian ad litem "shall be an advocate for the best interests of the [child]").

¶30 In a final argument pertaining to the guardians, Barret asserts that when, as here, the guardians are also prospective adoptive parents, the guardians' participation as parties is problematic, especially during the grounds phase of the proceedings. Barret argues, as I understand it, that a potential adoptive parent's participation raises the risk that a fact finder will, consciously or unconsciously, make an impermissible comparison between a child's biological parent and a prospective parent. I acknowledge that this comparison is not a proper consideration, at least not during the grounds phase of proceedings, where the parent's interests are paramount. Still, Barret's limited argument does not persuade me that this possibility compels a different conclusion than the one I reach here based on the statutes and ***David S.*** Nothing in my decision prevents circuit courts from taking steps to limit the risk of an improper comparison, including by limiting testimony and instructing juries. Also, nothing in my decision should be read to address the status of potential adoptive parents who are *not* court-appointed guardians.

C. Circuit Court's Application Of The Rules Of Evidence At The Dispositional Hearing

¶31 Barret argues that the circuit court erroneously exercised its discretion by selectively applying the rules of evidence against him at the dispositional hearing. For the reasons that follow, I conclude that this argument fails.

¶32 I begin with Barret's assertion that it is "not clear" whether the rules of evidence apply to the dispositional hearing in a termination of parental rights proceeding. This assertion goes nowhere. As the County, guardian ad litem, and guardians point out, WIS. STAT. § 48.299(4) governs dispositional hearings and explains the role of the rules of evidence at such hearings.

> Except as provided in s. 901.05 [pertaining to HIV test results], neither common law nor statutory rules of evidence are binding at … a dispositional hearing …. At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness…. The court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

Section 48.299(4)(b). Thus, as most pertinent here, we know that the evidentiary rules are not "binding" but may be considered; that the court must admit testimony having "reasonable probative value," subject to certain exceptions; and that the court may admit hearsay if it has "demonstrable circumstantial guarantees of trustworthiness." *See* ***id.***

¶33 In order to prevail, Barret needs to persuade me that the circuit court erroneously or inconsistently applied these standards in making its evidentiary rulings. Barret focuses on the court's rulings on two evidentiary topics, expert testimony and hearsay. I address them in the following two subsections.

1. Expert Testimony

¶34 Barret argues that the circuit court erred by applying the rules of evidence to, on the one hand, *exclude* his proffered expert from testifying as to whether termination would be in Ella's best interests while, on the other hand,

admitting testimony on the same topic by the author of a court-ordered agency report. Barret argues that this was an inconsistent application of the evidentiary rules. I disagree because, as I explain, Barret's proffered expert testimony and the report author's testimony are not comparable, and there is no inconsistency in what the circuit court did with respect to each.

¶35 As to Barret's proffered expert, Barret sought to have her qualified as an expert on the specific topic of whether a termination of parental rights has negative effects on a child. The circuit court acknowledged that it was "not bound by the strict enforcement of evidentiary rules," but applied the evidentiary rules governing the qualification of experts. Under questioning by the court, the expert admitted that she did not think there is any reliable method to test, analyze, or predict the effect on a particular child of a termination of parental rights. The circuit court thus excluded the expert's testimony on this topic. As I read the circuit court's ruling, the court applied the expert qualification rules to determine, consistent with WIS. STAT. § 48.299, that the proffered testimony lacked reasonable probative value with respect to Ella's situation. *See* § 48.299(4)(b).

¶36 To be clear, Barret does not argue that the circuit court's ruling on his proffered expert testimony is incorrect when analyzed on its own. Rather, Barret argues that the ruling is inconsistent with how the circuit court ruled on the report author's testimony. As we shall now see, Barret is wrong.

¶37 The report author was required by statute to address in her written report all statutory factors the circuit court must address at disposition, including the child's best interests. *See* WIS. STAT. §§ 48.425(1)(e) and 48.426(2) and (3). No one, however, suggested that the report author (a County employee) was an expert witness on whether a termination of parental rights would be in Ella's best

interests or whether there are negative effects to a termination of parental rights more generally. Indeed, Barret points to no testimony by the report author on these topics, except for one instance in which Barret's counsel elicited the report author's opinion about Ella's best interests as part of an attempt to impeach the report author. No other party objected, and the circuit court made no ruling on whether the report author could testify as an expert.[6]

¶38 Accordingly, I see no inconsistency. Barret's proffered expert testimony and the report author's testimony were not comparable. In particular, the report author did not testify as an expert. To the extent that the circuit court may have allowed the report author to give limited lay opinion testimony as part of Barret's attempt to impeach her, this was not an inconsistent or selective application of the rules of evidence in a way that worked against Barret.

2. Hearsay

¶39 Barret argues that the circuit court erred by admitting three instances of hearsay testimony by one of the guardians. However, Barret points to no instance in which the circuit court excluded comparable hearsay testimony that he offered. Thus, Barret again fails to show that the circuit court inconsistently or selectively applied the rules of evidence. Moreover, I observe that Barret gives me no reason to think that the circuit court otherwise erred in admitting hearsay. *See* WIS. STAT. § 48.299(4)(b) (circuit court may admit hearsay in dispositional

[6] Prior to the dispositional hearing, Barret objected to expert testimony by County employees regarding Ella's best interests, and the circuit court stated that it would reserve ruling on the objection until the court heard at trial what the testimony would be.

hearing if proffered hearsay has "demonstrable circumstantial guarantees of trustworthiness").

Conclusion

¶40 In sum, for the reasons stated above, I affirm the circuit court's order terminating Barret W.S.'s parental rights to Ella M.S.

By the Court.—Order affirmed.

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