COURT OF APPEALS
DECISION
DATED AND FILED

October 1, 2015

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. 2015AP1480
2015AP1481

Cir. Ct. Nos. 2013TP92
2013TP93

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

NO. 2015AP1480

IN RE THE TERMINATION OF PARENTAL RIGHTS TO R. M.-W.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

A. W.,

RESPONDENT-APPELLANT.

NO. 2015AP1481

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

A. W.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: REBECCA LYNN GRASSL BRADLEY, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] A.W. appeals the circuit court's orders terminating her parental rights to R.M.-W. and B.M. A.W. argues that the circuit court erroneously exercised its discretion at the dispositional phase of proceedings by concluding that the termination of A.W.'s parental rights was in the children's best interests. I agree with the State and the guardian ad litem that the circuit court reasonably exercised its discretion in reaching this conclusion. Accordingly, I affirm the circuit court's orders.[2]

Background

¶2 The State petitioned for the termination of A.W.'s parental rights to R.M.-W. and B.M on two grounds: failure to assume parental responsibility and commission of a serious felony against one of the children. As to the second ground, the State alleged that A.W. had been convicted of a felony child abuse

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] The orders also terminated each of the children's father's parental rights, but this appeal concerns only the termination of A.W.'s parental rights.

crime in which B.M. was the victim. The circuit court granted summary judgment to the State on the second ground. There is no dispute on appeal as to grounds for termination.

¶3 As already noted, the circuit court concluded at the disposition hearing that the termination of A.W.'s parental rights was in the children's best interests. I reference additional facts in the discussion section below.

Discussion

¶4 A.W. challenges the circuit court's conclusion that the termination of her parental rights to R.M.-W. and B.M. was in the children's best interests. The circuit court's decision whether to terminate parental rights is discretionary. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

¶5 Generally speaking, "[a] circuit court acts within its discretion when it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach." ***Bank Mut. v. S.J. Boyer Constr., Inc.***, 2010 WI 74, ¶20, 326 Wis. 2d 521, 785 N.W.2d 462. In the more specific context of terminating parental rights, the circuit court's exercise of discretion requires the court to focus on the child's best interests and to consider six statutory factors:

> (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.

See WIS. STAT. § 48.426(3); ***Sheboygan Cty. DHHS v. Julie A.B.***, 2002 WI 95, ¶¶28-29, 255 Wis. 2d 170, 648 N.W.2d 402; ***Gerald O.***, 203 Wis. 2d at 153-54.

¶6 Here, the circuit court correctly focused on the children's best interests, and the court discussed each of the statutory factors, applying those factors to evidence presented at the disposition hearing. A.W. nonetheless argues that the circuit court erroneously exercised its discretion.

¶7 More specifically, and as I understand it, A.W. argues that the circuit court erred for two reasons. First, A.W. argues that the circuit court incorrectly assumed that, if A.W.'s rights were terminated, the likely adoptive parent, A.W.'s cousin S.B., would allow A.W. to have contact with the children. Second, A.W. argues that the circuit court unreasonably denied A.W.'s request that the court take the less drastic step of transferring guardianship of the children to S.B. instead of terminating A.W.'s parental rights. For this second argument, A.W. relies on a transfer-of-guardianship agreement that ultimately fell through before the circuit court could formally approve it. I reject both arguments.

A.W.'s First Argument—Circuit Court's "Assumption" Regarding Continued Contact With The Children

¶8 My analysis of A.W.'s first argument begins with some additional background facts. At the time of the disposition hearing, R.M.-W. was six years

old and B.M. was three years old. They had been placed outside of A.W.'s home since R.M.-W. was three years old and B.M. was three months old. For about two of those years, they had been placed in S.B.'s home. The circuit court found that S.B. was approved as an adoptive parent, and was committed to adopting the children. It is clear that everyone's expectation was that, if A.W.'s parental rights were terminated, then S.B. would be the adoptive parent.

¶9 Pertinent to A.W.'s argument, the circuit court made a finding of fact that S.B. was willing to allow A.W. to continue to have contact with the children as long as the visits occurred in a safe and appropriate manner. The circuit court relied on this finding, along with many others, in addressing the third statutory factor and, more specifically, in concluding that the children would not be significantly harmed by severing their legal relationship with A.W.

¶10 A.W. argues that the circuit court incorrectly "assumed" that S.B. would allow A.W. to have visits with the children. A.W. asserts that the disposition hearing evidence showed instead that S.B. would *not* allow visits. I reject A.W.'s argument for the following reasons.

¶11 To begin, the circuit court did not simply "assume" that S.B. would allow visits. Rather, the circuit court made an express finding, supported by evidence, that S.B. was willing to allow visits as long as those visits occurred in a safe and appropriate manner. The supporting evidence included S.B.'s testimony that she was willing to allow future contact. In addition, a case management supervisor testified that S.B. had indicated that S.B. wanted A.W. to continue to have a role in the children's lives and be able to visit them. Finally, another case management supervisor testified that S.B. had indicated that S.B. would allow

future contact as long as the contact was, in the supervisor's words, "appropriate and consistent."

¶12 A.W. appears to argue that all of this testimony about S.B.'s willingness to allow visits was not credible because there was other testimony suggesting that S.B. had not allowed visits in the past. In particular, A.W. testified that, when A.W. would ask S.B. for visits, S.B. either would not respond or would say she was busy. This argument fails because the weight and credibility of conflicting evidence was for the circuit court to decide. *See* ***Jacobson v. American Tool Cos.***, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1998) (court of appeals "will accept the circuit court's determination as to weight and credibility" of the evidence). Here, the circuit court plainly gave more weight to the testimony suggesting that S.B. would allow visits.

¶13 I note that the circuit court's finding that S.B. was willing to allow visits is also supported by further testimony suggesting that, even if S.B. had sometimes refused visits in the past, it was because A.W. made unreasonable visit requests. Specifically, one of the case management supervisors testified that A.W. had difficulty understanding that A.W. needed to provide S.B. with reasonable notice to schedule visits instead of expecting S.B. to "just drop everything to have [A.W.] come over."

¶14 Moreover, even if the circuit court had found that S.B. was *unwilling* to allow visits, it is difficult to imagine that such a finding would or should have changed the circuit court's decision that termination of A.W.'s parental rights was in the children's best interests. On the whole, the circuit court's underlying findings clearly reflect the circuit court's reasonable view that the children lacked

a substantial relationship with A.W., and that greater harm would come to the children if A.W.'s parental rights were *not* terminated.

A.W.'s Second Argument—The Transfer Of Guardianship Agreement

¶15 The disposition hearing and circuit court's termination of parental rights decision occurred in March 2015. More than a year earlier, in February 2014, the parties and guardian ad litem had reached an agreement that a transfer of guardianship to S.B., which would allow A.W.'s legal relationship with the children to remain intact, would be in the children's best interests. The circuit court at that time referred to the agreement as a "win-win" situation. However, the State and guardian ad litem later withdrew from the agreement before the court could formally approve it.

¶16 At the March 2015 disposition hearing, A.W. asked the circuit court to consider transferring guardianship to S.B. instead of terminating A.W.'s parental rights. The circuit court rejected this option, concluding that a guardianship was not in the children's best interests because it would not give them the same level of stability and permanency. The circuit court found that, under the circumstances, "[g]ranting a guardianship would leave the children, especially [R.M.-W.], with the fear that someone sometime in the future might come to take them away again and maybe separate them again." The circuit court reasoned that the children "deserve to feel safe and secure in the home that [S.B.] has made for them and with the family they have in that home."

¶17 As I understand it, A.W. now relies on the February 2014 transfer-of-guardianship agreement to argue that the circuit court unreasonably rejected the transfer of guardianship option in March 2015. To be clear, A.W. does *not* argue

that the circuit court or the parties were legally bound by the 2014 agreement. Rather, A.W. appears to argue that the circuit court unreasonably rejected the guardianship option in March 2015 because there had been no significant change in circumstances since February 2014. A.W. in effect asks: How could a transfer of guardianship have been in the children's best interests in February 2014, but not in March 2015, unless circumstances had significantly changed?[3]

¶18 I see multiple problems with A.W.'s argument, but will focus on one. A.W. fails to support her no-significant-change assertion with adequate citations to record evidence. And, so far as I can tell, the record supports the opposite of A.W.'s assertion.

¶19 In particular, one of the case management supervisors testified regarding significant changes in A.W.'s circumstances. The supervisor testified that, at the beginning of 2014, A.W. was "engaged in all of her services and working on making progress." But, according to the supervisor, "things started to fall apart around April of 2014 and I don't believe that [A.W.]'s been compliant since that time." Providing further details, the supervisor testified that, beginning in April 2014, A.W. had increasing problems with housing, therapy, AODA services, drug use, visitation with the children, missed appointments, and probation violation. In addition, there is the undisputed fact that, by the time of the disposition hearing in March 2015, both young children had been placed out of

[3] At the time of the February 2014 agreement, a different circuit court judge was presiding over the proceedings. No one suggests that this fact matters, and I do not consider it material to my analysis.

A.W.'s care for a significantly longer period of time than they had been in February 2014.

¶20 I could go on to discuss additional evidence showing changed circumstances between February 2014 and March 2015. However, the evidence already discussed is sufficient.

¶21 A.W. asserts that "[i]t should be further noted" that the transfer-of-guardianship agreement fell through because of instances in which S.B. failed to adequately supervise the children, resulting in a temporary placement of the children outside S.B.'s home in mid-2014. However, A.W. does not explain why this assertion, if true, should have changed the circuit court's decision. Accordingly, I deem any argument based on the assertion undeveloped, and reject it on that basis. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not consider inadequately developed arguments).

¶22 Having said that, I choose to briefly comment on A.W.'s apparent argument that the transfer-of-guardianship agreement somehow matters. First, although it appears undisputed that S.B. was the *initial* cause for a delay in formal court approval of the agreement, it is far from apparent that the agreement *ultimately* fell through because of S.B. Rather, as far as I can tell, the agreement ultimately fell through because, as suggested by the testimony summarized in ¶19 above, A.W. was unable to make lasting progress in several areas to show that she could provide a safe and stable environment for the children.

¶23 Second, even if the agreement fell through by no fault of A.W.'s, the circuit court was required to make a disposition decision based on the children's

best interests in March 2015, not based on what might have seemed fair to A.W. in light of the reason or reasons for the agreement's failure. The parent's rights are paramount during the grounds phase of termination proceedings, but the best interests of the child are paramount during the dispositional phase. ***Julie A.B.***, 255 Wis. 2d 170, ¶¶22, 24, 28, 42. Here, the circuit court acknowledged that the children had been temporarily removed from S.B.'s home, but the court found based on other evidence that the children were thriving with S.B., that S.B. had generally provided a safe and stable home for the children for two years, and that the placement with S.B. was much more successful than previous placements had been.

¶24 In sum, A.W. does not persuade me that the February 2014 agreement or the circumstances surrounding it undermine the reasonableness of the circuit court's conclusion in March 2015 that termination of A.W.'s parental rights was in the children's best interests.

Conclusion

¶25 For all of the reasons stated above, I affirm the circuit court's orders terminating A.W.'s parental rights to R.M.-W. and B.M.

By the Court.—Orders affirmed.

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