**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**March 18, 2010**

**David R. Schanker**
**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. 2009AP2038**
**2009AP2039**

**Cir. Ct. No. 2008TP59**

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

---

**NO. 2009AP2038**

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

**DANE COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**V.**

**JAMES M.,**

**RESPONDENT-APPELLANT.**

---

**NO. 2009AP2039**

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

**DANE COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**V.**

**DIANE G.,**

**RESPONDENT-APPELLANT.**

---

APPEAL from orders of the circuit court for Dane County: STEVEN D. EBERT, Judge. *Affirmed.*

¶1 VERGERONT, J.[1] James M. and Diane G. are the parents of Cheyenne M. and the parental rights of each were terminated. Both appeal, contending that their respective pleas to the ground for termination were not knowing and voluntary because the court did not inform them and they did not understand that the plea would result in the loss of their substantive due process right to parent their child. In addition, James contends that his plea was invalid because the court did not perform a mandatory duty under WIS. STAT. § 48.422(7)(bm) (2007-08), which provides that, before accepting a plea, the court in certain circumstances must request and review a report on payments made to the child's parents by the proposed adoptive parents. For the following reasons, we reject these arguments and affirm.[2]

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] We hereby sua sponte consolidate the two appeals for purposes of disposition.

## BACKGROUND

¶2 On June 12, 2008, the Dane County Department of Human Services filed a petition seeking to terminate the parental rights of James and Diane to Cheyenne, born May 31, 2004. The petition alleged two grounds: that Cheyenne was a child in need of protection and services (CHIPS) under WIS. STAT. § 48.415(2), and that each parent had failed to assume parental responsibility under § 48.415(6). On January 20, 2009, both parents appeared with counsel for pretrial motions. Each attorney informed the court that her client wished to enter a plea to the grounds for termination and obtain a date for the dispositional hearing in which each parent wished to participate. Counsel for Dane County advised the court that it wished to voluntarily dismiss the failure-to-assume ground and proceed only on the CHIPS ground. Both James' attorney and Diane's attorney said they had no objection.

¶3 The court then engaged in the following colloquy with James and Diane.

> THE COURT: All right. Then I started to explain to the parents that I'm going to go through the plea colloquy and if you could answer first, Ms. [G.], and Mr. [M.] second. Let me ask the parents then, and point out that the petition alleges in the first ground for parental rights, the second one now being dismissed, that Cheyenne [M.] was adjudged to be a child in need of protection and service on September 15, 2006, that she had been placed outside her parental home on March 17, 2006, and that she has continued in placement outside her parental home by Court order since September 15, 2006. To that allegation how do you plead?
>
> MS. [G.]: No contest, Your Honor.
>
> MR. [M.[: No contest.
>
> THE COURT: Do you understand that with a plea of no contest that you are not contesting the State's ability to

prove the facts stated in the petition at least with respect to Count 1?

MS. [G.]: Yes, Your Honor.

MR. [M.]: No contest.

THE COURT: But do you understand that that relieves the State from having to prove those allegations regarding the finding of CHIPS in the time period that Cheyenne has been out of the parental home?

MR. [M.]: Yes.

THE COURT: And by entering into this stipulation or plea, do you understand that you're waiving your right to have a jury decide this issue, the first phase which is the grounds phase?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes, Your Honor.

THE COURT: Is that something that you've had enough time to discuss with your attorney? We'll go with Ms. [G.] first.

MS. [G.]: Just since we got here today. I haven't really had time to think about it, it was like five minutes ago.

THE COURT: Well, I know that you've been discussing this with your attorneys for 40 minutes. Are you indicating that you need more time?

MS. [G.]: I'm not really sure. I told them I would do whatever they thought was right so I guess it's okay.

THE COURT: Ms. Fruth [counsel for Diane], would you like – Were you going to say something?

MS. FRUTH: Just that, Your Honor, in the last, I don't know how many weeks, we've kind of gone over the different issues in the case, the different conditions of return, the evidence and things like that. So while I'm respectfully not trying to disagree with her, I think these are issues that have sort of been in play for some time. And, as I said, I'm not trying to disagree with what Ms. [G.] is saying.

THE COURT: Ms. [G.], how old are you?

MS. [G.]: I'll be 50 in February.

THE COURT: Mr. [M.]?

MR. [M.]: I'll be 55 January 29th, this month.

THE COURT: What is your highest level of education or last grade completed?

MS. [G.]: 12, Your Honor.

MR. [M.]: 12.

THE COURT: Are you, either of you under any psychiatric treatment at this time?

MS. [G.]: No, Your Honor.

MR. [M.]: No.

THE COURT: Have you consumed any alcohol or, any alcohol or drugs in the last 24 hours?

MS. [G.]: No, Your Honor.

MR. [M.]: No, Your Honor.

THE COURT: How about medication?

MS. [G.]: No, Your Honor.

MR. [M.]: Just what my doctors prescribe me, high blood pressure medicine, antidepressants.

THE COURT: Ms. [G.]?

MS. [G.]: No, Your Honor.

THE COURT: Does that medication, Mr. [M.], affect your ability to understand what you're doing today?

MR. [M.]: No, it doesn't.

THE COURT: And you both read and write English; is that correct?

MR. [M.]: Yes.

MS. [G.]: Yes.

THE COURT: Okay. Let me ask Ms. [G.] to respond first.

MR. [M.]: I'm sorry, Your Honor.

THE COURT: That's okay, it's just for the court reporter's benefit in taking it down. And do you understand that the purpose of today's hearing was originally to hear arguments on pretrial motions?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes.

THE COURT: And I think I've asked you and maybe I haven't but I'll ask again then, have you, do you understand that the first phase, the grounds phase is a jury trial phase? Do you understand that?

MS. [G.]: Yes, Your Honor.

MR. [M.]: Yes, Your Honor.

THE COURT: And do you understand that you're waiving that phase of the hearing today?

MS. [G.]: Yes, Judge.

MR. [M.]: I'm doing what my lawyer talked to me about.

THE COURT: Well, but do you agree with what your lawyer is recommending?

MR. [M.]: Yes, I do.

THE COURT: And you understand that the second phase that would be conducted in this case would be a phase that is, that the main emphasis on that phase is what would be in Cheyenne's best interests?

MS. [G.]: Yes, Your Honor.

MR. [M.]: Yes, Your Honor.

THE COURT: Do you understand that ultimately if the Court were to determine that it would be in Cheyenne's best interests to have your parental rights terminated, that you would be losing certain rights you would have? You would lose the right to have visitation with your child, do you understand that?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes, Your Honor.

THE COURT: And you would also lose the right to have any information about your child including where she was living, where she was going to school or information about her health?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes, Your Honor.

THE COURT: You would also be losing the right to make any decisions for your child, do you understand that?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes, Your Honor.

THE COURT: And your child would be losing the right to inherit from you?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes, Your Honor.

THE COURT: And conversely you would be losing the right to inherit from your child?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes, Your Honor.

THE COURT: And you would have no further financial responsibility for your child, do you understand that?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes.

THE COURT: And also you would be losing the right to have custody of the child, do you understand that?

MS. [G.]: Yes, sir.

MR. [M.]: Yes, Your Honor.

THE COURT: The next – Strike that. Ms. Guinn [counsel for Dane County], are there questions you would like to ask?

MS. GUINN: Just for the record, Your Honor, I would like to make sure that the parents understand that if their parental rights are terminated after the second phase of the

hearing, because they've pled no contest today if they lose at the second half, they will be found unfit. Just so they're aware of that. But before we get to that, just for the record, I believe that the Department and the guardian ad litem and the attorneys and the parents have been in communication with Cheyenne's foster parents and, at this point, the foster parents have indicated that they would like to continue contact between Cheyenne and her parents after the TPR, but I want it to be perfectly clear to the parents that should their parental rights be terminated, we can't guarantee that that's going to happen and that they won't be able to take that issue back into Court.

THE COURT: And is that something that you understand, Ms. [G.]?

MS. [G.]: Our lawyers already explained this, Judge.

THE COURT: And did you understand that as well, Mr. [M.]?

MR. [M.]: Yes, sir.

THE COURT: Ms. Doyle [guardian-ad-litem], is there anything you would like to ask?

MS. DOYLE: The only thing that I would just like to state is just to emphasize, and I'm sure the parents understand too because we've had a number of discussions because I have with their lawyers and I'm sure they have talked to their clients, by stipulating to these grounds, they are not doing that in exchange for this continued contact with Cheyenne. And I would like it if you would ask them this, that they understand that it is not an exchange, that they've made this decision to stipulate to grounds independently of whatever might occur with regard to communication in the future between Cheyenne and her foster parents and them.

THE COURT: Do you understand that, Ms. [G.]?

MS. [G.]: Yes, I do, Judge.

THE COURT: And do you agree with that?

MS. [G.]: Yes, Judge.

THE COURT: Mr. [M.]?

MS. DOYLE: Your Honor, may I just add, this is something that the foster parents have freely offered and I

think will continue. I just want it known for the record this wasn't offered and they said okay then well, I think the parents understand that. I just want it clear on the record that the foster parents, this is their decision and they can choose to do this but it is not premised upon the parents' willingness to stipulate to grounds.

MS. BOSBEN [counsel for James]: Your Honor, Mr. [M.] just wanted to know if the visits would continue between now and the disposition. My understanding is they would because his rights have not technically been terminated yet. If they were, they wouldn't necessarily be.

THE COURT: The answer to your second part of the question is right, they're not – their parental rights have not, are not terminated.

MS. BOSBEN: Right.

THE COURT: And I would defer to the social worker as to the continued visitation.

MS. GUINN: Yes, Your Honor.

THE COURT: They will continue?

MS. BLANCK [social worker]: Visitation would continue, yes.

MS. BOSBEN: And then, sorry, as to Ms. Doyle's question?

MR. [M.]: No, there is no agreement with us, the foster parents and us about if our parental rights have been terminated, right.

THE COURT: Well, in entering a stipulation and pleas at this time, you are, I've already talked about the fact that you're waiving the right to have a jury decide the issues and those issues are No. 1, the issue about whether or not Cheyenne had been adjudged to be a child in need of protection and services and had been placed outside the home for a period of 6 months or longer. So you understand you're not contesting that?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes, Your Honor.

THE COURT: Another issue that would be before the jury if this were to go to a jury is whether or not the Department made a reasonable effort to provide services ordered by the Court. Do you understand that?

MS. [G.]: Yes, Judge.

THE COURT: Mr. [M.]?

MR. [M.]: Yes, Your Honor.

THE COURT: All right. And the last issue that would be before the jury which wouldn't now if you waive the jury and enter your pleas or stipulation, is whether or not either of you have failed to meet conditions established, the conditions of return. Do you understand that's an issue that will now be waived at this point?

MS. [G.]: Yes, Judge.

MR. [M.]: Yes, Your Honor.

THE COURT: And, lastly, whether or not there would be a substantial likelihood that either of you will not meet the conditions of return within a 9-month period?

MS. [G.]: I understand, Judge.

MR. [M.]: I believe we can.

THE COURT: But you're waiving the right to make the State prove that?

MR. [M.]: Yes, Your Honor.

THE COURT: All right. Do you understand that?

MR. [M.]: Yes, Your Honor.

MS. GUINN: Just to clarify for the record, Your Honor, this is under the old TPR warnings so it would be 12 months instead of 9 months.

THE COURT: Okay. Thank you for the correction. And you understand that it's 12 months rather than 9?

MS. [G.]: Yes, Your Honor.

MR. [M.]: Yes, Your Honor.

> THE COURT: Ms. Fruth, do you believe you've had enough time to discuss these same topics with Ms. [G.]?
>
> MS. FRUTH: Yes, sir, I have.
>
> THE COURT: And Ms. Bosben, same question?
>
> MS. FRUTH [sic]: Yes, Your Honor.
>
> THE COURT: All right. Then I'm going to accept what is either labeled as a stipulation or pleas to the grounds phase and then we'll set this matter over for a dispositional hearing. Do you need to make any other findings, Ms. Guinn?
>
> MS. GUINN: Yes, Your Honor. I would request a finding that the pleas were knowingly and freely and voluntarily entered and I just need to find out for the record if the attorneys and their parties are going to stipulate that the petition forms a factual basis for the Court to make a finding as to the continuing CHIPS ground or whether or not I need to have the worker testify as to grounds. The Court can make that independent determination.
>
> THE COURT: Ms. Fruth?
>
> MS. FRUTH: One moment, Your Honor. Your Honor, we would so stipulate.
>
> THE COURT: Thank you. Ms. Bosben?
>
> MS. FRUTH [sic]: We'll also stipulate, Your Honor.
>
> THE COURT: I guess I was thinking it rather than stating it. I am finding that the pleas are entered knowingly and voluntarily and that there is then a factual basis in support of the pleas. And how much time do you think will be needed for dispositional phase?

¶4 The court then proceeded to schedule the dispositional hearing with the attorneys. At the dispositional hearing, both James and Diane appeared with counsel and both testified. At the close of the dispositional hearing the court determined that it was in Cheyenne's best interest to terminate the parental rights of both James and Diane, and it entered an order accordingly.

¶5 Post-disposition, James and Diane each filed a motion to withdraw the plea each entered. Both contended that their pleas were not knowingly and voluntarily made because they did not know that the acceptance of their pleas would result in a finding of parental unfitness and the loss of their substantive due process right to parent their child. In addition, James asserted his plea was invalid because the court failed to make the inquiries and request the report about proposed adoptive parents required by WIS. STAT. § 48.422(7)(bm).

¶6 The circuit court concluded that both James and Diane had established a prima facie case for plea withdrawal on the ground that they were uninformed that they would be found unfit parents upon entry of their pleas. The court determined that a circuit court is obligated to include this in its colloquy, that this was not done, and that each parent had alleged he/she did not know this. After an evidentiary hearing on this ground, the court determined that the County had established by clear and convincing evidence that James knew he would be found an unfit parent as a result of his plea. The court made the same finding with respect to Diane.

¶7 With respect to the parents' contention on their substantive due process rights, the court concluded they had not made a prima facie case. The court reasoned that the termination of parental rights was only a potential outcome of a finding of unfitness and a circuit court had no obligation to advise them of a potential loss of a constitutional right.

¶8 With respect to James' contention based on the court's failure to make the inquires and request the report required by WIS. STAT. § 48.422(7)(bm), the court concluded that James had not made a prima facie case because he did not allege that he did not know or understand this information.

¶9 Based on these rulings, the circuit court denied the motion of each party for withdrawal of his/her plea.

## DISCUSSION

¶10 On appeal James and Diane each contend that the circuit court erred in concluding that the court was not obligated to inform each that the plea would result in the loss of the substantive due process right of each to parent Cheyenne. A correct ruling on this issue, they assert, leads to the conclusion that they did make a prima facie case that their pleas were not knowing and voluntary. James makes the additional argument that the court erred in its ruling with respect to WIS. STAT. § 48.422(7)(bm) because his knowledge and understanding is irrelevant to the obligation imposed on the court and the County in this subsection.

### I. Knowing and Voluntary Plea—James and Diane

¶11 Prior to accepting a plea of no contest to a ground for termination of parental rights, the circuit court must undertake a personal colloquy with the parent in accordance with WIS. STAT. § 48.422(7). § 48.422(3); ***Kenosha County DHS v. Jodie W.***, 2006 WI 93, ¶25, 293 Wis. 2d 530, 716 N.W.2d 845. Subsection (7) provides:

> (7) 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.

¶12 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.

¶13 When parents allege that their no-contest plea was not knowing or voluntary, the principles and analysis set forth in ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), apply. ***Jodie W.***, 293 Wis. 2d 530, ¶24 n.14. Under ***Bangert*** parents must make a prima facie showing by establishing that the court failed to inform them of their rights and alleging that they did not understand the rights that they were waiving. ***Id.***, ¶26. Once the parent makes this showing, the burden shifts to the petitioner to prove that the parent made his plea knowingly, voluntarily, and intelligently. ***Id.***

¶14 Whether a parent has established a prima facie case because of a deficiency in the colloquy presents a question of law, which this court reviews de novo. ***Oneida County DSS v. Therese S.***, 2008 WI App 159, ¶7, 314 Wis. 2d 493, 762 N.W.2d 122. To the extent the interpretation of a statute is involved, that is also a question of law. ***Oneida County DSS v. Nicole W.***, 2007 WI 30, ¶9, 299 Wis. 2d 637, 728 N.W.2d 652.

¶15 James and Diane contend that they have a fundamental right to parent their child, a right protected by the substantive due process clause of the

United States Constitution, and they lose this right once they are found unfit. They assert that, because of this and because a finding of unfitness is required once the court accepts their pleas, the court was obligated to inform them before accepting their plea that, upon the finding of unfitness, they would lose their fundamental right to parent their child. They disagree with the circuit court's analysis that this loss does not occur until their parental rights are terminated and is therefore only a potential loss at the time they enter their pleas. They assert that, even though their parental rights cannot be terminated until after the dispositional hearing, they have lost their fundamental right to parent their child upon the acceptance of their plea.

¶16 An analysis of this issue requires an examination of the substantive and procedural components of the constitutional right to parent one's child and the manner in which the legislature has chosen to protect those rights by statute.

¶17 As James and Diane assert, a parent who has a substantial relationship with his or her child has a fundamental liberty interest in parenting the child, and that interest is protected by the substantive due process clause of the Fourteenth Amendment to the United States Constitution. ***Mrs. R. v. Mr. and Mrs. B***., 102 Wis. 2d 118, 136, 306 N.W.2d 46 (1981); ***L.K. v. B.B***., 113 Wis. 2d 429, 447-48, 335 N.W.2d 846 (1983). Because termination of parental rights interferes with a fundamental liberty interest, the State must establish that a parent is unfit before terminating his or her parental rights. ***Mrs. R.***, 102 Wis. 2d at 136.[3]

[3] The fundamental liberty interest at stake also requires procedural protections in the proceeding to terminate parental rights. *See* ***Sheboygan County DHHS v. Julie A.B.***, 2002 WI 95, ¶¶22-23, 255 Wis. 2d 170, 648 N.W.2d 402. The requirements of procedural due process are not at issue on this appeal.

¶18 WISCONSIN STAT. § 48.415 sets forth various grounds for termination of parental rights, and § 48.424(4) requires that the circuit court find the parent unfit upon finding that one of those grounds exists.[4] In the context of a plea, once the court accepts a no contest plea at the grounds stage, the parent must be found unfit. ***Therese S***., 314 Wis. 2d 493, ¶9. In this first phase, often referred to as the "grounds phase," the "parent's rights are paramount … the burden is on the government, and the parent enjoys a full complement of procedural rights." ***Sheboygan County DHHS v. Julie A.B.,*** 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402.

¶19 After a finding of unfitness, the proceeding moves to the second phase, the dispositional hearing, where the court determines whether termination of parental rights is in the child's best interests based on the factors prescribed in WIS. STAT. § 48.426. ***Id.***, ¶28. "The outcome of this hearing is not pre-determined, but the focus shifts to the interests of the child," because the prevailing factor considered by the court is the best interests of the child. ***Id.***; § 48.426(1)-(2). At the dispositional hearing the court may enter an order

[4] Although WIS. STAT. § 48.424(4) requires a finding of unfitness upon a finding that one of the statutory grounds exists, a finding that one of the grounds exists is not conclusive on the issue of whether the substantive constitutional standard for termination has been met. Because termination of parental rights interferes with the fundamental liberty interest of parenting one's child, the substantive grounds for termination must be narrowly tailored to serve the compelling governmental interest of protecting children from unfit parents. ***Dane County DHS v. Ponn P***., 2005 WI 32, ¶20, 279 Wis. 2d 169, 694 N.W.2d 344. Even where there is no dispute that one of the statutory grounds exist, application of that statutory ground may violate the substantive due process right of a parent. *See, e.g.*, ***Monroe County DHS v. Kelli B***., 2004 WI 48, ¶43, 271 Wis. 2d 51, 678 N.W.2d 831 (concluding that § 48.415(7), "Incestuous Parenthood," as applied to a victim of incest perpetrated by her father is not narrowly tailored to advance a compelling governmental interest and therefore violates her right to substantive due process.) Neither James nor Diane contends that the CHIPS ground, § 48.415(2), as applied to them, violates their right to substantive due process.

terminating parental rights, § 48.427(3), or it may dismiss the petition "if it finds that the evidence does not warrant the termination of parental rights." § 48.427(2).

¶20 Thus, while it may be true that, as a matter of constitutional law, once a parent has been found unfit, it would be permissible for a court to immediately terminate parental rights, Wisconsin statutory law does not permit that. There must be a dispositional hearing after which the court has the authority to dismiss the petition notwithstanding a finding of unfitness. Indeed, WIS. STAT. § 48.424(4) expressly provides that "[a] finding of unfitness shall not preclude a dismissal of a petition under s. 48.427(2)." Not until the court enters an order terminating parental rights, if that occurs, does the parent lose the right to parent his or her child. This is clear if we posit a situation in which there is a finding of unfitness but, at the dispositional phase, the court decides the evidence does not warrant termination of parental rights and dismisses the petition. There would be no question in that case that, after dismissal, the parent had the fundamental right, as a matter of constitutional law, to parent his or her child.

¶21 Turning to the facts in this case, the court here ascertained that James and Diane understood that they were waiving the right to have the County prove, before a jury, each of the elements of the CHIPS ground, which the court described. The court also ascertained that each understood that in the next phase the emphasis would be on the child's best interests, and the court could determine that it would be in Cheyenne's best interests to terminate the parental rights of one or both parents. The court then specified all the rights each would lose if his/her parental rights were terminated and ascertained that each understood those. There was additional discussion emphasizing that, while the foster parents were willing to allow them to have contact with Cheyenne after their parental rights were

terminated, they had no right to this and the foster parents could change their mind. The court ascertained they understood this.

¶22 This colloquy effectively ascertained that James and Diane each understood that, after the entry and acceptance of their plea, the only issue that would remain would be Cheyenne's best interests and that the court could decide that it was in her best interests to terminate the right of each to parent her.

¶23 In addition, a court is obligated to ascertain that a parent understands that acceptance of their plea will result in a finding of unfitness. ***Therese S.***, 314 Wis. 2d 493, ¶10. Although the circuit court here did not do this in its colloquy with James and Diane, the court found each understood this, and neither appeals on this ground.

¶24 Because Wisconsin statutory law does not permit a court to terminate parental rights upon a finding of unfitness without completing the dispositional phase, we see no rationale for requiring a court to inform a parent that a finding of unfitness results in the automatic loss of the constitutional right to parent. This is confusing information, given that a parent does not lose this right under Wisconsin statutory law until an order is entered terminating his or her parental rights. What is important for a parent to understand is that, with the acceptance of his or her plea, the parent no longer has the right to have the State prove unfitness, there will be a finding of unfitness upon acceptance of their plea, and the only issue that remains is the best interest of the child, which the court could decide requires a termination of parental rights. The colloquy here (apart from the absence of reference to the finding of unfitness) ascertained that James and Diane each understood this. Knowledge that, as a matter of constitutional law, a court *could* terminate parental rights upon the acceptance of a plea and a finding

of unfitness is not a meaningful addition to the knowledge that a Wisconsin parent should have in order to enter a knowing and voluntary plea, given that this is not permitted in Wisconsin.

¶25 Our conclusion is supported by the supreme court's analysis of a plea in ***Waukesha County v. Steven H***., 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607. There the circuit court ascertained that the parent understood the following: (1) by waiving the fact-finding hearing he was agreeing not to contest the specific allegations relating to each element of the CHIPS ground for termination; (2) if he did contest the allegations, the county would have to prove the facts with clear and convincing evidence; and (3) he still had the right to contest the termination of his parental rights at the dispositional hearing. ***Id.***, ¶¶46-48 The circuit court also established that no promises or threats were made to elicit this waiver. ***Id.***, ¶48. The supreme court concluded that this colloquy was sufficient to show that the parent "understood the nature of the acts alleged in the petition and the potential disposition and that he voluntarily, and with understanding, waived his right to contest the fact-finding hearing." ***Id.***, ¶49.[5] There is no suggestion that the colloquy was deficient because the court did not explain and make sure the parent understood that, as a result of the plea, he would lose his substantive due process right to parent his child.

[5] ***Waukesha County v. Steven H***., 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607, was decided before we held in ***Oneida DSS v. Therese S***., 2008 WI App 159, ¶10, 314 Wis. 2d 493, 762 N.W.2d 122, that, in order for a no contest plea at the "ground stage" to be knowingly entered, parents must understand that acceptance of their plea will result in a finding of unfitness.

## II. Failure to Comply with WIS. STAT. § 48.422(7)(bm)—James

¶26 WISCONSIN STAT. § 48.422(7)(bm) provides in full:

> (7) Before accepting an admission of the alleged facts in a petition, the court shall:
>
> ….
>
> (bm) Establish whether a proposed adoptive parent of the child has been identified. If a proposed adoptive parent of the child has been identified and the proposed adoptive parent is not a relative of the child, the court shall order the petitioner to submit a report to the court containing the information specified in s. 48.913(7). The court shall review the report to determine whether any payments or agreement to make payments set forth in the report are coercive to the birth parent of the child or to an alleged [or] presumed father of the child or are impermissible under s. 48.913(4).[6] [Footnote added.] Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall dismiss the petition or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24(1). This paragraph does not apply if the petition was filed with a petition for adoptive placement under s. 48.837 (2).

¶27 The required contents of the report are:

> Report to the court; contents required. The report required under sub. (6) shall include a list of all transfers of anything

[6] WISCONSIN STAT. § 48.913(4) provides: "Other payments prohibited. The proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may not make any payments to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child except as provided in subs. (1) and (2)."

> of value made or agreed to be made by the proposed adoptive parents or by a person acting on their behalf to a birth parent of the child, an alleged or presumed father of the child or the child, on behalf of a birth parent of the child, an alleged or presumed father of the child or the child, or to any other person in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents. The report shall be itemized and shall show the goods or services for which payment was made or agreed to be made. The report shall include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any payment from the proposed adoptive parents or a person acting on behalf of the proposed adoptive parents in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents.

WIS. STAT. § 48.913(7).

¶28 James asserts his plea was invalid because, before accepting his plea, the court did not establish whether there was a proposed adoptive parent and did not order the County to submit the report required by WIS. STAT. § 48.422(7)(bm). He contends the circuit court erred in dismissing his motion on this ground under a ***Bangert*** analysis because this provision is not directed to informing a parent of his or her rights. Rather, he asserts, this subsection imposes an obligation on the court, before accepting a plea, to order the County to submit the prescribed report if a proposed adoptive parent has been identified who is not a relative of the child, and the court's failure to do this entitles him to withdraw his plea.

¶29 The County does not rely on the circuit court's analysis, implicitly conceding that the ***Bangert*** framework is not applicable. Instead, the County responds that James was presumably aware before the plea hearing of the foster mother's willingness to adopt Cheyenne, was informed of it at the dispositional hearing, and at no time asked that the report be provided. The County contends

that James does not claim he was prejudiced and therefore he is not entitled to withdraw his plea. The County relies on ***Steven H***., 233 Wis. 2d 344. There, the supreme court concluded that the circuit court erred in failing to hear testimony in support of the allegations in the petition after the parent stated he was not contesting them, as required by WIS. STAT. § 48.422(3). However, the supreme court held the parent was not entitled to relief on this ground because he was not prejudiced. ***Id.***, ¶¶56-60.

¶30 James replies that the record does not show that he was aware before he entered the plea of the foster mother's willingness to adopt Cheyenne and that "to date" the County has not submitted the required report and the circuit court has not made the determination required by WIS. STAT. § 48.422(7)(bm). Therefore, he contends, this court cannot conclude James was not prejudiced by the error.

¶31 We agree with James that the record does not show compliance with WIS. STAT. § 48.422(7)(bm), but we are not persuaded that he is entitled to withdraw his plea as a result. James' argument overlooks the significant fact that the report required by § 48.422(7)(bm) is to disclose transfers of anything of value made or agreed to be made by or on behalf of the proposed adoptive parent *to James*. *See* § 48.913(7). The evident purpose is to ensure that James is not entering a plea because of such transfers or promises. The court is also required to "[e]stablish whether any promises or threats were made to elicit an admission," § 48.422(7)(b), which can be accomplished by addressing the parent entering the plea. Subsection (7)(bm) provides additional protection from coercion that might arise from the proposed adoptive parent giving or promising something of value to the birth parent, which the birth parent might not disclose to the court.

¶32 If James did not know there was a proposed adoptive parent before he entered his plea, then it is difficult to see how he could have received or been promised anything of value from or on behalf of the proposed adoptive parent. If he did know there was a proposed adoptive parent when he entered his plea, then he must know whether or not he received or was promised something of value from or on behalf of that individual. However, he does not state whether he did or not. His position, as we understand it, is that, regardless of whether he received or was promised anything, he is entitled to withdraw his plea because the court did not have this information at the time he entered his plea. But he does not present a developed argument explaining why this result is required either by the statute or case law or is necessary to protect his rights or interests. In the absence of a more developed argument, we conclude James is not entitled to withdraw his plea solely because the court, before accepting his plea, did not comply with WIS. STAT. § 48.422(7)(bm).

¶33 We emphasize that our conclusion does not alter the fact that circuit courts and petitioners are obligated to comply with WIS. STAT. § 48.422(7)(bm) before the court accepts a plea.

## CONCLUSION

¶34 We affirm the circuit court's denial of James' and Diane's motions for post-disposition relief and we affirm the order terminating their parental rights.

*By the Court.*—Orders affirmed.

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