

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 24, 2026

Samuel A. Christensen
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 No. 2025AP2519
STATE OF WISCONSIN**

Cir. Ct. No. 2024JG23

**IN COURT OF APPEALS
DISTRICT IV**

IN THE MATTER OF THE GUARDIANSHIP OF G. L. W.:

MONROE COUNTY,

PETITIONER-RESPONDENT,

V.

T. L. B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Monroe County:
RICHARD A. RADCLIFFE, Judge. *Affirmed.*

¶1 BLANCHARD, J.¹ T.L.B. appeals an order of the circuit court appointing a guardian of the person for her minor child, G.L.W., pursuant to the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

court's authority under WIS. STAT. § 48.977. T.L.B. argues that the court erred by applying incorrect legal standards in determining whether a guardianship was available. T.L.B. also contends that the court erred by concluding that there was clear and convincing evidence that she and her spouse, G.L.B., in managing the household and childcare together, were unable to parent G.L.W. T.L.B. further argues that the court clearly erred in finding that: the Monroe County Department of Human Services (the County) undertook reasonable efforts to make it possible for the parents to reunite with G.L.W.; and future efforts to reunite G.L.W. with the parents were not likely to be successful. I conclude that the court did not err in any of the ways argued by T.L.B., and accordingly the order is affirmed.²

BACKGROUND

¶2 G.L.W. was born in January 2021. While still at the hospital following birth, G.L.W. was removed from the custody of T.L.B. and G.L.B. Shortly after G.L.W.'s removal, T.L.B. suffered a stroke. G.L.W.'s out-of-home placement continued pursuant to a dispositional order that was entered pursuant to CHIPS proceedings in June 2021.³

¶3 G.L.W. was placed with an aunt and uncle in October 2021, and has remained placed with them since then.

² G.L.B. separately appeals the circuit court's order appointing a guardian for G.L.W., in appeal No. 2025AP2239, which this court addresses in a separate opinion that is being issued simultaneously with this opinion.

³ “‘CHIPS’ is a commonly used acronym for ‘child in need of protection or services.’” *Eau Claire Cnty. DHS v. S.E.*, 2020 WI App 39, ¶1 n.3, 392 Wis. 2d 726, 946 N.W.2d 155, *aff'd*, 2021 WI 56, 397 Wis. 2d 462, 960 N.W.2d 391. Procedures specified in WIS. STAT. ch. 48 permit a circuit court to find that a child is in need of protection or services and, when such a finding is made, the court shall issue a dispositional order that can direct that the child be placed outside of the home of the child's parents. See WIS. STAT. §§ 48.345, 48.355.

¶4 T.L.B. is an enrolled member of the Ho-Chunk Nation. This makes G.L.W. eligible for enrollment with the Nation, although he was not enrolled at any pertinent time during this litigation. Because G.L.W. is eligible for enrollment, the Wisconsin and federal versions of the Indian Child Welfare Act apply to child custody proceedings involving G.L.W. See WIS. STAT. § 48.02(8g)(b) (defining “Indian child” to include any child “who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe”); WIS. STAT. § 48.028(3)(a) (describing applicability of “Indian child welfare” statute to “Indian child custody proceedings”).

¶5 In September 2024, the County commenced this action, petitioning the circuit court to appoint the aunt and uncle as G.L.W.’s joint guardians under WIS. STAT. § 48.977. The petition alleged facts that the County contended satisfied the grounds necessary to allow the court to appoint a guardian. See § 48.977(2) (the circuit court “may” appoint a guardian if the conditions listed in sub. (2) are found by the court).

¶6 The circuit court held a three-day trial to determine if the conditions required for appointing a guardian were present. See WIS. STAT. § 48.977(2), (4)(d). The County called witnesses who included three “parent coaches” employed by private service providers. These coaches worked with G.L.W.’s parents. The County also called two social workers employed by the County who had also worked with the parents. T.L.B. and G.L.B. also testified.

¶7 The circuit court found that each of the necessary conditions for appointing a guardian under WIS. STAT. § 48.977(2) were met. The court later held a disposition hearing at which it appointed the aunt and uncle as guardians for

G.L.W. See § 48.977(4)(fm)-(h) (describing procedures for disposition phase of a § 48.977 action).

¶8 T.L.B. appeals.

DISCUSSION

¶9 Each of T.L.B.’s arguments on appeal challenges the circuit court’s determination, following trial, that the conditions for the appointment of a guardian under WIS. STAT. § 48.977(2) were met. I describe pertinent legal standards before addressing these arguments.

¶10 WISCONSIN STAT. § 48.977 permits a circuit court to appoint a guardian of a child if the court finds all of the conditions listed in § 48.977(2) have been proven by clear and convincing evidence. See § 48.977(2), (4)(d). This court upholds the factual findings of a circuit court unless clearly erroneous. **Robin K. v. Lamanda M.**, 2006 WI 68, ¶12, 291 Wis. 2d 333, 718 N.W.2d 38. This court reviews de novo whether the facts found by a circuit court constitute clear and convincing evidence that meet the statutory conditions in § 48.977(2). See **Waukesha County v. M.A.C.**, 2024 WI 30, ¶66, 412 Wis. 2d 462, 8 N.W.3d 365 (reviewing de novo whether county met its burden to prove by clear convincing evidence the statutory elements required for involuntary commitment); **Brandt v. Brandt**, 145 Wis. 2d 394, 409, 427 N.W.2d 126 (Ct. App. 1988) (stating that whether a party has met the burden of proof presents an issue of law in the context of applying the clear and convincing evidence level of burden).⁴

⁴ As noted above, T.L.B. appears to limit her challenge to the circuit court’s rulings regarding whether the statutory requirements of WIS. STAT. § 48.977(2) have been met, and she does not appear to argue that the court erroneously exercised its discretion in deciding to appoint
(continued)

¶11 It is not disputed that the following WIS. STAT. § 48.977(2) conditions apply here:

- G.L.W. is a child who “has been adjudged to be in need of protection or services.” See § 48.977(2)(a).
- Pursuant to the CHIPS proceedings, G.L.W. was placed with the aunt and uncle, who were nominated to be his guardians, and who were likely to be willing and able to serve as guardians “for an extended period of time.” See § 48.977(2)(b)-(c).
- Termination of the parents’ rights to G.L.W. was in G.L.W.’s best interest. See § 48.977(2)(d).

¶12 What is disputed are two of the WIS. STAT. § 48.977(2) conditions. The first is whether, as pertinent here, both of G.L.W.’s parents were “unable to carry out the duties of a guardian.” See § 48.977(2)(e).⁵ While the circuit court’s pertinent findings focused on both T.L.B. and G.L.B.’s abilities as guardians, as is necessary under § 48.977(2)(e), T.L.B. in this appeal challenges the court’s

a guardian. I note that a circuit court’s ultimate decision to appoint a guardian under § 48.977 is a discretionary decision, as is the case with other child custody decisions. See § 48.977(2) (explaining that, when specified conditions are met, a court “may” appoint a guardian); see also *Cynthia H. v. Joshua O.*, 2009 WI App 176, ¶33, 322 Wis. 2d 615, 777 N.W.2d 664 (“A custody award will be upset only if the appellate court is convinced that the findings of fact upon which the custody determination is based are clearly erroneous, WIS. STAT. § 805.17(2), or that the custody determination represents” a clearly erroneous exercise of discretion. (citing *Barstad v. Frazier*, 118 Wis. 2d 549, 554, 348 N.W.2d 479 (1984))).

⁵ WISCONSIN STAT. § 48.977(2)(e), in pertinent part, specifies as a condition for appointment of a guardian that “both parents are neglecting, refusing[,] or unable to carry out the duties of a guardian.” The circuit court found that T.L.B. and G.L.B. were not “neglecting” or “refusing” to carry out the duties of a guardian. The County does not argue that neglect or refusal to carry out the duties of a guardian could be alternative grounds to affirm the circuit court.

findings with arguments that generally involve her own ability as a guardian, or the abilities of the parents when seen as a unit—without making arguments challenging findings that are exclusive to G.L.B.

¶13 The second disputed condition, as I discuss in further detail below, relates to whether the County “made reasonable efforts to make it possible for [G.L.W.] to return” to the parents’ residence, whether it was likely that G.L.W. would be reunited with his parents, and whether further reunification efforts would be in G.L.W.’s best interest. See WIS. STAT. § 48.977(2)(f).

I. Application of Proper Legal Standards

¶14 T.L.B. argues that the circuit court failed to properly apply pertinent legal standards discussed by our supreme court in *Barstad*. T.L.B. frames this argument first in a more general way and then in a more specific way, and I address each framing in turn.

¶15 In the more general framing, T.L.B. contends that the circuit court failed to apply the following principle noted in *Barstad*. “[I]n custody disputes between parents and third parties ... a parent is entitled to custody of his or her children unless the parent is either unfit or unable to care for the children or there are compelling reasons for awarding custody to a third party.” *Barstad*, 118 Wis. 2d at 568. However, as the County notes, the court recognized the applicability of *Barstad* to the guardianship petition here and also devoted a substantial portion of its discussion to whether the parents were “unable to carry out the duties of a guardian” under WIS. STAT. § 48.977(2)(e). As part of this discussion, the court found that T.L.B. and G.L.B. did not “have the ability to parent this child.” T.L.B. does not develop an argument explaining how the court’s discussion of the ability of the parents to carry out guardianship or parental

duties differs in any meaningful way from the standard under which a “compelling reason[.]” may be found that a parent was “unfit *or unable* to care for the child[.],” as discussed in **Barstad**. See **Barstad**, 118 Wis. 2d at 568 (emphasis added).⁶

¶16 Turning to the more specific framing of T.L.B.’s argument, she contends that the basis for the circuit court’s parental ability finding does not constitute a “compelling reason” for a change in custody under **Barstad**. She emphasizes that the court rested its decision in part on the fact that G.L.W. had greater care needs than an average child, reflected in part by G.L.W. having been diagnosed with autism and related or potentially related conditions. The court gave T.L.B. and G.L.B. credit for some strengths and motivations as parents, but ultimately the court found that they were unable to carry out their duties to provide care for G.L.W. specifically. T.L.B. contends that this reasoning is contrary to the following point made in **Barstad**: “Absent compelling reasons narrowly defined, it is not within the power of the court to displace a fit and able parent simply because in the court’s view someone else could do a ‘better job’ of ‘parenting[.]’” **Barstad**, 118 Wis. 2d at 567-68. T.L.B. contends that the court’s reasoning here

⁶ Following the approach of the circuit court—and absent any argument that the ability to carry out “the duties of a guardian” are distinct from the ability to carry out the duties of a parent for purposes of WIS. STAT. § 48.977(2)(e)—in this opinion I sometimes use the phrase “parental ability” to refer to the court’s discussion related to the topic addressed in § 48.977(2)(e).

Separately, I note that I need not address an argument advanced by the County that G.L.W.’s placement outside the home since soon after G.L.W.’s birth is itself a “compelling reason” to award custody to a third party under **Barstad**. As the County notes, the court in **Barstad** identified an “extended disruption of parental custody” as a “compelling reason” that could justify awarding custody to a third party. See **Barstad**, 118 Wis. 2d at 568. T.L.B. argues in reply that relying on G.L.W.’s placement outside the home here as a basis for appointing a guardian is “circular” and violates her constitutional rights as a parent to due process. Because I conclude that the circuit court’s determination on parental ability under WIS. STAT. § 48.977(2)(e) is equivalent to a “compelling reason,” I need not resolve this dispute.

was essentially that there were others available who could do a better job meeting G.L.W.’s relatively great needs.

¶17 But it is evident from the circuit court’s analysis that it was not comparing the parents’ abilities to those of the potential guardians. Instead, the court assessed the parents’ abilities to meet the basic health and safety needs of G.L.W. The court described the issue before it as whether “these two parents,” with their collective strengths and limitations, “are ... able to carry out the duties of a guardian for [G.L.W.], not for a different child, not in a different household.” For example, the court found that T.L.B. and G.L.B. had “made very little progress in trying to understand” the many and varied needs that G.L.W. has, such as not understanding G.L.W.’s need for nebulizer treatments for lung conditions. The court also found that they were not able to keep their residence clean, that they had a limited ability to follow through on medical appointments, and that they had “difficulty” in maintaining productive relationships with providers.⁷

¶18 G.L.W. may intend to suggest that considering as a factor the individual needs of a child relative to other children is improper under WIS. STAT. § 48.977 or *Barstad*. However, if intended, this argument is not well developed. G.L.W. does not address the scope of “the duties of a guardian” under § 48.977(2)(e), which would be necessary to develop the point.

¶19 This calls for a clarification regarding the legal standard. Under WIS. STAT. § 48.977(5), the default duties of a guardian appointed under § 48.977

⁷ I explain separately below why I reject T.L.B.’s related argument that these findings did not constitute clear and convincing evidence of an inability to carry out the duties of a guardian.

are defined by WIS. STAT. § 48.023. Pertinent here, these duties include, but are not limited to, the “responsibilities of legal custody,” see § 48.023(4), which in turn are defined to include responsibilities “to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care,” see WIS. STAT. § 48.02(12). It is true that these responsibilities refer to the provision of “ordinary” medical care. This, taken in isolation, arguably excludes the need to support G.L.W. in ways that are of special benefit to G.L.W.’s development as a child with autism and related or potentially related conditions. But, implied in the circuit court’s discussion of parental fitness was a finding that keeping up with G.L.W.’s greater needs was not simply beneficial, but important to his safety and overall wellbeing, implicating the more fundamental duty of a guardian “to protect” the child. See § 48.023(12). Seen this way, “protect[ion]” of G.L.W. and tending to his “ordinary medical care” could include taking the steps necessary to account for his conditions in ways that would keep him reasonably safe and healthy. With that clarification in mind, T.L.B. does not show that the circuit court here erred as a matter of law in discussing its assessment of G.L.W.’s individual needs.

II. Evidence of Inability to Parent

¶20 Setting aside T.L.B.’s arguments about the application of *Barstad* to the facts here, she makes the following closely related contention about the circuit court’s parental ability determination. She contends that the record does not support a finding by clear and convincing evidence that she was unable to carry out the duties of a guardian for G.L.W. She asserts that, in order to meet its burden to prove this inability, the County was required to show that leaving T.L.B. in place as guardian “posed a substantial, ongoing threat to [G.L.W.’s] safety or well-being that could not be mitigated through continued supervision and

support.” T.L.B. does not cite legal authority in support of this asserted standard. But, in her favor, I assume without deciding that proving the inability to carry out the duties of a guardian under WIS. STAT. § 48.977(2)(e) in part requires proving the existence of such a threat to G.L.W.’s wellbeing in the absence of a guardianship.

¶21 Bearing that assumption in mind, T.L.B. more specifically challenges the significance of the circuit court’s findings, noted above, regarding the cleanliness of the parents’ residence and their difficulty following through with appointments. She also contends that the court overemphasized what the court considered to be the slow pace of progress that the parents made in improving their ability to meet G.L.W.’s needs. I address each of these points in turn, and conclude that the court’s findings meet the standard of clear and convincing evidence of an inability to carry out the duties of a guardian to G.L.W.

¶22 Regarding the cleanliness of the parents’ residence, T.L.B. argues that the evidence showed only that it was “messy,” full of “clutter,” and lacking in certain kinds of childproofing. And, she contends, such references are not sufficient evidence to establish a threat to G.L.W.’s wellbeing. The problem with T.L.B.’s argument is that the circuit court clearly implied that the court credited evidence that extreme clutter and dirtiness created genuine safety risks for G.L.W. I now summarize some of this evidence.

¶23 One of the parent coaches testified that, as an “ongoing issue,” the parents needed to be coached on “clearing the clutter and maintaining an environment free of hazards and dangerous materials.” This same coach testified, based on notes from other in-home visits with G.L.W., that “[t]here’s no safe place

to sit or lay [G.L.W.] down in the home.” Another parent coach testified why she considered the “cluttered and dirty” state of the residence to be a “safety concern”:

There was not a lot of space for [G.L.W.] to play in. There was clothing and empty drink containers all over the living room, and then when you walked into the kitchen there [were] medicine bottles within reach of [G.L.W].

There were dirty dishes that appeared to have like a white film and mold on them in the sink. There was dirt and old food on the floor, and the house in general was cluttered and hard to move [around] in.

¶24 One of the County’s social workers gave the following testimony. The floors of the residence were “grimy,” and “almost black with dirt,” such that it obviously had not been mopped or swept “in a very long time.” This and similar conditions were a problem because G.L.W. was beginning to crawl. As a result, the social worker decided that the parents’ visits with G.L.W. could no longer take place in the parental residence. The social worker “gave [the parents] time to rectify the situation,” but when this worker returned to the residence on two later occasions, “nothing was changed.” The parents told the social workers that they disagreed with the workers who said that the state of their residence presented safety concerns. T.L.B. specifically told the social worker that T.L.B. “wasn’t going to make any changes” in cleaning up the residence.

¶25 Summing up on the “mess” topic, there was sufficient evidence for the circuit court to find that the state of the parents’ residence amounted to more than, as T.L.B. now puts it, “household disorganization.” Rather, T.L.B. does not show that the court could not reasonably, based on this evidence, view the condition of the residence as a safety concern that contributed to the court’s ruling that Wis. STAT. § 48.977(2)(e) was met.

¶26 Turning to the topic of missed appointments, T.L.B. argues that her struggles with setting and attending appointments did not support a finding that she was unable to carry out the duties of parenting G.L.W. She contends that this difficulty does not necessarily establish an inability to understand and consent to treatment or services. See WIS. STAT. § 48.023 (guardian “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”). But this argument fails to come to grips with the fact that the circuit court separately found that T.L.B. and G.L.B. did not understand the scope of G.L.W.’s needs, in addition to struggling to follow through with making and attending medical appointments. More broadly, T.L.B. does not explain why the court could not reasonably view the trial evidence as establishing that the parents’ difficulty in following through on appointments put G.L.W.’s welfare in at least some risk of harm, especially in light of the court’s finding that G.L.W. has greater needs relative to many children.⁸

¶27 Turning to T.L.B.’s argument regarding the pace of the parents’ progress, this involves the circuit court’s observation that, despite the fact that G.L.W. had been removed from the parents’ residence approximately four years before the trial, progress toward ending the need for that out-of-home placement had been “stagnant.” T.L.B. argues that the court’s comments do not constitute

⁸ Along similar lines, T.L.B. argues that she was given only “passive” support by the County regarding scheduling appointments, which was insufficient given her continued recovery from a stroke shortly after G.L.W.’s birth and T.L.B. having a learning disability. But T.L.B. does not explain how this factor cuts against a finding that the condition in WIS. STAT. § 48.977(2)(e) was met here. In the final subsection of this opinion, I address a similar argument as it relates to § 48.977(2)(f), which partly involves whether the County’s “efforts to make it possible for [G.L.W.] to return” to the parents’ residence were “reasonable.”

findings that could support the determination that she was unable to carry out the duties of being G.L.W.'s guardian. I agree that these comments about the pace of progress do not, by themselves, support a finding of parental inability under WIS. STAT. § 48.977(2)(e). Indeed, the court's reasoning along these lines appears more directly related to its determination under § 48.977(2)(f), which in part addresses the likelihood of reunification of a child with his or her parents in the future. But it remains that the court's other findings on the topic of parental ability are not clearly erroneous for the reasons noted above.

¶28 Based on these findings, I conclude that the County met its burden to prove the condition in WIS. STAT. § 48.977(2)(e) by clear and convincing evidence. To recap, these findings include the combination of the extremely cluttered nature and lack of cleanliness of the parents' residence creating safety risks, the difficulty the parents had with setting and following through on medical appointments, and their difficulty in engaging in productive relationships with providers. And, as discussed above, the circuit court's relevant findings on this topic also include the parents' lack of understandings regarding the challenges they had in meeting G.L.W.'s relatively greater needs.

III. Reasonable Efforts and Likelihood of Reunification

¶29 I understand T.L.B. to argue that the circuit court clearly erred in finding that the County's efforts to provide services were reasonable under WIS. STAT. § 48.977(2)(f) and that future efforts at reunifying G.L.W. with the parents were not likely to succeed. After discussing § 48.977(2)(f) in more detail, I explain why I reject these arguments.

¶30 In order for the condition under WIS. STAT. § 48.977(2)(f) to be met, the agency primarily responsible for providing services to a child must have made

“reasonable efforts to make it possible for the child to return” to the parents’ residence.⁹ There is no dispute that, here, the County is the responsible agency for G.L.W. In making the required efforts, the County was required to “assur[e] that [G.L.W.]’s health and safety are the paramount concerns.” See § 48.977(2)(f). Section 48.977(2)(f) has two further required showings. The first is a showing that the reunification of G.L.W. with the parents is either currently unlikely or contrary to G.L.W.’s best interests. See § 48.977(2)(f). The second is a showing that future reunification efforts are unlikely to be made or are contrary to G.L.W.’s best interests. See § 48.977(2)(f).¹⁰

¶31 The circuit court summarized the following as reasonable efforts by the County to provide services to the parents. The County provided or arranged for transportation of the parents to court hearings and other appointments. The County could not accommodate travel to appointments in Rochester, Minnesota, but the court concluded that this particular limitation was reasonable.

⁹ Unlike in the context of proceedings on the termination of parental rights, “reasonable efforts” are not defined for purposes of WIS. STAT. § 48.977(2). Cf. WIS. STAT. § 48.415(a)2.a. (defining “reasonable effort” for purposes of “this subdivision,” *i.e.*, only § 48.415(a)2.).

¹⁰ WISCONSIN STAT. § 48.977(2)(f) also provides alternative requirements addressing the situation in which a child is subject to a CHIPS order but has not yet been placed outside the parents’ residence. Here, to repeat, there is no dispute that G.L.W. has been placed outside the parents’ residence since shortly after his birth.

Separately, I note that WIS. STAT. § 48.977(2)(f) further directs that the circuit court “shall make the findings” pertaining to this condition for appointing a guardian “on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the guardianship order.” Thus, an order appointing a guardian under § 48.977 must do more than “merely reference[] [subpart (2)(f)] without documenting or referencing ... specific information.” See § 48.977(2)(f). T.L.B. does not argue that the circuit court here, in its remarks at trial or in a subsequently issued written order appointing the aunt and uncle as guardians, failed to do more than merely reference subpart (2)(f).

¶32 The circuit court said that the County’s efforts in communicating with the parents were not perfect, and that in hindsight the County could have “done better.” But the court also noted that the parents “play[ed] a part in the difficulty with communication,” which was a clear reference to testimony from multiple witnesses that the parents were often confrontational or verbally aggressive with social workers. The court also credited testimony by the social workers regarding the workers’ efforts to find ways to communicate with the parents, both orally and in writing, that were most likely to be effective. The court found that the County provided information to the parents about appointments and meetings, and coordinated the sharing of information with the parents coming from medical and service providers, school staff, and parent coaches. Similarly, the County made referrals and coordinated directly with other agencies, medical providers, and the Ho-Chunk Nation. In this regard, the County “went above and beyond” what the County “might normally do” for other parents.

¶33 The circuit court also found that the County made reasonable efforts to support the parents in what should have been the parents’ efforts to make their residence less cluttered and cleaner, and therefore a safer place for G.L.W., even if it would have been “possible” for the County to have done more in this regard. The County also made referrals to providers for supervised visits of the parents with G.L.W.

¶34 With these findings as background, T.L.B. argues that the County attempted only a few “core interventions” to help the parents make their residence more functional and therefore safer for G.L.W. T.L.B. lists these “core interventions” as: providing the parents with written childproofing packets and checklists; conducting short, agenda-driven meetings; and discussing with the parents how to schedule medical appointments. T.L.B. also characterizes the

County's efforts as merely handing the parents "a list of tasks," instead of offering more direct support in accomplishing those tasks.

¶35 This argument fails because it presents a skewed summary of the circuit court's relevant findings, described above. T.L.B.'s list leaves unaccounted for many of the court's findings regarding the County's efforts to provide services. For example, T.L.B. does not account for the fact that the court credited testimony that social workers had many in-person conversations with the parents identifying the need to improve the safety of the home environment as an important step for the parents to take. This was coupled with testimony explaining how the social workers tried to adapt their communication strategies to more effectively work with T.L.B. and G.L.B. specifically. For example, one social worker testified that she intentionally used short, agenda-driven meetings because the worker believed that this would make meetings with the parents more productive.

¶36 T.L.B. makes an argument apparently challenging the following reasoning by the circuit court regarding the application of WIS. STAT. § 48.977(2)(f) here on the topic of whether reunification of G.L.W. with the parents was likely. The court noted that G.L.W. had, during his most recent interaction with the parents before trial, not demonstrated a strong bond with T.L.B. The court viewed this, after four years of G.L.W.'s placement outside the parents' residence, as evidence that future efforts at reunification were not likely to succeed. T.L.B. argues that G.L.W.'s difficulty forming a bond with his parents was due to restrictions on parental visits with G.L.W. imposed by the County. Expanding on this point, T.L.B. argues that the less time that T.L.B. has been able to spend with G.L.W. due to these restrictions, the harder it became for the two of them to bond, compared with G.L.W.'s ability to bond with other caregivers. This, T.L.B. contends, creates a self-fulfilling argument in favor of a guardianship:

the County limited T.L.B.'s contact with G.L.W., which contributed to a weaker bond, which allowed the County to cite the weaker bond as a reason to permanently place G.L.W. outside the parents' residence.

¶37 I reject this argument for at least the reason that T.L.B. fails to ground it in the pertinent terms of WIS. STAT. § 48.977(2)(f) or in the overarching legal principles stated in applicable case law. As a result, T.L.B. does not support the proposition that it was improper for the circuit court to weigh the strength G.L.W.'s bond with T.L.B. as an indicator of how close the family might be to potential reunification. I also note that T.L.B. does not cite evidence in the record to support the factual premise of this argument that the County, as opposed to the parents, caused or was at least the primary driver of their reduced contact with G.L.W. over time.

¶38 T.L.B. argues that the circuit court failed to sufficiently take into account the likelihood that reunification with the parents could be achieved if T.L.B. had been given "intensive, in-home, adaptive services," which would have been better tailored to her circumstances as someone recovering from a stroke and who has a learning disability. However, T.L.B. does not offer a detailed explanation, supported by citation to trial evidence, explaining what theoretical intensive and adaptive services she is referring to, and how those services differ from what the evidence shows the County offered to the parents. This would be a necessary starting point for a supported argument that the court clearly erred in weighing the evidence regarding the reasonableness of the County's efforts or the likelihood of reunification. Further, as noted by the court here, WIS. STAT. § 48.977(2)(f) requires reasonable efforts, not ideal efforts.

¶39 Stepping back, another weakness with T.L.B.’s arguments regarding WIS. STAT. § 48.977(2)(f) is that she bases them in part on whether there was evidence that the County made “active efforts” to support the parents. These appear to be references to additional requirements that the Wisconsin Indian Child Welfare Act imposes for certain kinds of child-custody proceedings involving children, such as G.L.W., who are subject to the Act. These additional requirements include, in part, proof by clear and convincing evidence of “active efforts ... to prevent the breakup of the Indian Child’s family” before a circuit court can “order an Indian child to be removed from the home ... and placed in an out-of-home care placement.” See WIS. STAT. § 48.028(4)(d)2.¹¹ However, as

¹¹ Under WIS. STAT. § 48.028(4)(g)1.:

The [circuit] court may not order an Indian child to be removed from the home of the Indian child’s parent ... and placed in an out-of-home care placement unless the evidence of active efforts under [§ 48.028(4)(d)2.] shows that there has been an ongoing, vigorous, and concerted level of case work and that the active efforts were made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe and that utilizes the available resources of the Indian child’s tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child, other individual Indian caregivers, and other culturally appropriate service providers.

Section 48.028(4)(g)1. then lists activities that the finder of fact must consider when determining if active efforts have been made. See 48.028(4)(g)1.a.-h. For example, one of the listed activities is:

to provide natural and unsupervised family interaction in the most natural setting that can ensure the Indian child’s safety, as appropriate to the goals of the Indian child’s permanency plan, including arrangements for transportation and other assistance to enable family members to participate in that interaction.

(continued)

explained by the circuit court here, G.L.W. had already been removed from the parents' residence based on CHIPS proceedings in which all findings required by § 48.028(4)(d) had been made. No party argued that these findings were required to be made again for the appointment of a guardian under § 48.977. Further, T.L.B. does not support such an argument on appeal, even if she had preserved it for appeal. See **Brown Cnty. Human Servs. v. B.P.**, 2019 WI App 18, ¶28, 386 Wis. 2d 557, 927 N.W.2d 560 (court of appeals usually does not address arguments raised for the first time on appeal).

CONCLUSION

¶40 For all of these reasons, I affirm the circuit court's appointment of a guardian for G.L.W.

By the Court.—Order affirmed.

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

§ 48.028(4)(g)1.d. Although the circuit court here concluded that it did not need to find that the County had engaged in active efforts to appoint a guardian, the court said that it considered the County's efforts to be "active" in the sense required by § 48.028(4)(g). I need not reach that conclusion, because as noted in the text T.L.B. does not develop a supported argument, preserved in the circuit court, that § 48.028(4) applies here.

