COURT OF APPEALS
DECISION
DATED AND FILED

November 4, 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. 2026AP1890 **Cir. Ct. No. 2023TP16**

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

S.B.T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County: KRISTIN M. CAFFERTY, Judge. *Affirmed.*

¶1 LOCOCO, J.[1] S.B.T. appeals the order terminating her parental rights to her daughter, K.R.

¶2 Proceedings below were not regular. S.B.T. did not show up for trial on whether grounds existed for termination. Her attorney located her and brought her to court late, but upon arrival, S.B.T. did not seem lucid and the circuit court ordered a drug test. A snow emergency then required adjournment to the next day. When the parties reconvened, S.B.T. was again absent and her drug test came back positive for cocaine. The court found her in default. It announced plans to proceed to disposition at a later date without, apparently, taking evidence on grounds. Although it held a belated prove-up following denial of S.B.T.'s motion to vacate the default, *see* ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶24, 246 Wis. 2d 1, 629 N.W.2d 768, S.B.T.'s attorney did not present evidence or cross-examine the State's only witness at the hearing. There is no suggestion by the State that S.B.T. had waived her right to counsel. *But see* WIS. STAT. § 48.23(2)(b)3. In fact S.B.T.'s attorney made objections at the prove-up and participated at the dispositional phase.

¶3 Ultimately the circuit court ordered termination of S.B.T.'s parental rights. Because of open questions regarding the placement of K.R.'s sister, K.T.R., and the court's desire to see the two united, the court continued K.R.'s placement with her foster family under a guardianship until plans for K.T.R. solidified.

[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.

¶4 S.B.T. first argues the circuit court erred in defaulting her and in failing to vacate its default order at her request under WIS. STAT. § 806.07(1)(g)-(h). This court disagrees. Default is an appropriate sanction for egregious conduct, and the circuit court could properly conclude that S.B.T.'s repeated failure to comply with court directives to attend her hearings—she had missed others even before her absence at trial—met this standard. *See* ***Dane County DHS v. Mable K.***, 2013 WI 28, ¶¶69-70, 346 Wis. 2d 396, 828 N.W.2d 198; ***Evelyn C.R.***, 246 Wis. 2d 1, ¶26.

¶5 S.B.T. suggests her difficult life circumstances (homelessness, recent childbirth, drug addiction, among others) required a more lenient punishment. But the circuit court considered the factors S.B.T. cites alongside others equally relevant. It determined that none of the general obstacles S.B.T. faces specifically explained her absence the day of trial, and that the balance of the equities did not favor vacatur. These rulings, discretionary in nature, receive deference. ***Evelyn C.R.***, 246 Wis. 2d 1, ¶18; ***State ex rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 541-42, 363 N.W.2d 419 (1985). This court cannot upset them simply because S.B.T. thinks the circuit court should have weighed matters differently.

¶6 One item does require a closer look. The record shows the circuit court rescheduled proceedings and adjourned due to the snow with S.B.T. absent (off obtaining drug testing). Lack of notice of the new trial date would certainly explain S.B.T.'s failure to return the following day. The circuit court's assessment of this point is largely inscrutable, but it appears to have at least implicitly found S.B.T. had notice. This finding, moreover, has record support, since S.B.T.'s attorney was present at the relevant time, a witness later saw S.B.T. and her attorney conversing in the hallway, and S.B.T., tellingly, acknowledged and did not dispute the finding in her motion to vacate. *See also, e.g.*, ***Lofthus v. Lofthus***,

2004 WI App 65, ¶¶20-21, 270 Wis. 2d 515, 678 N.W.2d 393 (ferreting out an implicit finding to support a discretionary ruling). The default stands.

¶7 S.B.T. does not adequately develop an independent challenge to other, questionable aspects of the grounds phase, namely the delayed prove-up and her and her attorney's failure or inability to participate at it fully. Entertaining such a challenge would require examination of, among other things, her attorney's admission below that he was "not asking to cross-examine [the State's sole witness] and[/]or present evidence," as well as the impact of any mistake in light of the Legislature's enactment of WIS. STAT. § 48.23(2)(b)3. (waiver of counsel). S.B.T. asserts only that prejudice from the hearing shows that error in defaulting her was not harmless. This is a moot point since this court upholds the default as justified. Further inquiry into the grounds phase, on these briefs, is not appropriate or possible.

¶8 As for the dispositional phase, S.B.T. attacks what she sees as a fatal inconsistency in the circuit court's evaluation of K.R.'s best interests. After terminating S.B.T.'s parental rights, the court considered the possibility of an adoptive placement for K.R. with either her aunt and uncle or her foster family. But it withheld judgment pending the separate placement of K.R.'s sister K.T.R., hopeful the two might join the same family and concerned that failure to wait might harm their future relationship. Instead, the court ordered continuation of K.R.'s successful foster placement under a guardianship. While the court expressed some hesitation as to its authority to create a conditional guardianship in this manner, S.B.T. does not ask this court to review the mechanism used. She does, however, believe the disposition contains too many open questions to support the circuit court's determination that termination of her parental rights is in K.R.'s best interests.

¶9 A court may conclude termination serves a child's best interests despite uncertainty regarding future placements; the statutes repeatedly contemplate this uncertainty. *See* WIS. STAT. § 48.426(3) (best interests factors include "likelihood of the child's adoption after termination" and "likelihood of future placements"); § 48.427(3m)(a)-(am) (authorizing certain post-termination guardianships intended to precede adoptive placements). Here the circuit court considered eventual adoption "very likely," *see* § 48.426(3)(a), and saw adoption by either of the interested families as preferable to maintenance of S.B.T.'s rights and productive of "a more stable and permanent family relationship," § 48.426(3)(f), given S.B.T.'s inability to care for K.R. The court also described "the stability [K.R.] has at her current placement." It explained that termination would not sever a relationship between K.R. and K.T.R., *see* § 48.426(3)(c)—no such relationship yet existed—or foreclose a future one. As the court's reasoning is sound and evinces careful attention to the applicable statutory factors, no more need be said. *See, e.g.*, ***State v. B.W.***, 2024 WI 28, ¶70, 412 Wis. 2d 364, 8 N.W.3d 22.

By the Court.—Order affirmed.

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