

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 16, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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. 2014AP1426
2014AP1427**

**Cir. Ct. Nos. 2013TP77
2013TP78**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JEVON S.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JEVON S.,

RESPONDENT-APPELLANT.

APPEALS from an order of the circuit court for Milwaukee County:
MARK A. SANDERS, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Jevon S. appeals the order terminating his parental rights to two of his children. Because the circuit court properly exercised its discretion, we affirm.

BACKGROUND

¶2 Jevon is the father of Terayonna S., born June 21, 2002, and Treveon S., born May 16, 2004. On February 14, 2013, the State filed a petition for the termination of Jevon’s parental rights, alleging continuing need of protection or services (CHIPS) and continuing denial of periods of physical placement. On July 24, 2013, the State moved for partial summary judgment as to Jevon.² The motion alleged that the circuit court should find Jevon unfit because certified CHIPS court orders “establish the factual basis for the [TPR] ground of continuing denial of visitation.”

¶3 The circuit court addressed the partial summary judgment motion during final pre-trial proceedings on August 28, 2013. The court granted the motion after Jevon, through counsel, conceded that there were no genuine issues

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12).

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The State also brought TPR proceedings against the children’s mother, Latoya M. Latoya M. also appealed the circuit court’s decision to terminate her parental rights. The case numbers for those appeals are 2014AP1424 and 2014AP1425.

of material fact as to the ground of “continuing denial of periods of physical placement or visitation.” The court also dismissed the claim of continuing CHIPS on Jevon’s motion.

¶4 A dispositional hearing was then held over the course of three days. Jevon contested the dispositional phase, arguing that instead of termination, guardianship of the children should be transferred to his mother, Wilma S.-H.

¶5 Multiple witnesses testified at the dispositional hearing. Melinda Deibert, the ongoing case manager handling the children’s case, testified that from the time the children were placed in foster care in 2004, they have each had about ten foster placements. The children were twice placed with Wilma S.-H. Deibert testified that in October 2005, Wilma S.-H. requested the children’s removal from her home because Wilma S.-H. “felt that the parents were not completing their court-ordered conditions due to her being family and having placement of the children.” The children were returned to Wilma S.-H. a short time later, but Wilma S.-H. again requested their removal in 2007, which Deibert said the case file suggested was because of behavioral issues.

¶6 Deibert testified that both children are currently in separate foster homes and both appear bonded with their foster families. Deibert testified that Treveon has been in foster care for a majority of his life and that his placement with his current foster family is the most stable of all of his placements. Deibert stated that Treveon’s foster parents are involved with his school, obtain the necessary home services for Treveon, and are committed to Treveon. Deibert stated that neither Jevon nor Wilma S.-H. actively attempt to inquire about Treveon’s well-being.

¶7 As to Terayonna, Deibert testified that Terayonna is also well-bonded with her foster family. As of the time of the hearings, Terayonna had been with her current foster family for four years and was well-integrated into her foster home. Deibert stated that the foster family is committed to Terayonna's schooling, improving her behavioral issues and obtaining whatever services are necessary for Terayonna's psychological and physical well-being. Deibert recognized, however, that Terayonna's foster family is hesitant to commit to adoption because it cannot absorb the cost of the multiple services Terayonna needs, including vision therapy. Deibert stated that while the Bureau of Milwaukee Child Welfare prefers adoption rather than foster parents maintaining sustaining care contracts, the bureau would honor a court order for a sustaining care contract between Terayonna's foster family and the bureau.

¶8 Deibert also stated that neither child should be returned to Wilma S.-H., as both children's behaviors have improved significantly since being placed in their current foster homes and Wilma S.-H. was previously so overwhelmed by their behaviors that she asked for them to be removed. Moreover, Wilma S.-H. has not inquired about the children's well-being since their placements into their most recent foster homes. Deibert opined that termination of both Jevon's and Latoya's rights is in the best interest of the children.

¶9 Sarah Rosenblatt, the therapist treating Terayonna and Treveon, also testified. Rosenblatt testified that Terayonna suffers from reactive attachment disorder, post-traumatic stress disorder, a mood disorder and ADHD, among other conditions. However, Terayonna's behaviors have improved significantly since her placement with her current foster family. With therapy, Terayonna has improved considerably at school, is able to make friends, and feels at home with her foster family. Rosenblatt also stated that Terayonna expressed

fear regarding her grandmother's home and was upset when she found out that her older sister, T.S., was living at her grandmother's home because Terayonna feared T.S. would be abused. Specifically, Terayonna said to Rosenblatt: "They always told us not to talk about the abuse and stuff going on.... And [T.S.] is not going to say a thing, so how do we know if she's going to be abused or not?" Rosenblatt also stated that when Terayonna also lived with Wilma S.-H., Terayonna and T.S. fought violently at times.

¶10 As to Treveon, Rosenblatt stated that he has many of the same psychological diagnoses as Terayonna, but "his behaviors are more extreme." Rosenblatt stated that Treveon's moods have improved over the course of his time with his current foster family. She stated that the foster parents are very committed to Treveon's well-being, actively participate in his therapy sessions, and have expressed a willingness to adopt. Rosenblatt said that both Treveon and the foster family are bonded with each other, that Treveon views his foster family as his family, and that the foster family even delayed an out-of-state move pending the outcome of the TPR proceedings.

¶11 Terayonna's foster mother also testified, telling the circuit court that she does not want Terayonna removed from her home and that Terayonna's behaviors have improved significantly from the time Terayonna was first placed in the home. Terayonna's foster mother also testified that she loves Terayonna, but hesitates to commit to adoption because "[Terayonna] has some significant medical issues that are typically not covered under insurance. And I would hate for her to suffer and not be provided with the things she needs because I can't afford them." She stated that she is willing to enter a sustaining care contract with the Bureau of Milwaukee Child Welfare, which would obligate the foster family to

provide care to Terayonna until Terayonna reaches the age of eighteen, with assistance from the bureau.

¶12 Treveon’s foster mother told the court that Treveon’s behavior has improved significantly since he has been in her home. She testified that she is a crisis stabilizer with experience dealing with at-risk youth. Because of Treveon’s difficulties in school, his foster mother transitioned her employment closer to home in order to better respond to Treveon’s school needs. Treveon’s foster mother expressed a desire to adopt Treveon, stating: “[w]e’ve seen such a growth in Treveon. He has a beautiful smile. We’ve seen such a change in the person that he’s become.... He keeps us laughing. He’s getting more comfortable in his own skin.”

¶13 Wilma S.-H. also testified, telling the circuit court that she has custody of T.S., another one of Jevon’s children. Wilma S.-H. stated that as the children’s paternal grandmother, she wants a “chance” to foster the children. Wilma S.-H. stated that she has stable employment, is aware of the children’s behavioral problems, and is willing to maintain therapy for both of the children.

¶14 In a thoughtful and well-reasoned decision, the circuit court determined that it was in the children’s best interests to remain in their respective foster homes. Taking into account all of the testimony, the children’s behavioral improvements, the likelihood of adoption, and the children’s relationships with their family members, among other factors, the circuit court determined that terminating both parents’ parental rights, and denying placement with Wilma S.-H., was in the children’s best interests. This appeal follows. Additional facts will be included as relevant to the discussion.

DISCUSSION

¶15 On appeal Jevon contends that the circuit court erroneously exercised its discretion when it terminated his parental rights to Terayonna and Treveon because the court failed to consider the “law favoring placement with a relative.” Jevon also contends that the circuit court erroneously favored a sustaining care contract for Terayonna over placement with Wilma S.-H. We disagree.

Standard of Review.

¶16 “Wisconsin has a two-part statutory procedure for the involuntary termination of parental rights.” *Steven V. v. Kelley H.*, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. During the first, or “grounds” phase of the proceeding, “the petitioner must prove by clear and convincing evidence that one or more of the statutorily enumerated grounds for termination of parental rights exist.” *Id.*; *see also* WIS. STAT. § 48.31(1). “Once the court has declared a parent unfit, the proceeding moves to the second, or dispositional phase, at which the child’s best interests are paramount.” *Steven V.*, 271 Wis. 2d 1, ¶26. In making this determination, “the court ‘should welcome’ any evidence relevant to the issue of disposition, including any ‘factors favorable to the parent,’ and must at a minimum consider the six ‘best interests’ factors set forth in WIS. STAT. § 48.426(3).” *Steven V.*, 271 Wis. 2d 1, ¶27 (citation omitted).

¶17 “A determination of the best interests of the child in a termination proceeding depends on first-hand observation and experience with the persons involved and therefore is committed to the sound discretion of the circuit court.” *David S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993). This court will not upset the circuit court’s decision unless the decision represents an

erroneous exercise of discretion. *Id.* “The [circuit] court properly exercises 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.” *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

The circuit court properly exercised its discretion.

¶18 Contrary to Jevon’s implication, neither WIS. STAT. § 48.355(1) nor WIS. STAT. § 48.427 require a circuit court to transfer custody to a relative. WISCONSIN STAT. § 48.355(1), states, as relevant, that “[i]f there is no less drastic alternative for a child than transferring custody from the parent, the judge *shall consider* transferring custody to a relative whenever possible.” (Emphasis added.) WISCONSIN STAT. § 48.427³ permits the circuit court to transfer custody to a relative as one of many potential dispositions. No statute obligates a circuit court to place a child with a family member if the court finds that such placement is not in the child’s best interest. Rather, WIS. STAT. § 48.426(2) establishes the “best interest of the child” as the prevailing factor in all TPR dispositions.

¶19 The record establishes that the circuit court carefully considered all the testimony provided at the dispositional hearing and that the court properly addressed the multiple dispositional factors provided by WIS. STAT. § 48.426(3).

³ WISCONSIN STAT. § 48.427(3m)(a)5. states that if a parent’s rights are terminated and a guardian has not been appointed, the court may transfer guardianship and custody of a child pending adoptive placement to: “[a] relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments under s. 48.62(4) for providing care and maintenance for the child.”

The statute provides:

In considering the best interests of the child under this section the court shall consider but not be limited to the following:

- (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.

¶20 In its very thorough, well-reasoned decision, the circuit court summarized the testimony of each witness and addressed each of these factors. With regard to the likelihood of adoption, the court found that Treveon’s age and behavioral issues generally “create barriers to adoption,” but found that Treveon is likely to be adopted by his current foster family. The court noted that Treveon’s foster mother “changed jobs so that she could be more available when [Treveon] needed her available,” making it “highly likely” that Treveon would be adopted by his foster family. As to Terayonnia, the circuit court noted that she has many psychological issues and is older than Treveon, but found her to be “in the intermediate category in terms of adoptability in a general sense.” The court stated that while Terayonnia’s foster family is currently unwilling to commit to adoption, the family “is willing at some point in the future to reconsider the idea of

adoption.” Terayonnia’s foster mother testified that the reluctance to adopt was only because the family could not afford the special services Terayonnia needed—services which the Bureau of Milwaukee Child Welfare provided.

¶21 With regard to the second statutory factor—the age and health of the children at the time of the disposition and at the time of removal from their home—the court noted that at the time of the disposition the children were eleven years old and nine years old and in good physical health, with the exception of Terayonnia’s “vision issues.” The court stated that both children have psychological, behavioral and emotion health issues, but are improving.

¶22 The circuit court called the third statutory factor—whether the children have substantial relationships with Jevon or other family members and whether it would be harmful to sever these relationships—“multifaceted.” The court stated that neither child has a substantial relationship with Jevon, in part, because Jevon’s visits were suspended. However, the court noted that Jevon did not take any action to remedy the causes of the suspension, and that the children are actually fearful of Jevon. The court also did not find a substantial relationship between the children and Wilma S.-H. The court stated that the children acknowledge their grandmother, but Terayonnia has expressed concern about “abuse” at her grandmother’s home, and that Wilma S.-H. does not visit the children. The court found that severing the children’s relationship with Jevon and Wilma S.-H. would not be harmful to the children.

¶23 As to the wishes of the children, the fourth statutory factor, the court stated that the children’s wishes “are fairly straightforward. They wish to remain where they are.” As to the fifth statutory factor—the duration of separation between the parent and children—the court stated that “[r]emoval for them was so

long ago when they were very, very young, that it's not really something of comparison.”

¶24 As to the final statutory factor—whether the children will be able to enter more stable families as a result of termination—the court stated that Treveon’s foster family “offers a great deal of permanence and stability.” Specifically, the court said Treveon’s foster mother’s “current work as a crisis stabilizer [and] the willingness that she has displayed to adjust her own life to his needs ... demonstrate that she provides a level of stability and a high level of permanence.”

¶25 Regarding Terayonna, the court stated that while her foster family is currently unwilling to adopt, it is “willing to provide permanence.... [The foster mother] is willing and desirous of having Terayonna until Terayonna is an adult. The mechanism that is advocated to achieve that permanence ... is a sustaining care contract.” The court explained that a sustaining care contract “is less permanent than adoption,” but that the risk of Terayonna’s foster family “giv[ing] up [on] Terayonna” is “small.” The court addressed specific actions taken by Terayonna’s foster mother that suggest “her willingness to provide permanence.” The circuit court particularly pointed to the foster mother’s detailed understanding of Terayonna’s medications and her involvement in Terayonna’s extracurricular activities.

¶26 The circuit court also discussed the rationale for rejecting Wilma S.-H.’s request for custody:

One of the issues is the presence of [T.S.] in that home....
The issue there is the relationship between Terayonna and [T.S.].

Historically when placed together, they had what, I think, could generously be described as a volatile relationship. There is an incident four and a half years ago when they were both much younger and much different people, ... where [T.S.] chases Terayonna around ... with a broken bottle, or something sharp anyway, and threatens to kill her.... They are having improved visits... [b]ut [T.S.] continues to have some behavioral issues that are violent.

....

Another issue that is present with placement with [Wilma S.-H.] is the fact that there is not a substantial relationship between Terayonna and Treveon and [Wilma S.-H.]. They haven't seen each other in five years.

(Some formatting altered.) The court elaborated on the lack of a relationship between the children and their grandmother and mentioned Terayonna's statement about "abuse," noting that it was unsure of how much weight to give the statement, but that it should be acknowledged.

¶27 It is clear that the circuit court carefully addressed each of the factors outlined by WIS. STAT. § 48.426(3). The court heard testimony from multiple witnesses and ultimately determined that both children are in stable, loving, and permanent homes, and should remain in those homes. The court also articulated why a sustaining care contract is in Terayonna's best interest at this time, stating that her foster family cannot afford all of the services Terayonna requires, but still wants to provide a permanent home for her. This is a conclusion that a reasonable judge could reach. Consequently, the circuit court properly exercised its discretion and this court affirms.⁴

⁴ We express our thanks to the guardian *ad litem* for the children in these proceedings. We appreciate the clear analysis, the detailed citations to the record, and the thorough and careful presentation of the circuit court's findings. Her brief in this case was of great assistance to this court.

By the Court.—Order affirmed.

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

