

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 24, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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No. 98-0272

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

**IN RE THE TERMINATION OF
PARENTAL RIGHTS OF BOBBY L.W.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

ANGELA M.W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
KATHRYN W. FOSTER, Judge. *Affirmed.*

SNYDER, P.J. Angela M.W. appeals from a trial court order terminating her parental rights to her son, Bobby L.W. On appeal, Angela claims that the termination order should be vacated because “her admission to the allegations in the termination petition and her waiver of a fact-finding hearing

were not knowing and voluntary.” After filing an appeal from the termination order, Angela requested that this court remand the cause to the trial court for an evidentiary hearing on the issue of whether her admission and waiver were knowing and voluntary.¹ The trial court ultimately denied Angela’s motion to vacate the termination order after finding that her admission and waiver were both knowing and voluntary.

A petition for the termination of Angela’s parental rights to Bobby was filed on January 7, 1997. *See* § 48.42, STATS. The State claimed both “abandonment” and a “continuing need of protection and services” as grounds for the petition. *See* § 48.415(1) & (2), STATS. At a hearing on May 7, 1997, Angela waived her right to a jury trial. On May 12, 1997, after consultation with her attorney, Angela admitted that Bobby was in continuing need of protection or services, one of the grounds for termination, and waived any factfinding on the matter. However, she specifically reserved the right to contest the disposition. On June 23, 1997, a dispositional hearing was held; Angela failed to appear.² After taking testimony at that hearing, the trial court terminated her parental rights to Bobby.

Angela then commenced an appeal on the basis that her admission to the underlying petition was “involuntary and unintelligent.” She requested that this court remand the matter to the trial court for a hearing on her claim. That motion was granted. After conducting the hearing, the trial court found that Angela “did freely, voluntarily and knowingly and intelligently and understanding

¹ This was done by this court’s order dated February 10, 1998.

² She later explained that the place where she was staying had lost power the night before and as a consequence her alarm did not go off.

the consequences, waive her right to a contested hearing as far as the grounds but that she maintained her right to contest the disposition” The trial court then denied Angela’s motion to withdraw the waiver and noted that the “ultimate orders of court terminating Angela’s parental rights should stand.” With the record of the trial court before us, we now consider Angela’s underlying claim.

Angela argues that she did not voluntarily, knowingly and intelligently waive her right to contest the grounds for the termination of her parental rights to Bobby. We begin with the applicable standard of review. In *T.M.F. v. Children’s Service Society*, 112 Wis.2d 180, 188, 332 N.W.2d 293, 298 (1983), the supreme court held that the applicable standard is that “the appellate court should give weight to the trial court’s decision, although the trial court’s decision is not controlling.” (Quoted source omitted.) The court noted that when proceedings to terminate parental rights are undertaken, “the legal conclusion of voluntary and informed consent is derived from and intertwined with the trial court’s factual inquiry” *Id.* Because the trial court has the opportunity to question and observe the witnesses, it is better prepared to reach an accurate and just conclusion on this issue. *See id.* Furthermore, public policy is served by a standard which favors the finality of the trial court’s conclusion as to the voluntariness of the parent’s consent. *See id.*

Because the only issue on appeal concerns the voluntariness of Angela’s agreement not to contest the factual bases for the State’s claim that Bobby was in continuing need of protection or services, this matter was initially remanded to the trial court for a factfinding hearing on the issue of voluntariness. *See Rhonda R.D. v. Franklin R.D.*, 191 Wis.2d 680, 692, 530 N.W.2d 34, 39 (Ct. App. 1995) (this court retains jurisdiction but may remand for an evidentiary

hearing). The trial court found that Angela's consent was knowing and voluntary and articulated its reasoning on the record.

The basic information a trial court must ascertain to determine on the record whether consent is voluntary and informed includes:

1. the extent of the parent's education and the parent's level of general comprehension;
2. the parent's understanding of the nature of the proceedings and the consequences of termination, including the finality of the parent's decision and the circuit court's order;
3. ... the parent's understanding of the right to retain counsel at the parent's expense;
4. the extent and nature of the parent's communication with the guardian ad litem, the social worker, or any other adviser;
5. whether any promises or threats have been made to the parent in connection with the termination of parental rights;
6. whether the parent is aware of the significant alternatives to termination and what those are.

T.M.F., 112 Wis.2d at 196-97, 332 N.W.2d at 301-02. With this as a standard, we examine the transcript of the original hearing in which Angela agreed not to contest the factual bases for the termination, as well as the later factfinding hearing wherein the trial court revisited the issue of whether Angela's waiver was voluntary and informed.

We begin with the requirement that the trial court should consider the parent's education and general comprehension in reaching its decision. As the trial court noted, this case was "not a situation where Angela's background was unknown to the court. It was known to [the trial court] that Angela had limited education, that there were concerns about her competency level for lack of a better term; ... that Angela does need to take a lot of breaks ... to have a cigarette or

whatever the case may be. That's the way Angie is." Based upon our review of the transcripts of the various hearings in this case, it is apparent that the trial court was not only very knowledgeable about Angela's background and general competency, but the trial court's questioning of Angela was founded on its understanding of her particular situation. Our review of the pertinent hearing transcripts convinces us that the trial court questioned Angela carefully to make certain that both she and the trial court were clear on what she was and was not contesting, and that her decision not to contest the grounds for termination was both knowing and voluntary.

The trial court was also required to consider Angela's level of understanding of the nature of the proceedings and the consequences of the termination. The trial court noted that Angela had "[been] through" the court process on several other occasions and that this particular court had had "extensive dealings [with her] ... all along." As to Angela's understanding of her right to counsel, the trial court highlighted its respect for her counsel, the quality of his work and his professionalism. The trial court observed that from the itemization of Angela's attorney's work, it was apparent that counsel did "expend a lot of time and effort in preparing this matter for trial or disposition and meeting with his client and ... familiarizing himself with the circumstances of this case." Based on both of these factors—Angela's knowledge of the legal system and the competence of her attorney—the trial court concluded that Angela had been well informed of her choices and the consequences of those choices in making the decision not to contest the termination. We agree with the trial court's assessment. As the trial court noted:

In [the] final analysis there is really no doubt in my mind today and I don't know that there is any real converse in the record that Angie knew exactly what was at stake. I can

clearly accept at face value the testimony of [the social worker] ... that [Angela] knew full well what was at stake; that she's known all along; that this is not a complicated legal issue This is a case where Angie's ability to parent and all the responsibilities and all the joys that come with that were clearly on the line. And there's no doubt in my mind that Angie knew that.

When we consider Angela's prior contacts with the legal system and couple that with the apparent skill and dedication of her counsel, we agree with the trial court that Angela was knowledgeable about the import of the termination proceedings.

The trial court also heard testimony relating to the extent and nature of the communication between Angela and the county social worker assigned to the case. The social worker testified that she met with Angela on May 7, 1997. At that meeting Angela spoke to her about her desire to waive a jury trial, wanting to terminate her parental rights to Bobby and requesting a last visitation with him before the final court hearing. The social worker testified that this discussion took place in the presence of Angela's attorney, Bobby's father and the father's attorney. The social worker testified that Angela was "upset" and that Angela felt "it was a big decision for her."

The social worker also met with Angela one week later, just prior to the termination hearing. She testified that prior to that hearing she and Angela spoke about the upcoming hearing:

Angie and I talked about again [the] struggle that she was having with terminating her parental rights, concern of wanting a visit to be set up again for her final visit with Bobby. She wanted her other children so Bobby could see them. She had talked about wanting, the possibility if we could do an open adoption right now at that point so she could have contact and still know what he was doing in the future. She requested pictures during that time of Bobby. Her physical state at this time, Angie was still shaking, trembling, crying. At a point I believe she started to

hyperventilate. She was very upset about the hearing that was coming up.

....

I believe ... that she knew that this was going to be possibly the last time that she would be able to see her son and [the] finality of the court's situation.

....

... Angie talked about not being able to provide for Bobby as well as she would like and wanting, again stating that she would—she wants to get an apartment, she wants to do those things, but just not being able to.

The trial court concluded that the above observations reported by the social worker were supported by the court's own observations of Angela's demeanor at the May 12, 1997 hearing. The trial court also noted that those same observations accounted for its decision to adjourn the May 12 hearing until June 23 to enable Angela one last opportunity to work on the conditions for return and "to have the court or department consider whether Bobby should be placed with her as her other two children or other dispositions that would have been available to the court."

Based on both the social worker's testimony and its own observations, the trial court concluded that the above evidence also supported a finding that Angela's decision not to contest the termination was voluntary and informed.

The trial court must consider whether the parent's decision was the result of any promises or threats. Although Angela testified that her attorney was "rushing" her to sign the papers and told her that she should "get it over with," as well as that Bobby's father threatened to "take [her] to Milwaukee by the cemetery and beat [her] up" if she did not give up her rights, the trial court ultimately concluded that Angela's testimony on this issue lacked credibility. The court

considered that Angela admitted on the record that she had lied in the past about Bobby's father's behavior "to get him in trouble" and that the county had made "vivid points about [Angela's] lack of credibility." In the final balance, both weighed heavily against Angela. The trial court ultimately concluded that "frankly [it] is an easy finding here today that Angela is not credible in that regard"

Other than Angela's testimony, there is no indication anywhere in the record that Angela was subjected to any threats or improper inducements to give up her parental rights to Bobby. We therefore conclude, as did the trial court, that Angela's unsubstantiated statements to the contrary are without credence and require no further consideration.

Finally, the trial court must consider whether Angela was aware of the alternatives to termination. As the court noted, Angela and her attorney had discussed her alternatives at length. In fact, by scheduling the dispositional hearing six weeks after accepting Angela's waiver, the trial court gave Angela one last chance to show that she was serious about taking steps to meet the conditions of return. The trial court noted:

[T]he conditions for return that must be discussed really are common sense conditions.... They really revolve around the basics that Angie needs a place to live, a safe place to live; that she needs to deal with her drug problem ... that Angie get treatment and be able to use that treatment to maintain a sober life before Bobby could ever be considered to be returned and along with that ... some means of support whether through—be through AFDC or employment and finally the parent/child interaction assessment which we of course never got to.

Angela was not uninformed about her options. However, she was unable to make any significant progress towards meeting the conditions for return, and her

inability to maintain a drug- and alcohol-free lifestyle then hampered her progress in other areas. Testimony was received that numerous individuals had attempted to work with Angela and help her understand what would be required in order for her to have custody of Bobby. As the trial court outlined:

[W]hat Angela has never been able to do is to translate that desire to parent into action and dealing with the drug problem and dealing with other issues in her life.

Our review of the testimony and the pertinent hearings in this case convinces us that the trial court was correct when it concluded that Angela's decision not to contest the factual bases for the termination was voluntary and informed.

Notwithstanding the above analysis, Angela argues that her appeal "challenges the failure of the court to inform Angela of the statutory grounds or elements of § 48.415(2), Stats.," and claims that this failure "is violative of due process." She then attempts to analogize her case to *State v. Bangert*, 131 Wis.2d 246, 260, 389 N.W.2d 12, 20 (1986), in which the supreme court determined that a criminal defendant must be questioned about his or her "understanding of the nature of the charge" before a plea can be accepted as voluntary. Because the trial court in Angela's case did not go over the requirements of § 48.415(2) point by point, she maintains that the voluntariness of her waiver, on this basis alone, is suspect. We are not persuaded.

Section 48.415, STATS., is entitled "Grounds for *involuntary* termination of parental rights." (Emphasis added.) Because Angela agreed to waive her right to contest the grounds for termination, another statutory section, § 48.422(7), STATS., is applicable. This section deals with the trial court's obligations before accepting *an admission* of the alleged facts. It requires the court to:

(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.

(c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

Angela argues for a very formalistic approach to the above requirements and, in particular, contends that the phrase “nature of the acts” corresponds to a formal recitation of the “statutory grounds/elements for termination.” Because that formal recitation did not occur, Angela argues that her waiver of factfinding was not truly knowing and voluntary.

We consider instructive the supreme court’s commentary in *T.M.F.* when it considered the issue of voluntary consent in a termination proceeding. The court there stated:

We do not and cannot set forth precisely what information must be given to the parent in each termination hearing or what questions must be asked or what responses must be elicited on the record to ensure that a sufficient judicial inquiry is made to determine that the consent is voluntary and informed. Each parent and each family will be different. In this nonadversarial setting, the circuit court has a unique opportunity and a special obligation to be vigilant in protecting the interests of all parties.

T.M.F., 112 Wis.2d at 196, 332 N.W.2d at 301. The court then went on to list as “basic” the six points included earlier in this opinion and which this decision discusses at length. As noted by the trial court, in Angela’s case “the conditions for return ... really are common sense conditions.” Applying the broad requirements of *T.M.F.*, we conclude that the trial court’s finding that Angela’s consent to the termination was both voluntary and informed should be upheld.

Based on the foregoing analysis, it is not necessary to reach the question of prejudice. *See Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983) (if one issue is dispositive, other issues raised need not be addressed). We affirm the order of the trial court.

By the Court.—Order affirmed.

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

