

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 18, 2015

Diane M. Fremgen
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. 2014AP2960
2014AP2961
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2013TP34
2013TP35**

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JASMINE W.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JASMINE W.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County:
JOHN J. DIMOTTO, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Jasmine W. appeals from orders terminating her parental rights to two of her children. We affirm.

BACKGROUND

¶2 Jasmine W. is the mother of Elijah O., born on September 24, 2008, and Sierra W., born on December 30, 2009. On May 24, 2010, the State filed CHIPS petitions alleging abuse and neglect of both children. According to the facts in the record, the petition was filed following a domestic violence incident between Jasmine and the children's father, Bennie O., which ultimately resulted in severe injuries to Sierra. Jasmine initially reported that Bennie attacked her and that Bennie picked up a pot of boiling water and threw it in the air. The water landed on Sierra, causing severe burns. Jasmine later changed her story, claiming Elijah was responsible for Sierra's burns. Ultimately, Jasmine admitted that she threw the pot of boiling water in the air because she was upset about an argument she had with Bennie.

¶3 The Bureau of Milwaukee Child Welfare initially placed the children with their maternal grandmother, Celestine E. The children remained with Celestine for approximately one year, but were removed from her care after the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Bureau determined that Celestine failed to meet Sierra's medical needs. The children were placed with a foster couple in Kenosha.

¶4 Jasmine was charged with child abuse as to Sierra. Jasmine pled guilty to the charge. The CHIPS dispositional order was extended multiple times. Ultimately, the State filed a petition to terminate Jasmine's parental rights, alleging continuing CHIPS and commission of a felony against a child.²

¶5 The State moved for partial summary judgment, asserting that Jasmine's conviction for felony child abuse established the TPR ground of "Commission of a Serious Felony Against One of the Person's Children." Jasmine stipulated to this ground and was found unfit by the circuit court. The State dismissed the continuing CHIPS claim.

¶6 At the dispositional hearing, the State presented testimony from Rosemary Brunner, the lead ongoing case manager for the Bureau of Milwaukee Child Welfare. Brunner testified about the history of domestic violence between Jasmine and Bennie, the children's presence during the violent disputes, and the injuries caused to the children as a result of the violence, including Sierra's burns.

¶7 Brunner also testified that the children were removed from Celestine's care because Celestine failed to meet Sierra's medical needs. Brunner stated that Sierra needed to attend regular medical appointments, however, under Celestine's care, those appointments were frequently rescheduled or missed. Sierra was also in need of a special burn vest and sleeve to alleviate scarring. The fitting for the vest had to take place during a specific window of time; however, by

² After the State filed the TPR petition, Jasmine gave birth to a third child, Asia. Asia remained in Jasmine's custody immediately after her birth, but was taken into protective custody after three months. Asia was placed with Celestine on a temporary order.

the time Celestine scheduled the appointment, Sierra had missed the window. Celestine failed to take Sierra for a necessary CT scan to assess bleeding in Sierra's brain and to an ophthalmologist to treat the burns to Sierra's eyes. Brunner also testified that Celestine was able to maintain placement for Jasmine's youngest daughter, Asia, because Asia did not have the significant medical or behavioral issues that Elijah and Sierra had. Brunner opined that Celestine would not be able to manage all three children.

¶8 Brunner said that after Elijah and Sierra were placed in foster care, Celestine did not contact the foster parents, outside of Jasmine's visitation with the children. Brunner stated that Jasmine's visits took place in Celestine's home in the presence of other people, including a maternal aunt and her two children. Celestine did not make an effort to contact the children, or inquire about their well-being. Brunner testified that the children had significant behavioral issues, including anxiety and physical aggression. Because of the significant efforts of the foster parents, Brunner opined, the children became well-adjusted in the foster parents' care. Brunner also stated that the foster parents have been approved for adoption.

¶9 The children's foster mother told the circuit court that she and her husband intend to adopt Elijah and Sierra. She stated that the children refer to her and her husband as "mom and dad," have emotional bonds with their foster grandparents, and feel at home with their foster family.

¶10 The circuit court found termination of Jasmine's parental rights to be in the best interests of the children. This appeal follows. Additional testimony from the dispositional hearing will be included as necessary to our analysis.

DISCUSSION

¶11 On appeal, Jasmine argues that the circuit court erroneously exercised its discretion when it: (1) found no substantial relationship between the children and Celestine and found that severing their legal ties with Celestine would not cause harm; and (2) did not place the children with Celestine.

Standard of Review.

¶12 Whether circumstances warrant termination of parental rights is within the circuit court's discretion. *Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993); *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). In a termination of parental rights case, this court applies the deferential standard of review to determine whether the circuit court erroneously exercised its discretion. *See Rock County DSS v. K.K.*, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). "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." *Laura S.*, 179 Wis. 2d at 150. 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.*, 203 Wis. 2d at 152.

A. The circuit court did not erroneously exercise its discretion when it found no substantial relationship between the children and Celestine.

¶13 At the dispositional hearing, the circuit court must consider the following factors when determining whether a termination is in a child’s best interests:

- (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.

WIS. STAT. § 48.426(3).

¶14 In addressing the third factor—whether the children had a substantial relationship with Celestine—the court said that the children’s relationship is “‘visitation based’ at best.” Jasmine argues that the circuit court’s finding is mistaken because the children resided with Celestine for nearly a year. The circuit court’s finding is supported by the record.

¶15 Although the children did reside with Celestine in the year following their removal from Jasmine’s home, the circuit court found that the children were

ultimately placed in foster care because of Celestine's medical neglect of Sierra. Once in foster care, Celestine failed to maintain contact with the children. Brunner testified that Celestine failed to contact the foster parents to inquire about the children's well-being and failed to contact the children directly. Celestine herself confirmed that she never called the foster parents, never asked for their phone number, never wrote letters, and did not know their address. At the time of the dispositional hearing, the children had been out of Celestine's care for about three years.

¶16 The court also found that severance of the relationship between the children and Celestine would not be harmful because the foster parents were willing to maintain contact with Celestine, so long as the contact was not harmful to the children. The court said the foster parents "recognize there is a bond between the children and their mother and are willing to facilitate future contact between the children and their mother, maternal grandmother and other maternal family members so long as it is safe for the children."

¶17 Jasmine's arguments, in essence, are no more than disagreements with the circuit court's factual findings. The record supports the court's findings.

B. The circuit court considered the proper factors.

¶18 Jasmine also argues that the circuit court erroneously exercised its discretion when it failed to place the children with Celestine. Jasmine contends

that because Celestine is Asia's current caretaker, Celestine is a suitable caretaker for Elijah and Sierra.³

¶19 Neither WIS. STAT. § 48.355(1) nor WIS. STAT. § 48.427, the statutes pertaining to disposition, 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. § 48.427 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 interests of the child” as the prevailing factor in all TPR dispositions.

¶20 The record establishes that the circuit court carefully considered all the testimony provided at the dispositional hearing and properly addressed the multiple “best interests of the child” factors provided by WIS. STAT. § 48.426(3). 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.

³ There is no placement motion on the record requesting that the children be placed with Celestine. However, the court did consider, and ultimately rejected, the possibility of Elijah and Sierra living with Celestine. The court's decision was based on Brunner's testimony that Elijah and Sierra, unlike Asia, are special needs children. Brunner also testified that Celestine failed to meet Sierra's medical needs and that the Bureau had concerns about Celestine's ability to care for three children, as opposed to just Asia.

(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.

¶21 With regard to the likelihood of adoption, the court found the likelihood “great.” The court noted that the foster parents have been approved for adoption, that they love the children, and are committed to adopting.

¶22 With regard to the age and health of the children, the court stated that Elijah was twenty months old at the time of his removal from Jasmine's care, while Sierra was five months old. Elijah was nonverbal at the time and Sierra had severe burns. Their home life, the court said, was rife with “violence, turmoil and danger.” At the time of disposition, Elijah was five years and nine months old. Sierra was four years and six months old. The court said that the children's needs were being met, they were in a loving, safe environment, and had a good relationship with their foster family.

¶23 We have already discussed the third statutory factor—whether the children had substantial relationships with their family members and whether severing those relationships would be harmful. The court's findings as to this factor are supported by the record for reasons we have previously discussed.

¶24 As to the fourth statutory factor—the wishes of the children—the court said that because of the children’s young age, “they have not been asked what their wishes are.” However, the court said that their behavioral improvements reflect happiness in their foster home. The children are well-adjusted, physically healthy, and free from domestic violence.

¶25 The court found the “duration of separation of these children from both parents” to be “extremely longstanding.” Both children spent the majority of their lives apart from Jasmine. The circuit court found that Jasmine’s “poor choices” resulted in a “lack of meaningful contact” between her and her children.

¶26 As to the final factor—whether the children will be able to enter a more stable environment as a result of termination—the court again said the foster parents have provided for the children’s needs and have been approved for adoption. The court found it unlikely that Jasmine “would be able to ‘stay the course’ and provide a stable and permanent family relationship and setting for these children.” The court’s finding was based on Jasmine’s “history of longstanding failure to address [her] issues which resulted in the removal of [the children] from a dangerous household and which also resulted in the removal of Asia from [Jasmine’s home].”

¶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 the children are in a stable, loving, and permanent home, and should remain in that home. This is a conclusion that a reasonable judge could reach. Consequently, the circuit court properly exercised its discretion and this court affirms.

By the Court.—Orders affirmed.

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

