

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 7, 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. 2015AP46
2015AP47**

**Cir. Ct. Nos. 2013TP124
2013TP125**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JODIE A.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JODIE A.,

RESPONDENT-APPELLANT.

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

¶1 CURLEY, P.J.¹ Jodie A. appeals the orders terminating her parental rights to two of her children, B.A. and J.C. We affirm.

BACKGROUND

¶2 On May 20, 2013, the State filed petitions to terminate Jodie’s parental rights to her two children. Amended petitions alleged that the children were in continuing need of protection or services (continuing CHIPS) and that Jodie failed to assume parental responsibility. Jodie initially contested the petition, but on the morning of trial, stipulated to the grounds for termination in exchange for a three-month adjournment of the dispositional hearing. The circuit court conducted a colloquy with Jodie to ensure that her stipulation was knowing, voluntary, and intelligent. The court asked Jodie multiple questions about her employment history and education, telling her: “I ask all of these questions for a reason. The reason I ask these is because I want to get a sense about your educational background and your ability to read and understand what is going on in court.” The circuit court explained each of the allegations in the termination petition, what the State would have to prove and what rights Jodie would be waiving. Jodie affirmatively told the court that she understood each of the court’s questions and explanations. The circuit court then determined whether Jodie

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.

conferred with her trial counsel and whether she was enticed or threatened into stipulating. Jodie told the court that she discussed her decision with counsel, had been thinking about stipulating for some time, and was not threatened or coerced into stipulating the termination grounds. The circuit court then conducted a colloquy with Jodie's counsel. Ultimately, the circuit court accepted Jodie's stipulation.

¶3 A three-day dispositional hearing began on April 30, 2014. Both the State and Jodie called witnesses. After considering all of the evidence, the circuit court determined that it was in the best interest of B.A. and J.C. to terminate Jodie's parental rights.

¶4 Jodie filed a notice of appeal and a motion for remand to the circuit court so that she could seek to withdraw her stipulation as to the grounds for termination. We ordered that the appeals regarding B.A. and J.C. be consolidated and remanded to the circuit court for a post-dispositional hearing.

¶5 Upon remand, Jodie filed a motion to withdraw her stipulation, arguing that the circuit court failed to comply with the mandates of WIS. STAT. § 48.422(7)(bm), rendering her stipulation invalid. Specifically, Jodie argued that the circuit court did not establish whether there was a proposed adoptive parent and did not require the State to provide a report itemizing any payments or transfers made from the proposed adoptive parents to Jodie, pursuant to WIS. STAT. § 48.913(7). The guardian ad litem (GAL) for the children opposed the motion and attached two affidavits to the motion: (1) an affidavit from the GAL establishing that she was not aware of any payments made by the potential adoptive parents to Jodie; and (2) an affidavit from a representative of the Bureau

of Milwaukee Child Welfare indicating that an adoptive resource has been identified for both children.

¶6 The circuit court held a hearing on Jodie’s motion. The court acknowledged that it did not previously ask Jodie about proposed adoptive resources or whether payments to Jodie had been made, but denied her motion. Specifically, the circuit court said:

[B]ecause there’s no evidence of prejudice, because there’s no evidence of coercion, because the affidavit remedies whatever error existed, I will find that whatever error occurred was harmless.

¶7 This appeal follows.

DISCUSSION

¶8 Jodie argues that the circuit court’s failure to ask about adoptive resources and its failure to require a report detailing potential financial exchanges prior to accepting Jodie’s stipulation renders the stipulation invalid. We disagree.

Standard of Review.

¶9 Whether circumstances warrant termination of parental rights is within the circuit court’s discretion. *David 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. *See 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.

The Circuit Court’s Failure to Discuss Potential Adoptive Resources and to Require a Financial Exchange Report did not Render Jodie’s Stipulation Invalid.

¶10 Before accepting a parent’s stipulation as to grounds to terminate parental rights, the circuit court, in accordance with WIS. STAT. § 48.422(7), must:

(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.

(bm) Establish whether a proposed adoptive parent of the child has been identified. If a proposed adoptive parent of the child has been identified and the proposed adoptive parent is not a relative of the child, the court shall order the petitioner to submit a report to the court containing the information specified in s. 48.913(7). The court shall review the report to determine whether any payments or agreement to make payments set forth in the report are coercive to the birth parent of the child or to an alleged [or] presumed father of the child or are impermissible under s. 48.913(4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon

transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall dismiss the petition or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913(4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24(1). This paragraph does not apply if the petition was filed with a petition for adoptive placement under s. 48.837(2).

(br) Establish whether any person has coerced a birth parent or any alleged or presumed father of the child in violation of s. 48.63(3)(b)5. Upon a finding of coercion, the court shall dismiss the petition.

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

¶11 Here, the circuit court admitted that it did not inquire about adoptive resources or require the submission of a report concerning potential financial exchanges. We conclude that this error was harmless.

¶12 The standard for harmless error is whether there is a “reasonable possibility” that the error contributed to the outcome of the action or proceeding at issue. *Martindale v. Ripp*, 2001 WI 113, ¶32, 246 Wis. 2d 67, 629 N.W.2d 698. A “reasonable possibility” of a different outcome is a possibility sufficient to undermine our confidence in the outcome. *See id.*

¶13 The circuit court’s admitted error is not enough to undermine our confidence in the outcome because there is no evidence to suggest that if the court had asked the omitted questions, its decision would have been different. First, two affidavits submitted to the court following Jodie’s motion to withdraw established that adoptive resources were identified and that no impermissible financial exchanges took place. Moreover, the circuit court engaged Jodie at length to

ensure that she understood what she was stipulating to, what rights she was giving up, whether she was coerced into the stipulation, and what the consequences of her decision would be. Indeed, Jodie admitted, through counsel, that her motion to withdraw her stipulation was not based upon an assertion that her stipulation was not knowing, voluntary or intelligent. Nor could counsel articulate any prejudice that Jodie suffered. Rather, Jodie's counsel argued that the circuit court skipped certain statutory mandates and that this error automatically rendered the stipulation invalid. However, there is no evidence in the record to suggest that Jodie would not have stipulated had the circuit court not made the omissions Jodie complains of.

¶14 For the forgoing reasons, we affirm the circuit court.

By the Court.—Orders affirmed.

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

