

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 13, 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 No. 2015AP1345

Cir. Ct. No. 2014TP54

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

C. S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
REBECCA LYNN GRASSL BRADLEY, Judge. *Affirmed.*

¶1 STARK, P.J.¹ C.S. appeals an order terminating her parental rights to her son, M.G. C.S. argues the circuit court erred in determining that termination of her parental rights was in M.G.’s best interests. We disagree and affirm the order.

BACKGROUND

¶2 M.G. was born on August 4, 2005. On July 16, 2008, M.G. and his three older siblings were placed in out-of-home care. The children had been found at a maternal relative’s house in “deplorable conditions,” which consisted of nine children and at least two adults living in a two-bedroom apartment with no working utilities or appliances, no furniture, two mattresses, and feces from a child’s toilet on the floor. The children were reunited with C.S. on January 20, 2011.

¶3 On February 28, 2013, M.G. and his siblings were again removed from C.S.’s care after a referral was made to the Bureau of Milwaukee Child Welfare alleging C.S. was becoming increasingly violent with her children. M.G.’s older brother was found with a large laceration on his face caused by C.S. hitting him with a broken broom-stick, and M.G. had healing scars from prior physical abuse. The children reported that C.S. and her boyfriend had been hitting them with extension cords, sticks, hangers, and other objects. The children also informed the initial assessment workers that they were scared of C.S. and thought she might kill them if they returned home. C.S. was charged with felony child

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

abuse - intentionally causing harm, for the injuries to M.G.'s older brother. C.S. pled guilty to a reduced charge and was placed on three years' probation.

¶4 On March 4, 2013, M.G. was placed in the foster home of M.R., where he continues to reside. On March 10, 2014, the State filed a petition to terminate C.S.'s parental rights. C.S. entered a no contest plea to the ground of continuing need of protection or services under WIS. STAT. § 48.415(2). The circuit court accepted C.S.'s plea and found C.S. to be unfit. At the close of the subsequent disposition hearing, the court concluded it was in M.G.'s best interests to terminate C.S.'s parental rights and entered an order to that effect. C.S. now appeals.

DISCUSSION

¶5 “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). We will not overturn the court's determination absent an erroneous exercise of discretion. *Id.* A 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).

¶6 During the grounds phase of a termination of parental rights proceeding, the parent's rights are paramount. *Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. However, during the disposition phase, the best interests of the child are the prevailing concern. WIS. STAT. § 48.426(2). In determining whether termination of a parent's rights is in

the child's best interests, the court must consider the six factors in WIS. STAT. § 48.426(3). *Julie A.B.*, 255 Wis. 2d 170, ¶29. Here, the circuit court properly considered each of those factors.

¶7 First, the court considered the likelihood M.G. would be adopted if C.S.'s rights were terminated. *See* WIS. STAT. § 48.426(3)(a). The court found M.G.'s foster parent, M.R., with whom M.G. had resided for over two years, was licensed for adoption and wanted to adopt M.G. The court described M.R. as "committed to caring for [M.G.] whether as an adoptive or a foster mother" and concluded it was "very likely" M.G. would be adopted if C.S.'s parental rights were terminated.

¶8 Second, the court considered M.G.'s age and health. *See* WIS. STAT. § 48.426(3)(b). At the time of the hearing, M.G. was nine and one-half years old. The court did not identify M.G. as having any medical issues but indicated M.G. had been diagnosed with depression, attention deficit hyperactivity disorder, social anxiety, and attachment disorder. The court concluded neither M.G.'s age nor his health was a barrier to adoption, as M.R. was committed to adopting M.G. regardless.

¶9 Third, the court considered whether M.G. had a substantial relationship with C.S. or other family members and whether it would be harmful to M.G. to sever those relationships. *See* WIS. STAT. § 48.426(3)(c). The court found M.G. has had a substantial relationship with his mother "during parts of his life." The court also found M.G. has relationships with his siblings. However, the court concluded severing M.G.'s legal relationship to his biological family would not be harmful, in large part because contact with his biological family is likely to

continue. M.G.'s older brother was going to be placed with M.G. in M.R.'s home.

The court also explained,

[M.R.] testified that she will maintain contact between [M.G.] and his siblings ... [and] between [M.G.] and his mother, [C.S.]. [M.R.]'s testimony ... was quite compelling when she expressed how much she wants [M.G.]'s mother to be a part of their lives, recognizing that [M.G.] loves his mother very much. [M.R.] very emotionally testified that she wants to be there for [C.S.] and that [C.S.] will always be welcome in her home.

The court additionally found C.S. "has not been able to act as [M.G.]'s day-to-day parent for years of his life, approximately half of his life."²

¶10 Fourth, the court considered M.G.'s wishes. *See* WIS. STAT. § 48.426(3)(d). The court indicated M.G. expressed he wants to live with C.S. but, at his age, M.G. "cannot fully comprehend the complexities of his mother's mental illness and why he has not been safe in his mother's care." The court also noted that when M.G. was asked where he wanted to live if he could not return home with C.S., he stated he wants to stay with "granny," which is what he calls M.R.

¶11 Fifth, the court considered the duration M.G. had been separated from C.S. *See* WIS. STAT. § 48.426(3)(e). The court found M.G. was separated from his mother for a "significant period of his life." He was in out-of-home care from 2008 to 2011 and again for over two years as of the hearing date.

² The court also found M.G. never had a relationship with his biological father or the paternal side of his family, as his father's identity is unknown. The father's rights are not at issue in this appeal.

¶12 Finally, the court considered whether M.G. would enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of his current placement, the likelihood of future placements, and the results of prior placements. *See* WIS. STAT. § 48.426(3)(f). The court began by discussing the amount of time M.G. had been out of the home. The court next found M.G. had “suffered significant physical and emotional abuse at the hands of [C.S.] and her boyfriend, was neglected and exposed to domestic violence.” The court then focused on C.S.’s “significant, serious and chronic mental health history,” including her diagnosis of schizophrenia, major depressive disorder, and dependent personality disorder. The court recognized [C.S.] was enrolled in a program through ARC Community Services and “appear[ed] to be doing well in that program” and noted C.S. also was receiving services through Milwaukee Mental Health Associates. However, the court referenced a psychological report in which the psychologist stated “[C.S.] evidences a high level of psychopathology that is likely to be continuing and enduring.” Additionally, the court found C.S. has had repeated periods of incarceration, as recently as December 2014, and “has not been able to manage her mental health needs or her medications to the extent that she has not been able to safely parent [M.G.] consistently.”

¶13 The circuit court thoughtfully and carefully considered the proper factors in WIS. STAT. § 48.426(3) before concluding that termination of C.S.’s parental rights was in M.G.’s best interests. C.S. argues the court should have given greater weight to the substantial relationship between M.G. and C.S., the potentially harmful effect of severing the legal relationship, and M.G.’s wishes. However, the circuit court is not required to afford greater weight to any particular factors identified in § 48.426(3). *See State v. Margaret H.*, 2000 WI 42, ¶¶29, 35,

234 Wis. 2d 606, 610 N.W.2d 475. Rather, the factors that the court considers “must be calibrated to the prevailing standard,” the child’s best interests. *Julie A.B.*, 255 Wis. 2d 170, ¶30. Here, after giving careful consideration and weight to each of the § 48.426(3) factors, the court determined that providing M.G. with the permanence and stability of adoption outweighed any harm from the legal severance of his family relationships. The court was fully within its discretion to do so.

¶14 C.S. further argues that “no negative consequences to M.G.” would result from allowing C.S. additional time to prove that she could appropriately parent M.G. However, the circuit court concluded:

The evidence ... indicates that it is in the best interest of [M.G.] to give him the permanency, consistency and stability that [M.R.] can continue to provide him and the permanency that she can provide him by adopting him. Otherwise [M.G.] will remain in a sort of limbo, always wondering whether he is going to stay with [M.R. and her husband] or be returned to his mother or some place else. The law requires that at this time we give [M.G.] a permanent, stable home.

The court’s concern that M.G. otherwise would remain in limbo and its resulting termination order serve one of the legislative purposes in the Children’s Code, which states:

The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships are contrary to the welfare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their safe return to the family.

WIS. STAT. § 48.01(1)(a); *see also* § 48.01(1)(gg).

By the Court.—Order affirmed.

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

