COURT OF APPEALS
DECISION
DATED AND FILED

December 28, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-2549

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JONATHAN M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Brown County: J. D. McKAY, Judge. *Affirmed.*

¶1 PETERSON, J. Jonathan M. appeals an order terminating his parental rights. He claims that the circuit court erroneously denied his request for a continuance of the dispositional hearing. This court disagrees and affirms the order.

¶2 The Brown County Human Services Department petitioned for the termination of Jonathan's parental rights to his child, Cheyenne C.M., in March 1999. The grounds for the petition were continuing need of protection or services. At the fact-finding hearing in June, Jonathan waived his right to a jury trial and entered a plea of no contest. The court heard testimony, found that grounds existed for termination and scheduled a dispositional hearing.

¶3 The circuit court held the dispositional hearing in July to determine whether termination was in the best interests of the child. Jonathan requested a continuance so that he could pursue the possibility of generating evidence by meeting with a psychologist. The reasons he gave for failing to meet with a psychologist prior to the hearing date were twofold: first, he "had some transportation problems;" and, second, he was incarcerated for a portion of the time when he could have met with a psychologist.

¶4 The circuit court refused to grant Jonathan a continuance and admitted into evidence without objection reports from the Brown County Human Services Department and the Oneida Nation Social Services. After hearing argument from counsel, the court concluded that termination of Jonathan's parental rights was in Cheyenne's best interests. Jonathan appeals that decision, claiming that the court erred by refusing to grant him a continuance under § 48.315(2), STATS.[1]

[1] Section 48.315(2), STATS., states:

> A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

(continued)

¶5 A circuit court's decision to deny a continuance is discretionary.[2] *See* ***Brezinski v. Barkholtz***, 71 Wis.2d 317, 320, 237 N.W.2d 919, 921 (1976). This court will not reverse a discretionary decision unless the court failed to exercise its discretion or its decision lacked a reasonable basis. *See* ***id***. A court exercises its discretion appropriately when it examines the relevant facts, applies the proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach. *See* ***Loy v. Bunderson***, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982). In exercising its discretion, a court must consider the grounds for the request along with any consent of the parties and the interest of the public in the prompt disposition of cases. *See* § 48.315(2), STATS.

¶6 This court concludes that the circuit court properly exercised its discretion by refusing to grant Jonathan a continuance. After Jonathan's attorney explained the grounds for the request, the court sought responses from each of the three other parties. All three opposed Jonathan's request. The attorney representing the county did not believe good cause existed. The attorney representing the Oneida Tribe of Indians stated that this appeared to be only another delay in Jonathan's continued pattern of failing to keep appointments. The guardian ad litem observed that the scheduling time-line had provided sufficient opportunity for meeting with a psychologist.

¶7 The court considered each parties' arguments and found that Jonathan was afforded ample opportunity to meet with a psychologist. The court

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[2] A circuit court may only grant a continuance under § 48.315(2), STATS., if good cause exists. However, assuming good cause exists, the decision whether to grant a continuance is still discretionary. *See* ***Brezinski v. Barkholtz***, 71 Wis.2d 317, 320, 237 N.W.2d 919, 921 (1976).

stated that Jonathan knew about the dispositional hearing date and could have arranged transportation to meet with a psychologist at some point during the two-week period after he was released from jail, had it been a priority. The court also noted that Jonathan could have arranged to meet a psychologist while incarcerated. Finally, the court reasoned that there was no indication a psychological evaluation would assist it in making a decision.

¶8 Jonathan argues that his failure to find transportation over a two-week period does not constitute bad faith and that the other parties would not have been prejudiced by a short continuance. However, Jonathan does not claim that any of the facts the court found more controlling were erroneous.[3] This court also notes that Jonathan fails to discuss what evidence he hoped to obtain from a psychologist. In this regard he merely states: "had the trial court permitted a continuance to obtain psychological evaluations, he could have presented evidence at the dispositional hearing to convince the trial court to not terminate his parental rights." This court does not consider unsupported assertions or insufficiently developed appellate arguments. *See* ***Barakat v. DHSS***, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398-99 (Ct. App. 1995). Moreover, Jonathan fails to show any prejudice. *See* § 805.18(2), STATS.

¶9 The circuit court reasonably decided that further delay was not only unnecessary, but also was outweighed by the public's interest in prompt disposition. Therefore, this court concludes that the circuit court applied the proper standard of law to the relevant facts.

[3] This court does not reverse a circuit court's findings of fact unless they are clearly erroneous. *See* ***State v. Weber***, 174 Wis.2d 98, 111, 496 N.W.2d 762, 768 (Ct. App. 1993).

By the Court.—Order affirmed.

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