

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 29, 2016

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. 2016AP1472
2016AP1473
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2015TP74
2015TP75**

**IN COURT OF APPEALS
DISTRICT IV**

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

C. N.,

RESPONDENT-APPELLANT.

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

C. N.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed and causes remanded with directions.*

¶1 BLANCHARD, J.¹ C.N. appeals circuit court orders terminating her parental rights to J.N. and J.G. Regarding the grounds phase, C.N. does not dispute the ground of continuing children in need of protection or services (CHIPS) as to each child, but argues that the circuit court erred in issuing orders terminating C.N.'s rights to both children on the ground of failure to assume parental responsibility. Regarding the dispositional phase, C.N. argues that the court erroneously exercised its discretion in concluding that the termination of C.N.'s parental rights was in the children's best interests.

¶2 The parties agree that an apparent clerical error resulted in the orders erroneously reflecting that C.N.'s rights were terminated on the ground of failure to assume parental responsibility.² This leaves the challenge to the dispositional result. On this issue, I agree with the County and the guardian ad litem that the circuit court reasonably exercised its discretion in terminating C.N.'s parental rights in the children's best interests.

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

² The County concedes that the final orders should not have reflected failure to assume parental responsibility as a ground for termination of C.N.'s parental rights, and there is no dispute that continuing CHIPS is the only ground for termination that should appear on the orders. Accordingly, I remand the case to the circuit court with instructions to amend the final orders terminating C.N.'s parental rights to reflect only the ground of continuing CHIPS.

BACKGROUND

¶3 The County petitioned for termination of C.N.’s rights to each child on two grounds: continuing CHIPS and failure to assume parental responsibility. C.N. entered a no contest plea as to the first ground, continuing CHIPS, regarding both children. As part of the plea agreement, the circuit court dismissed the second ground of failure to assume parental responsibility as to both children.

¶4 Following C.N.’s plea on the single ground, the circuit court held a dispositional hearing, where as already noted the circuit court concluded that the termination of C.N.’s parental rights was in the best interests of each child. I reference additional facts as needed in the discussion section below.

DISCUSSION

¶5 C.N. challenges the circuit court’s conclusion that the termination of her parental rights to J.N. and J.G. was in the children’s best interests. A circuit court’s decision whether to terminate parental rights is discretionary. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

¶6 Generally speaking, “[a] circuit court acts within 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.” *Bank Mut. v. S.J. Boyer Constr., Inc.*, 2010 WI 74, ¶20, 326 Wis. 2d 521, 785 N.W.2d 462. In the specific context of a petition to terminate parental rights, the circuit court’s exercise of discretion requires the court to focus on the child’s best interests and to consider six statutory factors:

- (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.

See WIS. STAT. § 48.426(3); *Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶¶28-29, 255 Wis. 2d 170, 648 N.W.2d 402; *Gerald O.*, 203 Wis. 2d at 153-54.

¶7 As indicated above, once an appropriate ground for termination has been established, a circuit court's decision to terminate an individual's parental rights turns on the child's best interests. *See* WIS. STAT. § 48.01(1) (“[T]he best interests of the child ... shall always be of paramount consideration.”); WIS. STAT. § 48.426(2) (“The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.”).

¶8 C.N. cannot reasonably, and does not, dispute that the court discussed each of the statutory factors, and explicitly applied those factors to evidence presented at the dispositional hearing, keeping its focus on the best interests of the children. C.N.'s argument is that, in doing so, the circuit court erroneously exercised its discretion in placing too much weight on the fact that the children had been out of C.N.'s home for a significant period of time and had

formed strong attachments to their foster parents, and in placing insufficient weight on efforts that C.N. allegedly made toward reunification with her children.

¶9 As stated above, the court enumerated each of the pertinent factors and applied the evidence presented at the hearing to the factors. The court concluded that there was a strong likelihood that each of the children would be adopted. The court considered the ages and health of the children, observing that both children were generally in good health despite some behavioral issues for each child. The court noted that J.G. had expressed her wishes and that J.N. was too young to express his wishes, but that, in any event, the guardian ad litem, who is responsible for expressing the children's wishes, recommended that it was in the children's best interests to terminate C.N.'s parental rights to each child.

¶10 The court considered the facts that J.G. had been placed out of C.N.'s home for more than 60% of J.G.'s life, and J.N. had been placed out of C.N.'s home for more than 90% of J.N.'s life. The court discussed the fact that the duration of the children's separations from C.N. had affected the children's respective relationships with C.N. The court concluded that the children did not have substantial relationships with C.N., stating that they both viewed C.N. as a "visitor," and viewed their then-current foster care placements as "home." The court acknowledged that there might be harm to the children in severing their relationships with C.N., but, on balance, that risk of harm was outweighed by other factors, including that the children would have more stable family relationships if C.N.'s parental rights were terminated.

¶11 C.N. argues that the circuit court placed too much weight on the duration of the separations in determining that, although the children each had relationships with C.N., neither was substantial enough for either child to view

C.N. as a stable, safe parental figure. However, my review is limited to examining whether the circuit court properly considered each of the statutory factors in light of the evidence, and C.N. gives me no reason to conclude that the court did not appropriately exercise its discretion in weighing the factors. *See State v. Margaret H.*, 2000 WI 42, ¶29, 234 Wis. 2d 606, 610 N.W.2d 475. This includes C.N.'s argument that the court erroneously exercised its discretion in failing to place sufficient weight on the progress C.N. had allegedly made toward meeting the conditions of return. The circuit court explicitly took into account C.N.'s assertions that she was making strides in her efforts to become a stable and safe parent for her children, and C.N. provides no basis for me to conclude that the court reached a conclusion that a reasonable judge could not reach in assessing credibility, weighing evidence, and exercising its discretion.

CONCLUSION

¶12 For the foregoing reasons, I affirm the circuit court's decision that the termination of C.N.'s parental rights was in the best interests of the children and remand the case to the circuit court solely to address the apparent clerical errors on the orders regarding a ground for termination as to each child.

By the Court.—Orders affirmed and causes remanded with directions.

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

