

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 29, 2005**

Cornelia G. Clark  
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. 04-3094  
STATE OF WISCONSIN**

Cir. Ct. No. 03TP000239

**IN COURT OF APPEALS  
DISTRICT I**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**BEVERLY G.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
KEVIN E. MARTENS, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.<sup>1</sup> Beverly G. appeals from an order terminating her parental rights to Ariel T. Beverly contends that the trial court erroneously

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

exercised its discretion when it ordered termination because the foster parents were not firmly committed to adopting Ariel. Because the trial court did not erroneously exercise its discretion, this court affirms.

## BACKGROUND

¶2 Ariel was born to Beverly on August 10, 1994. When Ariel was nine months old, Beverly gave her to an aunt. On June 29, 1998, Ariel was removed from the home. She was placed in her current foster home with Luann F. in December of 1998, where she remains today. In 1998, five visits were scheduled for Beverly to visit Ariel. Beverly attended two of those visits. In 1999, Beverly had one visit with Ariel. There were no visits in 2000 or 2001. Beverly moved to California in 2000 and has resided there ever since.

¶3 On April 25, 2003, the State filed a petition seeking to terminate Beverly's parental rights to Ariel.<sup>2</sup> The petition asserted three grounds for termination: (1) Beverly had abandoned Ariel; (2) Ariel was in continuing need of protection or services; and (3) Beverly failed to assume parental responsibility. Beverly contested the petition and the case was tried to a jury in July 2004.

¶4 The jury returned a verdict finding that grounds existed to terminate Beverly's parental rights. Thereafter, the trial court conducted a dispositional hearing. At that hearing, Sharon Karow, the social worker assigned to work with Ariel and the foster family, testified that the foster family was not looking to adopt Ariel at the time of the dispositional hearing, although they were not ruling it out.

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<sup>2</sup> The State also sought to terminate the parental rights of Ariel's father. He did not appear in court for any of the TPR proceedings and was found in default. He does not appeal the termination of his rights.

The reason for this position was that Ariel had substantial psychiatric and behavioral needs and the foster family wanted to ensure that she would continue to receive the services necessary to address those needs. Testimony at the hearing also revealed that the foster family was committed to providing long-term care for Ariel, and Ariel indicated that she wanted to remain with her foster family. The trial court assessed the myriad of statutory factors before ruling that termination of parental rights was in Ariel's best interests. The court entered an order terminating Beverly's parental rights. Beverly now appeals from that order.

### DISCUSSION

¶5 Beverly raises a single issue: whether the trial court erroneously exercised its discretion in terminating her parental rights to Ariel, even though there was no firm adoptive resource available. Beverly claims that it is not in Ariel's best interests to terminate Beverly's parental rights under these circumstances. This court rejects Beverly's claim.

¶6 The trial court is vested with the discretion to determine whether termination of parental rights is in the best interests of the child. *In re J.L.W.*, 102 Wis. 2d 118, 131, 306 N.W.2d 46 (1981); *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The discretion is placed with the trial court in these circumstances because it has the firsthand opportunity to observe the persons involved. *Id.* This court will not disturb a discretionary determination if the trial court employed a rational thought process based on the pertinent facts and applied the correct standard of law. *Sheboygan County DHHS v. Julie A.B.*, 2002 WI 95, ¶43, 255 Wis. 2d 170, 648 N.W.2d 402.

¶7 Here, the statutory standard requires the trial court to determine what would be in the best interests of the child. *Id.*, ¶¶28, 30. In doing so, the trial

court shall consider the six enumerated factors set forth in WIS. STAT. § 48.426(3) (2003-04):<sup>3</sup>

FACTORS. 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.

(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.

¶8 This court has reviewed the record, particularly the trial court's analysis of these six factors and how each relates to Ariel's best interests. The trial court carefully considered all of the statutory factors. In addressing the first factor—likelihood of adoption—the trial court reasoned:

Likelihood of adoption after termination, it is very unclear whether Ariel will be adopted. There is testimony from the foster parents, if there is a resource it is the [foster family]; we are dealing with a child very damaged, unfortunately, regrettably, that has become apparent and

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<sup>3</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

has been apparent for a number of years. One of the few stable parts of this child would be seen as placement and continued services that the child is receiving.

The social worker testified what the [foster family] desire[s] but they are not in a position to be seeking adopting this child now and would be open to giving it some thought in the future....

....

So, assessing that factor, the Court makes a finding there is a likelihood of adoption after termination; there is a possibility and the possibility is something that may be long term rather than short term, given the testimony about the child's continuing needs. The Court does find that the current care giver has expressed a commitment to long term care and their actions have demonstrated that during the five years of the difficult behavior, but has been improving at least at some level.

¶9 The court proceeded to address each of the other statutory factors, finding that (b), (c), (d) and (e) all weighed in favor of termination. The court then went on to the last factor—stability:

Given the diagnosis and behavioral problems, this is a child desperately in need of stability and continuing treatment to address those problems, to allow the child to live in a safe, stable, happy home. I think it would be devastating for that child to be facing a prospect of continued or future moves. Given the fears expressed by the child and whatever memory this child has, it would be devastating to be faced with the prospect of visitation, contact that may lead to reunification.

I don't think at this point it is realistic, and given what I viewed as the child's need for stability, I think that would be harmful and create instability for the child. It is the child's best option for stability to remain where the child is at. The options for this child are perhaps not optimal in any direction but we need to do our best to ensure the child's safety and well being and do the best we can to do that.

¶10 Finally, the trial court concluded that it was in Ariel's best interests to terminate parental rights. Although it certainly would be preferable to have a

firm adoptive resource available to follow termination, this is not required. *See* WIS. STAT. § 48.428(1) (court has authority to terminate parental rights even when adoption is not possible or not likely).

¶11 Beverly argues that because adoption was listed as the first mandatory consideration, the legislature must have intended it to be the most important factor. This court disagrees. The “paramount” consideration is the best interests of the child, which is why this was clearly delineated within the statutory scheme. WIS. STAT. § 48.426(2) (“The best interests of the child shall be the prevailing factor considered by the court.”). The statute then delineates in the next statutory subsection the six mandatory factors that must be considered in determining the child’s best interests. *See* WIS. STAT. § 48.426(3).

¶12 Case law has consistently applied this statutory scheme, requiring courts to consider *all six* statutory factors in assessing the child’s best interests. In fact, our supreme court has clearly refuted Beverly’s claim, holding that the trial court should not “exclusively focus on any one factor ... of Wis. Stat. § 48.426(3).” *State v. Margaret H.*, 2000 WI 42, ¶35, 234 Wis. 2d 606, 610 N.W.2d 475. Rather, the trial court must assess each of the statutory factors in order to determine the best interests of the child. *Id.* The record here reflects that the trial court properly considered each of the statutory factors in making a best interests determination. The trial court found that the lack of an immediate adoption in this case was not sufficient to delay termination. The trial court determined that there was a possibility that the foster family would adopt Ariel sometime in the future and, even if that did not happen, all the other statutory factors favored termination. The trial court’s decision constituted a rational assessment of the facts and circumstances presented in this difficult case. This

court cannot hold that the trial court's determination resulted in an erroneous exercise of discretion.

¶13 Finally, although this court can understand Beverly's desire to delay termination in the hopes that she could sometime in the future find her footing, get a job, and contribute to Ariel's upbringing, this desire is insufficient to upset the trial court's ruling. The likelihood of that factual scenario occurring is purely speculative, and cannot form the basis of further delay, particularly when the mandatory statutory factors support the trial court's decision that termination at this time is in Ariel's best interests.

*By the Court.*—Order affirmed.

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

