**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**March 29, 2005**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 04-3099** **Cir. Ct. No. 03TP000784**

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

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**JOSE S.,**

**RESPONDENT-APPELLANT,**

**DAVID D. AND KATHLEEN D.,**

**RESPONDENTS.**

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APPEAL from an order of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed.*

¶1 FINE, J. Jose S. appeals from an order terminating his parental rights to Daniel S., who was born in October of 1997. He contends that the trial court erroneously determined that his conviction for killing the boy's mother was final, as that word is used in WIS. STAT. § 48.415(8), and, also, that the trial court erroneously exercised its discretion in concluding that termination of Jose S.'s parental rights to the boy was in the boy's best interests. We affirm.[1]

**I.**

¶2 Jose S. pled no-contest to the first-degree reckless homicide of Daniel S.'s mother. *See* WIS. STAT. § 940.02(1). He was sentenced to thirty-five years of initial confinement and fifteen years of extended supervision. We affirmed and the supreme court denied Jose S.'s petition for review.

¶3 WISCONSIN STAT. § 48.415(8) permits the circuit court to terminate a person's parental rights if he or she, among other things, kills the child's parent in such a way that the person is guilty of "first-degree reckless homicide … as evidenced by a final judgment of conviction." In ***Monroe County v. Jennifer V.***, 200 Wis. 2d 678, 548 N.W.2d 837 (Ct. App. 1996), we determined that "final judgment of conviction" meant that the person whose parental rights are sought to be terminated has exhausted his or her "appeal as of right" under WIS. STAT. § 808.03. ***Jennifer V.***, 200 Wis. 2d at 690, 548 N.W.2d at 843. Although conceding that he has exhausted his "appeal as of right" under § 808.03, Jose S. contends, however, that because ***Jennifer V.*** concerned a conviction under § 48.415(5)(a) (child abuse by parent causing death), ***id.***, 200 Wis. 2d at 680, 548 N.W.2d at 837, the decision does not apply here. He argues that § 48.415(8)'s

[1] On March 21, 2005, Jose S.'s lawyer filed a letter with the clerk of this court saying that she would not be writing a reply brief.

reference to federal law incorporates federal collateral attacks on his conviction and that until those are exhausted, his conviction for killing Daniel S.'s mother is not "final." We disagree.

¶4 WISCONSIN STAT. § 48.415(8) provides in full, with italics added to the part of the subsection upon which Jose S. relies:

> HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide in violation of s. 940.01, first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional homicide in violation of s. 940.05 *or a crime under federal law* or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide in violation of s. 939.30 *or a crime under federal law* or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime *under federal law* or the law of any other state as evidenced by a final judgment of conviction.

(Italics added.) Statutory language is the polestar for discerning legislative intent. ***State ex rel. Kalal v. Circuit Court***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. Although § 48.415(8)'s reference to federal law would, most likely, incorporate, federal first-appeal-as-of-right procedures for convictions of the designated crimes in federal court, that reference does not alter the fact that a "*final judgment* of conviction" (italics added) is final when all appeals as of right have been exhausted. ***Jennifer V.***, 200 Wis. 2d at 690, 548 N.W.2d at 843. To hold otherwise would not only read into § 48.415(8) something that is not there, but, as the State points out, would also undermine the overarching purpose of the termination-of-parental-rights provisions—to avoid the limbo of instability that would attend proceedings that, theoretically at least, would have no end. *See* WIS.

STAT. §§ 48.01(1)(a) ("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."); 48.01(1)(gg) ("This chapter shall be liberally construed to effectuate the following express legislative purposes: … To promote the adoption of children into safe and stable families rather than allowing children to remain in the impermanence of foster or treatment foster care."); 48.01(1)(gr) ("This chapter shall be liberally construed to effectuate the following express legislative purposes: … To allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued in accordance with this chapter and termination of parental rights is in the best interest of the child."); *see also* ***Jennifer V.***, 200 Wis. 2d at 689–690, 548 N.W.2d at 842–843 (stability goal of termination-of-parental-rights procedures); ***Woodford v. Garceau***, 538 U.S. 202, 206 (2003) (referencing the delay inherent in federal collateral attacks on state-court convictions). Jose S.'s contention that the State's petition to terminate his parental rights to Daniel S. was premature is without merit.

## II.

¶5 Whether a person's parental rights should be terminated is within the trial court's discretion. ***Brandon S.S. v. Laura S.***, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993). We will not reverse a trial court's discretionary decision if the trial court applied the relevant facts to the correct legal standard in a reasonable way. ***Ibid.*** We review *de novo*, however, whether the trial court has applied the correct legal standard. *See* ***Kerkvliet v. Kerkvliet***, 166 Wis. 2d 930, 939, 480 N.W.2d 823, 826 (Ct. App. 1992). Jose S. does not contend that the trial

court misapplied the law, but, rather, argues that it should have given more weight to keeping intact his family's ties to Daniel S.

¶6 WISCONSIN STAT. § 48.426 sets the principles that, if appropriate, the trial court should consider in exercising its discretion in deciding whether parental rights should be terminated. It provides:

> **(1)** COURT CONSIDERATIONS. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.
>
> **(2)** STANDARD. 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.
>
> **(3)** 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.

¶7 Given Jose S.'s long-term removal from society for killing Daniel S.'s mother, and the uncontradicted evidence that Daniel S. was, at the time of the court hearing doing well with his prospective adoptive parents, his maternal aunt and uncle, the focus of the trial court's decision, everyone agreed, was on whether some formal role should be given to Jose S.'s relatives. The trial court decided that there should not, noting that not only did Jose S.'s mother miss "forty-some percent" of scheduled visits with Daniel S., but also that Jose S.'s relatives were unable to give Daniel S. the nurturing he needed in light of his "sense of loss and confusion, [and] pain." Although not doubting the sincerity of Jose S.'s relatives in wanting Daniel S. to know his roots, the trial court came down on the side of stability and finality for the child:

> On the other hand, if we grant this adoption, finally there is closure. There is no saying that the [adopting family] can't allow some S[] relative who is consistent, seen Danny, sent cards. But they get to control it. That's what they should. That's what an adoption is. It creates parents. He has lost his parents. … And they need to be parents for him the best they can. And parents can control. They don't need a court coming into their life every six months revising who is allowed to see their son and who is not. Child needs to know this is my room, this is my school, these are my parents.

(Paragraphing omitted.) The trial court also found that Daniel S.'s relationship with Jose S.'s relatives was "not so substantial," as evidenced by "the lack of visits, the statements by Danny to" social service workers "and psychological experts," that Daniel S. would be harmed by severing his ties to those relatives. The trial court expressed it all in its oral-decision coda:

> I think he needs to be allowed, as best he can carrying that burden he carries, to live his life secure, stable, and peaceful, and there is nothing in the interest or needs of any paternal relative that supersedes that need. And, therefore, I am finding it in his best interest to terminate the parental rights of Jose S[].

¶8 As the trial court pointed out, this is a sad case—sad for Daniel S. as well as for his late mother, her family, and, also, for Jose S.'s family. The trial court's decision to terminate Jose S.'s parental rights to Daniel S. came down to what was best for Daniel S. This is what the statute requires, and, other than attempting to reargue the evidence, Jose S. has not shown how the trial court erroneously exercised its discretion. We affirm.

*By the Court.*—Order affirmed.

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