

**COURT OF APPEALS
DECISION
DATED AND FILED
November 17, 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 No. 2016AP1787

Cir. Ct. No. 2014TP99

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

S. C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

¶1 KLOPPENBURG, P.J.¹ S.C. seeks reversal of the order terminating her parental rights to her daughter D.C. During the first phase of the circuit court proceedings, S.C. pled no contest to grounds for involuntary termination, which resulted in a finding of parental unfitness. After conducting a dispositional hearing, the court found that termination is in the best interests of the child and terminated S.C.'s parental rights. S.C. argues that the circuit court erroneously exercised its discretion in how it considered certain of the statutory factors, specifically: (1) the likelihood of D.C.'s adoption and of a more stable and permanent family relationship as a result of termination; and (2) the impact of termination on D.C.'s broader relationships with her siblings and S.C. See WIS. STAT. § 48.426(3)(a), (c), and (f). For the reasons set forth below, I reject S.C.'s argument and affirm.

BACKGROUND

¶2 The following is a summary of the undisputed facts. S.C. is the mother of D.C., born in August 2013, and D.C.'s three older siblings; the siblings live in the Madison area, one with S.C. and two with a foster family. D.C. was removed from her mother's care upon birth, was placed with her current foster family in August 2014, and moved with her foster family to New York in July 2015.

¶3 Dane County Department of Human Services filed a petition requesting termination of S.C.'s parental rights to D.C. in December 2014, and in August 2015 S.C. pled no contest to the ground that D.C. continued to be a Child

¹ This appeal is 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.

in Need of Protection and/or Services (CHIPS). S.C., the social worker assigned to work with S.C., and one of D.C.’s foster parents were among those who testified at the dispositional hearing that followed in December 2015 and February 2016. Following the testimony, the circuit court ordered the termination of S.C.’s parental rights to D.C., and this appeal followed.

DISCUSSION

¶4 “Wisconsin has a two-part statutory procedure for the involuntary termination of parental rights.” *Steven V. v. Kelley H.*, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. “In the first, or ‘grounds’ phase of the proceeding, the petitioner must prove by clear and convincing evidence that one or more of the statutorily enumerated grounds for termination of parental rights exist.” *Id.* “[I]f grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit.” *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶18, 333 Wis. 2d 273, 797 N.W.2d 854 (quoted sources omitted). The second phase, the dispositional hearing, “occurs only after the fact-finder finds a Wis. Stat. § 48.415 ground has been proved and the court has made a finding of unfitness. In this step, the best interest of the child is the ‘prevailing factor.’” *Id.*, ¶19 (citations omitted).

¶5 On appeal, S.C. challenges only the second phase, the circuit court’s determination of the best interests of D.C. at the dispositional hearing.

¶6 The prevailing factor at the dispositional phase in a termination case is the best interests of the child. *David S. v. Laura S.*, 179 Wis. 2d 114, 149, 507 N.W.2d 94 (1993). The determination of the best interests of the child depends on first-hand observations and experiences with the persons involved. *Id.* at 150. Consequently, the decision whether to terminate parental rights is committed to the circuit court’s discretion. *Id.* “We will affirm a circuit court’s discretionary

determination so long as it examines the relevant facts, applies the proper legal standard, and uses a demonstrated rational process to reach a conclusion that a reasonable judge could reach.” *Martin L. v. Julie R. L.*, 2007 WI App 37, ¶4, 299 Wis. 2d 768, 731 N.W.2d 288.

¶7 WISCONSIN. STAT. § 48.426(3) sets forth the factors that a circuit court must examine in determining whether the termination of parental rights is in the best interests of the child. The statute provides:

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.

The weight to be given to each factor is a matter committed to the court’s discretion. See *State v. Margaret H.*, 2000 WI 42, ¶¶29-30, 234 Wis. 2d 606, 610 N.W.2d 475 (“we cannot mandate the relative weight to be placed on” a factor).

¶8 As noted, S.C. argues that the circuit court erroneously exercised its discretion in how it considered three of the statutory factors, specifically: (1) the

likelihood of D.C.'s adoption and of a more stable and permanent family relationship as a result of termination (factors (a) and (f)); and (2) the impact of termination on D.C.'s broader relationships with her siblings and S.C. (factor (c)). In response, the county explains how the record demonstrates to the contrary. I deem S.C.'s failure to file a reply brief to concede the issue. *See Fischer v. Wisconsin Patients Comp. Fund*, 2002 WI App 192, ¶1 n.1, 256 Wis. 2d 848, 650 N.W.2d 75 ("An argument asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted."). Nevertheless, for the sake of completeness, I engage in that explanation as follows.

¶9 As to the likelihood of adoption and a more stable and permanent family relationship, the circuit court determined that based on the evidence the likelihood of adoption after termination was "very high." The circuit court based this finding on testimony from the social worker, who testified that D.C. had "significantly bonded and attached with her foster parents," making the likelihood of D.C.'s adoption "very good," and testimony from one of D.C.'s foster parents, who testified that he and his family were "committed" to adopting D.C. and New York authorities had identified no barriers to adoption. The circuit court discounted the foster family's prior decision to return S.C.'s brother to Madison, based on his different situation – he had been removed from S.C.'s care at an older age, with greater potential for behavioral issues – and on the foster parent's explanation of how the move to New York was detrimental to the brother's best interest.

¶10 The circuit court also relied on the social worker's testimony that termination would allow D.C. to enter into a more permanent and stable living environment; that D.C. had formed strong bonds with her foster family; and that it would be significantly disruptive and psychologically harmful to D.C. to move her

from her foster home. The circuit court concluded that, as D.C. had spent most of her “formative bonding years” with a foster family that loves, supports, and wants to take care of her, D.C.’s best chance for a stable and permanent family relationship lay with the foster parents who remained committed to adopting her.

¶11 As to the impact of termination on D.C.’s broader relationships with her siblings and S.C., the circuit court relied on evidence showing that D.C. had a very minimal relationship with S.C. In addition, the circuit court properly relied on the foster parents’ testimony expressing their commitment to maintaining D.C.’s connections to her siblings and S.C., and describing the specific steps the foster parents had undertaken and would undertake to meet that commitment. *Cf. Margaret H.*, 234 Wis. 2d 606, ¶29 (“In its discretion, the court may afford due weight to an adoptive parent’s stated intent to continue visitation with family members”).

¶12 In challenging the circuit court’s consideration of the factors at issue, S.C. argues that neither adoption nor a stable and permanent family relationship is likely because one cannot be confident of the foster family’s commitment to D.C. when the family returned D.C.’s brother to S.C. after experiencing difficulties with him. S.C. also argues that, because D.C. was removed from S.C. upon birth, allowing D.C. to reside in New York will severely hamper the development of any relationships with S.C. and D.C.’s siblings, which could cause D.C. harm.

¶13 The gravamen of S.C.’s arguments is that the circuit court should have weighed the evidence differently, against rather than in favor of termination. But the weight and credibility of the evidence are for the circuit court to determine. See *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, ¶6, 351 Wis. 2d 439, 839 N.W. 2d 893; *Lessor v. Wangelin*, 221 Wis. 2d

659, 665-66, 586 N.W. 2d 1 (Ct. App. 1998). The record demonstrates that the circuit court considered the evidence highlighted by S.C., together with the other evidence relevant to each factor, and determined that based on the evidence as a whole, termination was in D.C.'s best interests. The court's decision represents a proper exercise of discretion and its order terminating S.C.'s parental rights is affirmed.

By the Court.—Order affirmed.

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

