COURT OF APPEALS
DECISION
DATED AND FILED

January 24, 2017

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. 2016AP1460

Cir. Ct. No. 2014TP316

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

P.T.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: MARK A. SANDERS and CHRISTOPHER R. FOLEY, Judges. *Affirmed.*

¶1 BRASH, J.[1] P.T. appeals an order terminating his parental rights to his son, X.L.T. He also appeals the order denying his postdispositional motion. On appeal, P.T.'s sole argument is that the postdisposition court erred when it examined the transcript of the colloquy regarding P.T.'s stipulation to grounds in determining whether P.T. failed to establish a prima facie case that his stipulation was not knowingly, intelligently, and voluntarily made. We disagree and affirm.

BACKGROUND[2]

¶2 P.T. is the biological father of X.L.T., who was born on December 23, 2011. X.L.T. was born prematurely with serious medical concerns. On or about March 16, 2012, X.L.T. was detained by the Bureau of Milwaukee Child Welfare (BMCW).[3] The BMCW made the decision to detain X.L.T. because there were concerns that P.T. and D.T.[4]—X.L.T.'s mother—failed to understand X.L.T.'s medical concerns and failed to make doctors' appointments. The BMCW was also concerned that X.L.T. was gaining little weight in the care of P.T. and

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted. Notwithstanding WIS. STAT. RULE 809.107(6)(e), we may extend the time to issue a decision in termination of parental rights cases. *See* ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995). Due to the need to address the number of issues raised by the parties on appeal, on our own motion, we extend the decisional deadline in this appeal to the date of this decision.

[2] Because the issue on appeal does not challenge the facts, only a brief background discussion is provided to give context to the issue on appeal.

[3] The Bureau of Milwaukee Child Welfare (BMCW) has since been renamed The Division of Milwaukee Child Protective Services. Since the agency was still the BMCW at the time of this proceeding, all references will be to the BMCW.

[4] D.T.'s parental rights were also terminated in Milwaukee County Circuit Court Case No. 2014TP316. The order terminating D.T.'s parental rights and the order denying her postdispositional motion are the subject of a separate appeal, *see* ***State v. D.T.***, No. 2016AP1488, and are not at issue in the current proceeding.

D.T., and that P.T. and D.T. would frequently forget to feed X.L.T. Ultimately, the decision to detain X.L.T. was made due to P.T.'s and D.T.'s demonstrated inability to provide the necessary care for X.L.T.

¶3 A Child in Need of Protection or Services (CHIPS) dispositional order was entered on January 24, 2013, listing the different goals and conditions P.T. and D.T. needed to meet. A trial reunification occurred in March of 2014 until approximately July of 2014, but was ultimately revoked because P.T. and D.T. were living in a motel and were not appropriately addressing X.L.T.'s health concerns. Throughout the pendency of the underlying proceedings, P.T. failed to participate in services to have X.L.T. returned to his care. Specifically, P.T. did not engage in parenting courses or therapy, he failed to participate in X.L.T.'s medical care in any way, and, from approximately July of 2014 until June of 2015, he did not engage in any visitation with X.L.T. Furthermore, P.T. was also refusing services from the BMCW during this time.

¶4 On December 5, 2014, the State filed a petition to terminate P.T.'s parental rights to X.L.T (Petition).[5] The Petition alleged two grounds for termination: (1) continuing need of protection and services, pursuant to § 48.415(2); and (2) failure to assume parental responsibility, pursuant to § 48.415(6). The matter was scheduled for trial.

[5] This petition also sought to terminate D.T.'s parental rights to X.L.T.

¶5 On May 18, 2015, P.T. and D.T. stipulated that grounds existed to terminate their parental rights under continuing need of protection or services. The circuit court engaged in a colloquy with both P.T. and D.T.[6] The circuit court explained to P.T. the different grounds alleged and the different rights he would be giving up by stipulating. The circuit court discussed how a stipulation to grounds would result in P.T. giving up his right to contest at later proceedings whether grounds exist. The circuit court further explained what a dispositional hearing would entail, how the best interests of the child would be the prevailing standard, and the procedure and potential outcomes from the hearing. The circuit court also specified for P.T. that, at the dispositional hearing, the circuit would not revisit whether conditions of return had been met and would be focused only on what was in X.L.T.'s best interests. P.T. indicated his understanding and the circuit court found that P.T.'s stipulation was entered freely, voluntarily, and intelligently.

¶6 Following P.T.'s stipulation, the circuit court adjourned the case for prove-up testimony and disposition. On September 15, 2015, the circuit court heard testimony to prove-up the grounds alleged and, finding that the State had provided the necessary factual basis to support P.T.'s stipulation, entered the requisite unfitness findings. The dispositional hearing was held over two separate days, beginning on September 15, 2015, and concluding on December 15, 2015. At the conclusion of the dispositional hearing, the circuit court ruled that, taking

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[6] The Honorable Mark A. Sanders presided over the litigation of the petition and entered the order terminating D.T.'s parental rights. The Honorable Christopher R. Foley presided over the postremand hearing and entered the order denying D.T.'s postdispositional motion.

For clarity, all court events preceding the postdispositional hearing will be referred to as "before the circuit court." The postdispositional hearing will be referred to as "before the postdisposition court."

into consideration the standards and factors enumerated in WIS. STAT. § 48.426, it was in X.L.T.'s best interests to terminate the parental rights of P.T. The order terminating P.T.'s parental rights to X.L.T. was signed on December 15, 2015.[7]

¶7 On January 14, 2016, P.T. filed a notice of intent to pursue postdispositional relief. P.T. filed a notice of appeal on July 20, 2016. On August 19, 2016, P.T. filed a motion seeking permission to file a postjudgment motion and remand. On August 24, 2016, we issued an order granting P.T.'s motion and remanded the case to the circuit court so that P.T. could pursue postdispositional relief.[8] P.T. filed a motion for postdispositional relief on September 12, 2016, arguing that his stipulation to grounds was not knowingly, voluntarily, and intelligently entered.

¶8 The postdispositional hearing was held on November 3, 2016. P.T. failed to appear at the postdispositional hearing. The postdisposition court found that P.T. failed to make a prima facie case for withdrawing his stipulation to grounds. The postdisposition court found that during the stipulation hearing, the circuit court made it "unquestionably and unequivocally" clear what the standards would be at the dispositional hearing. Ultimately, the postdisposition court denied P.T.'s motion. An order denying postdispositional relief was filed on November 8, 2016. This appeal follows.

[7] This order also terminated D.T.'s parental rights to X.L.T.

[8] Our August 24, 2016 order retained jurisdiction over this appeal.

DISCUSSION

¶9 On appeal, P.T. asserts that the postdisposition court inappropriately considered the transcript of the colloquy regarding P.T.'s stipulation to grounds in determining that P.T. failed to make a prima facie case that his stipulation was not knowingly, voluntarily, and intelligently made.

¶10 In termination of parental rights proceedings, Wisconsin law requires the circuit court to undertake a personal colloquy with a parent in accordance with WIS. STAT. § 48.422(7). *See* ***Kenosha Cnty. DHS v. Jodie W.***, 2006 WI 93, ¶25, 293 Wis. 2d 530, 716 N.W.2d 845. Prior to accepting an admission or plea of no contest, the circuit court must:

> (a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.
>
> (b) Establish whether any promises or threats were made to elicit an admission….
>
> ….
>
> (c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

WIS. STAT. § 48.422(7). As such, for a stipulation to be knowingly, voluntarily, and intelligently entered, the parent must understand that the stipulation will result in a finding of parental unfitness, the potential dispositions specified under. § 48.422(7), and that the dispositional decision will be governed by the child's best interest. *See* ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶4, 314 Wis. 2d 493, 762 N.W.2d 122. Additionally, a parent must have knowledge of the constitutional rights that are given up by the stipulation. See ***Jodie W.***, 293 Wis. 2d 530, ¶25.

¶11 When a parent alleges that a stipulation was not knowingly and intelligently made, we apply the ***Bangert***[9] analysis. *See* ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, ¶42, 233 Wis. 2d 344, 607 N.W.2d 607. Under the ***Bangert*** analysis, the parent "must make a prima facie showing that the circuit court violated its mandatory duties and he must allege that in fact he did not know or understand the information that should have been provided at the § 48.422 hearing." ***Steven H.***, 233 Wis. 2d 344, ¶42. "If [the parent] makes this prima facie showing, the burden shifts to the [State] to demonstrate by clear and convincing evidence that [the parent] knowingly, voluntarily and intelligently waived the right to contest the allegations in the petition." ***Id.*** If the parent fails to make a prima facie case, the circuit court may deny the motion without an evidentiary hearing. *See* ***id.*** at ¶43.

¶12 Whether a parent has presented a prima facie case by showing deficiencies in the colloquy and by alleging that he or she did not know or understand the information that should have been provided by the circuit court is a question of law that we review *de novo*. *See* ***Therese S.***, 314 Wis. 2d 493, ¶7. In doing so, we look to the totality of the circumstances and the entire record to determine the sufficiency of the circuit court's colloquy. *See* ***Steven H.***, 233 Wis. 2d 344, ¶42.

¶13 As a preliminary matter, we briefly note that P.T. fails to present a developed argument. He cites no authority or policy reasons to support his position that the postdisposition court engaged in an improper procedure. While

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[9] ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

P.T. cites to the ***Bangert*** and ***Brown***[10] cases, neither of these cases stand for the proposition that the postdisposition court was not allowed to review the colloquy transcript. Generally, we may decline to review issues that are inadequately briefed or conclusory in nature. *See* ***State v. Petit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Even considering the merits of P.T.'s argument, however, it fails.

¶14 To make a prima facie showing that he was entitled to an evidentiary hearing, P.T. needed to show that the circuit court failed to follow the mandatory procedures necessary to accept his stipulation. ***Steven H.***, 233 Wis. 2d 344, ¶42 (citing ***State v. Bangert***, 131 Wis. 2d 246, 274-75, 389 N.W.2d 12 (1986)). One way to show that the circuit court failed to follow the necessary procedures is to look to the colloquy transcript. *See* ***State v. Hampton***, 2004 WI 107, ¶47, 274 Wis. 2d 379, 683 N.W.2d 14 ("To obtain an evidentiary hearing based upon defects in the plea colloquy, the defendant will rely on the plea hearing record."). A rule that the postdisposition court is unable to review the colloquy transcript would leave only the motion of the parent for the postdisposition court to review in determining whether a prima face case has been made. This would virtually eliminate the first step of the ***Bangert*** analysis. Furthermore, it would allow the parent to ignore any evidence that refutes their argument and provide the postdisposition court with an incomplete record.

¶15 For example, in his motion for postdispositional relief, P.T. quoted a portion of the colloquy transcript where the circuit court discussed how the parents could still work on and meet the conditions for return following their stipulation to

[10] ***State v. Brown***, 2006 WI 100, 293 Wis. 2d 594, 716 N.W.2d 906.

grounds. However, in the circuit court's statements immediately following the quoted portion in P.T.'s motion, the circuit court stated:

> Do you also both understand … that let's say on the next date that we're back in court, you say we met the conditions for return, and the Bureau says no, they haven't yet met the conditions for return, that on the next date in court, what I'm going to be worried about is not whether somebody has met the conditions for return or not, but what I'm going to be worried about, what we'll focus on in that hearing is what's in [X.L.T.'s] best interests.

The circuit court further noted in its next statements that at the dispositional hearing, "we wouldn't explicitly revisit the question of whether you had met the conditions for return." By singling out only a portion of the colloquy, P.T. gives an inaccurate portrayal of whether the circuit court fulfilled its mandatory duties. As such, for the postdisposition court to determine whether a prima facie case had been made, it must be able to review the colloquy transcript as a whole. A rule to the contrary would effectively allow a parent to guarantee an evidentiary hearing and shift the burden by purposefully ignoring aspects of the colloquy.

¶16 To the contrary, the purpose of ***Bangert*** was not to grant an evidentiary hearing and shift the burden in all cases where the defense alleges a defect in the colloquy; rather, the purpose is as an "aid to ensure that the [circuit] court follows at the plea hearing the dictates of Section 971.08 and the obligation to ascertain that the defendant possesses knowledge of the nature of the charge and of his constitutional rights which he will be waiving if the plea is accepted." ***Bangert***, 131 Wis. 2d at 276-77. This purpose can only be met by allowing a review of the colloquy transcript. Furthermore, case law expressly allows for review of the entire record in determining the sufficiency of the circuit court's colloquy. *See* ***Steven H.***, 233 Wis. 2d 344, ¶42. Accordingly, we conclude that the postdisposition court did not err when it reviewed the colloquy transcript and,

as such, we affirm its decision that P.T. failed to make a prima facie case that his stipulation to grounds was not knowingly, voluntarily, and intelligently entered.

¶17 Nevertheless, even if we were to find that P.T. made a prima facie case, the evidence overwhelmingly shows that his stipulation was knowingly, voluntarily, and intelligently entered. P.T. alleges that he was under the impression he could continue working on his conditions of return due to the circuit court's statements. While we disagree with P.T.'s characterization of the circuit court's statements, nothing prohibited P.T. from continuing to work on meeting his conditions of return after his stipulation and before the dispositional hearing. In fact, this would only strengthen P.T.'s argument against termination at the dispositional hearing. One of the dispositional factors the circuit court must consider is whether "the child will be able to enter into a more stable and permanent family relationship as a result of the termination." WIS. STAT. § 48.426(3)(f). One way for the circuit court to evaluate the parent's stability is by looking to their participation in the CHIPS conditions of return. At the dispositional hearing, therefore, the circuit court acted appropriately when it considered P.T.'s enduring lack of participation in his CHIPS conditions when determining whether continuing the CHIPS order was in X.L.T.'s best interests.

¶18 P.T. further alleges that he believed that he could argue that his completion of the conditions of return was a defense against termination. This allegation is contradicted by a review of the colloquy transcript. During P.T.'s stipulation, P.T. affirmed that he understood he was giving up his right to trial and right to contest the continuing CHIPS grounds. The circuit court detailed what the dispositional hearing would entail, informing P.T. that the court would "focus on what's best in this case for [X.L.T.]," and that the parties would submit evidence of what was in the child's best interests. P.T. explicitly stated that he understood.

To ensure that there was no confusion over what the dispositional hearing would consist of, the guardian ad litem noted that the dispositional hearing would look only to X.L.T.'s best interest and would not be looking at whether the parents met the conditions of return. To be sure, the circuit court informed P.T. that it is never too late for him to meet the conditions of return. However, the circuit court immediately followed up that comment by stating, in discussing the dispositional hearing, "what I'm going to be worried about is not whether somebody has met the conditions for return or not, but what I'm going to be worried about, what we'll focus on in that hearing is what's in [X.L.T.'s] best interests." The circuit court then further clarified that, while the parents would have the opportunity to present evidence that they have met the CHIPS conditions, the circuit court "wouldn't explicitly revisit the question of whether [the parents] had met the conditions for return." P.T. again indicated that he understood.

¶19 P.T. was notified multiple times by the circuit court that the overriding standard at the dispositional hearing would be the best interests of X.L.T. and that he would be unable to contest the CHIPS allegations at the dispositional hearing. P.T. affirmed this understanding on several occasions. The evidence clearly and convincingly establishes that, even if a prima facie case were to exist, P.T.'s stipulation was freely, voluntarily, and intelligently entered.

¶20 For the foregoing reasons, we affirm.

By the Court.—Orders affirmed.

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