COURT OF APPEALS
DECISION
DATED AND FILED

February 21, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1488 **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.

D.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] D.T. appeals an order terminating her parental rights to her son, X.L.T. She also appeals the order denying her postdispositional motion. On appeal, D.T. argues that her stipulation to grounds existing to terminate her parental rights to X.L.T. was not knowingly, intelligently, and voluntarily made. We disagree and affirm.

BACKGROUND[2]

¶2 D.T. is the biological mother 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 D.T. and P.T.[4]—X.L.T.'s father—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 D.T. and P.T., and that D.T. and P.T. would frequently forget to feed X.L.T. Ultimately, the decision to detain X.L.T. was made due to D.T.'s and P.T.'s demonstrated inability to provide the necessary care for X.L.T.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[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] P.T.'s parental rights were also terminated in Milwaukee County Circuit Court Case No. 2014TP316. The order terminating P.T.'s parental rights and the order denying his postdispositional motion are the subject of a separate appeal, *see* ***State v. P.T.***, No. 2016AP1460, and are not at issue in the instant proceeding.

¶3 A petition for protection or services was filed on March 22, 2012. A Child in Need of Protection or Services (CHIPS) dispositional order was entered on January 24, 2013, listing the different goals and conditions D.T. and P.T. needed to meet. A trial reunification occurred in March of 2014 until approximately July of 2014, but was ultimately revoked because D.T. and P.T. were living in a motel and were not appropriately addressing X.L.T.'s health concerns. Specifically, there were concerns of medical neglect, as doctor appointments were not being made or followed through on, and X.L.T. was not gaining enough weight.

¶4 During the underlying proceedings, D.T. failed to participate in services to have X.L.T. returned to her care. Specifically, D.T. did not engage in parenting courses or therapy, she failed to participate in X.L.T.'s medical care in any way, and, from approximately July of 2014 until June of 2015, she did not engage in any visitation with X.L.T. Furthermore, D.T. was also refusing to participate in any services from the BMCW during this time.

¶5 On December 5, 2014, the State filed a petition to terminate D.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.

¶6 On May 18, 2015, D.T. and P.T. stipulated that grounds existed to terminate their parental rights under continuing need of protection or services.

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

The circuit court engaged in a colloquy with both D.T. and P.T.[6] The circuit court explained to D.T. the different grounds alleged and the different rights she would be giving up by stipulating. The circuit court discussed how a stipulation to grounds would result in D.T. giving up her 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 of the hearing. The circuit court also specified for D.T. that, at the dispositional hearing, the circuit court would not revisit whether the conditions of return had been met and would be focused only on what was in X.L.T.'s best interests. D.T. indicated her understanding and the circuit court found that D.T.'s stipulation was entered freely, voluntarily, and intelligently.

¶7 Following D.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 D.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 into consideration the standards and factors enumerated in WIS. STAT. § 48.426, it

[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.

was in X.L.T.'s best interests to terminate the parental rights of D.T. The order terminating D.T.'s parental rights to X.L.T. was signed on December 15, 2015.[7]

¶8 On December 21, 2015, D.T. filed a notice of intent to pursue postdispositional relief. D.T. filed a notice of appeal on July 22, 2016. On August 29, 2016, D.T. filed a motion seeking permission to file a postjudgment motion and remand. On September 6, 2016, we issued an order granting D.T.'s motion and remanded the case to the circuit court so that D.T. could pursue postdispositional relief.[8] D.T. filed a motion for postdispositional relief on September 15, 2016, arguing that her stipulation to grounds was not knowingly, voluntarily, and intelligently entered.

¶9 The postdispositional hearing was held on November 3, 2016. At the postdispositional hearing, D.T. testified that she understood that by stipulating, she would be found to be an unfit parent and that she was giving up the ability to make the State prove at a trial that she had not met her conditions of return. D.T. further testified that she knew she had the right to prove that she had met her conditions of return, and that she agreed she would not exercise that right.

¶10 At the conclusion of the hearing, the postdisposition court found that D.T. failed to make a prima facie case for withdrawing her 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 D.T.'s

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

[8] Our September 6, 2016 order retained jurisdiction over this appeal.

motion. An order denying postdispositional relief was filed on November 8, 2016. This appeal follows.

DISCUSSION

¶11 On appeal, D.T. argues that her stipulation to grounds was not knowingly, voluntarily, and intelligently made. Specifically, D.T. argues that she did not understand the information that was provided during the stipulation colloquy and that she was under the impression that she could continue working on her CHIPS conditions of return. We disagree.

¶12 "In termination of parental rights proceedings, Wisconsin law requires the circuit court to undertake a personal colloquy with [a parent] in accordance in 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 inquires 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.

¶13 When a parent alleges that a stipulation was not knowingly and intelligently made, we apply the ***Bangert***[9] analysis. *See* ***Waukesha County 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 [s]he must allege that in fact [s]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.

¶14 Whether a parent has presented a prima facie case by showing deficiencies in the colloquy and by alleging that 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.

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

¶15 Our independent review of the record shows that D.T. unquestionably entered her stipulation freely, voluntarily, and intelligently. During her stipulation, D.T. affirmed that she understood she was giving up her right to trial and her right to contest the continuing CHIPS grounds. The circuit court explained to D.T. that a stipulation would result in a finding of unfitness and that the case would proceed to the dispositional hearing. D.T. stated that she understood. The circuit court then provided a detailed explanation of what the dispositional hearing would entail, specifically informing D.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. D.T. explicitly stated that she understood. D.T. again affirmed to the circuit court that she understood all of her rights and that she understood what a dispositional hearing would entail, including the potential outcomes.

¶16 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 D.T. that it is never too late for her to meet the conditions of return. However, the circuit court immediately followed up that comment by stating, in discussing the dispositional hearing:

> 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.

D.T. stated that she understood. 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." D.T. again indicated that she understood. In fact, D.T. herself testified at the remand hearing that she understood that by entering a stipulation, she was giving up the ability to have a trial to make the State prove she had not met her conditions of return. Moreover, at the adjourned initial appearance on January 21, 2015, the circuit court informed her that it will "focus on what's in the best interest of the children that are involved in the case" at the dispositional phase. *See* ***Steven H.***, 233 Wis. 2d 344, ¶42 (we may look to the entire record in evaluating the sufficiency of a stipulation colloquy).

¶17 During the colloquy, D.T. asserted that she "just want[s] to continue with these services and continue to work with the Bureau and do what we have to do to bring our son home." This statement, however, is consistent with an individual who is choosing to enter a stipulation but challenging whether termination is in the child's best interest. The circuit court specifically informed D.T. that a termination was not the only option at the dispositional hearing, so D.T.'s desire to have her son returned to her does not indicate a lack of understanding about the nature of the stipulation, it indicates what her position would be at the dispositional hearing. D.T. argues that the statement by the circuit court that she could put on evidence that she met the conditions for return at the dispositional hearing was contradictory. To the contrary, this was an accurate statement of law by the circuit court. 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 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 D.T.'s enduring lack of participation in her CHIPS conditions when determining whether continuing the CHIPS order was in X.L.T.'s best interests.

¶18 D.T. asserts that the postdisposition court conceded that it wished the circuit court had stated to the parents that they "need to understand we aren't going to be relitigating whether you met the conditions of safe return at disposition." This statement, however, is a mischaracterization of the postdisposition court's statements. What the postdisposition court said was:

> As I read this and as I listened to this today, the one thing I wish [the circuit court] had said to the parents, given all of this stuff about conditions of return and continuances and [the circuit court] being obviously concerned and [the guardian ad litem] being obviously concerned about, wait, you need to understand we aren't going to be relitigating whether you met the conditions of safe return at the disposition—I wish [the circuit court] had said to [the parents], look given everything that you've said to me, I need you to tell me—I need you to understand this: If you believe that as of today you've met these conditions of return or if you believe that you will meet these conditions of safe return within nine months, then you should not enter into this stipulation, you should exercise your right to a trial. I think if [the circuit court] had said it as explicitly as that, then I don't think we'd be here today. Do I think [the circuit court] made it explicitly clear to [the parents]? Yes, I do.

This statement by the postdisposition court, viewed in full, is significantly different from D.T.'s assertion that the postdisposition court merely stated it wished the circuit court had informed the parents that they would not be relitigating compliance with the conditions of return; D.T. was explicitly notified of that. Furthermore, the postdisposition court noted that, even without the circuit

court making the above statement, this information was made explicitly clear to D.T. We agree.

¶19 Finally, in her brief, D.T. notes that the prove-up testimony establishing a factual basis for the stipulation happened several months after the stipulation. In noting this, D.T. asserts that "[i]f the factual basis for the [stipulation] was procedurally incomplete or inadequate," then the stipulation was not voluntary. D.T., however, provides no legal authority to support this assertion. D.T. provides no facts and puts forth no arguments on how the time lag influenced whether the factual basis was incomplete or inadequate. D.T. also provides no facts and puts forth no arguments on how the factual basis itself was incomplete or inadequate. As such, we decline to address this argument as it is inadequately briefed and conclusory. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶20 D.T. was notified multiple times by the circuit court over two separate court appearances that the overriding standard at the dispositional hearing would be the best interests of X.L.T. and that D.T. would be unable to contest the CHIPS allegations at the dispositional hearing. D.T. affirmed this understanding on multiple occasions. Accordingly, we conclude that the evidence clearly and convincingly establishes that D.T.'s stipulation was freely, voluntarily, and intelligently entered.

¶21 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.