COURT OF APPEALS
DECISION
DATED AND FILED

March 16, 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 Nos. 2016AP2468
2016AP2469

Cir. Ct. Nos. 2015TP21
2015TP22

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO J. I. M., A PERSON UNDER THE AGE OF 18:

JEFFERSON COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

V. B.,

RESPONDENT-APPELLANT.

IN RE THE TERMINATION OF PARENTAL RIGHTS TO J. V. M., A PERSON UNDER THE AGE OF 18:

JEFFERSON COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

V. B.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Jefferson County: RANDY R. KOSCHNICK, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] V.B. appeals from orders of the circuit court terminating her parental rights to J.I.M. and J.V.M. V.B. challenges the circuit court's determination that grounds existed for the termination of her parental rights. For the reasons discussed below, I affirm.

BACKGROUND

¶2 V.B. is the biological mother of J.I.M., who was born in May 2011, and J.V.M., who was born in November 2013. Dispositional orders were entered finding the children to be in need of protection and services pursuant to WIS. STAT. § 48.13(10) and placing them outside of the home. In September 2015, the Jefferson County Human Services Department filed a petition seeking the involuntary termination of V.B.'s parental rights to J.I.M. and J.V.M. The petitions alleged as the sole ground for termination that the children remained in continuing need of protection or services (continuing CHIPS), under WIS. STAT. § 48.415(2).

¶3 Following a trial to the circuit court on the issue of grounds, the court determined that the Department had established continuing CHIPS, and the court found V.B. to be unfit. Thereafter, the circuit court found that termination of V.B.'s parental rights was in the best interest of J.I.M. and J.V.M. and, in accordance with that finding, the court entered orders terminating V.B.'s parental rights. V.B. appeals. Additional facts will be discussed below as necessary.

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

DISCUSSION

¶4 V.B. challenges the circuit court's determination that grounds existed to terminate her parental rights to J.I.M. and J.V.M. V.B.'s arguments in her brief-in-chief are lacking in organization, poorly developed, and difficult to follow. I have addressed her arguments below as best I can discern those arguments to be. To the extent that I have not addressed arguments raised on appeal, the arguments are insufficiently developed and/or without merit. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶5 The procedure for involuntary termination of parental rights is a two-step process. ***Steven V. v. Kelley H.***, 2003 WI App 110, ¶18, 263 Wis. 2d 241, 663 N.W.2d 817. The first phase is fact-finding, to determine whether grounds exist for termination. ***Id.*** At this stage, the petitioner must prove by clear and convincing evidence that one or more of the statutorily enumerated grounds for termination of parental rights exist. ***Steven V. v. Kelley H.***, 2004 WI 47, ¶25, 271 Wis. 2d 1, 678 N.W.2d 856. *See* WIS. STAT. § 48.415. If all of the elements of a statutory ground have been established, the circuit court must find the parent to be unfit. ***Steven V.,*** 271 Wis. 2d 1, ¶25. After a parent is found to be unfit, the second step is the dispositional phase where the circuit court must decide whether termination of the parent's rights is in the best interest of the child. ***Id.***, ¶27; WIS. STAT. § 48.426(2). We are concerned here only with the first step.

¶6 The Department alleged continuing CHIPS as the ground for termination of V.B.'s parental rights to J.I.M. and J.V.M. To establish continuing CHIPS, the Department needed to prove by clear and convincing evidence that: (1) J.I.M. and J.V.M. had been adjudged in need of protection and services and placed outside the home for six months or more pursuant to a court order

containing statutory notice of TPR proceedings; (2) the Department had made reasonable efforts to provide the services ordered by the court; (3) V.B. failed to meet the conditions established for the safe return of the children; and (4) there was a substantial likelihood that V.B. would not meet the conditions of return within the next nine months. *See* WIS. STAT. § 48.415(2). The circuit court found that each of these four elements of continuing CHIPS had been established by clear and convincing evidence. On appeal, V.B. challenges the circuit court's determination that the second, third and fourth elements were established.[2]

¶7 V.B. argues that the circuit court failed to properly determine that the second and third elements of continuing CHIPS had been established because the court "did not address … with any detail" the court's reasoning for determining that those elements had been established, and because the court failed to resolve on the record conflicting testimony. V.B. does not cite this court to any legal authority that a factfinder, whether it be the court in a bench trial or the jury when the issue of grounds for termination is tried to a jury, must explain the factfinder's reasoning for finding that each of the elements for continuing CHIPS was established by clear and convincing evidence. This court need not consider arguments unsupported by reference to legal authority. *See* ***Kruczek v. DWD***, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286. Regardless, this court will uphold a finding of grounds if there is any credible evidence in the record on which the factfinder could have based its decision. *See* ***Morden v. Continental AG***, 2000 WI 51, ¶¶38-39, 235 Wis. 2d 325, 611 N.W.2d 659. Only when the

[2] V.B. does not challenge the circuit court's finding that the first element of continuing CHIPS was established by clear and convincing evidence. At the time of the trial on the issue of grounds, dispositional orders had placed J.I.M. outside of the home for fifty months and J.V.M. outside the home for thirty months.

evidence is inherently or patently incredible will this court substitute its judgment for that of the factfinder. ***State v. Saunders***, 196 Wis. 2d 45, 54, 538 N.W.2d 546 (Ct. App. 1995).

¶8 The second element of continuing CHIPS required proof that the Department had made reasonable efforts to provide the services ordered by the circuit court. *See* WIS. STAT. § 48.415(2)(a)2.a.-b. The circuit court found that the Department "adequately met its burden to provide services" to V.B.

¶9 The circuit court ordered that V.B.: undergo alcohol or drug (AODA) assessments and follow any recommendations and treatment plan deemed appropriate by her case manager; submit to random drug testing and preliminary breath tests; complete psychological assessments and psychiatric evaluation if deemed necessary by V.B.'s case manager; follow any recommendations by evaluators for therapy and supportive services, including individual, family and/or group counseling; actively participate in mental health treatment; participate and successfully complete a parenting class if deemed necessary by her case manager; and cooperate with home visits.

¶10 Brittany Krumbeck, a social worker employed by the Department, testified at trial that she was assigned as the ongoing case manager for J.I.M. and J.V.M. Krumbeck testified that the Department had provided V.B. with AODA assessments and follow through treatment, drug screening, psychological assessment, mental health treatment, parenting education classes, and family interaction planning and visitation with the assistance of family development workers. Krista Doerr, a licensed counselor employed by the Department, testified that the Department also provided V.B. with individual counseling. This evidence

supports the circuit court's finding that the Department provided those services to V.B. that were ordered by the court.

¶11 The third element of continuing CHIPS required proof that V.B. failed to meet the conditions established for the safe return of J.I.M. and J.V.M. to V.B.'s care. *See* WIS. STAT. § 48.415(2)(a)3. I conclude that there was also credible evidence to support the circuit court's determination that V.B. had not complied with conditions of return.

¶12 A condition of return for V.B. was that she undergo an AODA assessment and follow-up treatment. Krumbeck testified that V.B. had completed the AODA assessment, but had not complied with follow-up treatment at the time of the trial. Conditions of return required that V.B. undergo a psychological assessment and psychiatric evaluation, and that she "actively participate in mental health treatment through … [an] approved provider." Krumbeck testified that V.B. had "failed to follow through on the psychological evaluation referral" and that she was not consistently attending mental health treatment. Krumbeck stated that V.B. had engaged in mental health therapy for a period of time, but "was discharged in December 2015 for not appearing for an appointment since May 2015." A condition of return was that V.B. refrain from using non-prescription or illegal drugs and that she submit to random drug testing. Krumbeck testified that V.B. had missed approximately fifty percent of her drug tests, and that when V.B. did submit to drug testing, she would occasionally test positive for marijuana and opiates. A condition of return was also that V.B. "demonstrate that she is willing and able to assume an active parenting role" for the children. Krumbeck testified that at the time of the trial, V.B.'s visitation with the children had been reduced to one hour of supervised visitation per week and that during those visits, V.B. was not able to set boundaries for the children or "engag[e] on a one-on-one

meaningful level with the children." Krumbeck also testified that V.B. had not demonstrated that she would be able to establish a safe or stable home environment for the children. Krumbeck's testimony establishes that V.B. did not meet conditions of return.

¶13 The fourth element for continuing CHIPS required proof that there was not a substantial likelihood that V.B. would meet the conditions of return within the next nine months. *See* WIS. STAT. § 48.415(2)(a)3. The circuit court found that V.B. "suffers from an unspecified personality disorder that contains histrionic and narcissistic dependent features, has an adjustment disorder and further suffers from depression." The court found that V.B.'s mental illness "manifests itself in [] drug use … [h]er instability, her immaturity, [and] her inability to properly prioritize the obligations to her children and her placing her own interests above her children." The court found that V.B.'s mental illness "make[s] it nearly impossible within the next nine months for [her] to gain the skills or to be reformed from [her] mental illness … to meet all the terms and conditions," and that V.B. was not likely to meet the conditions of return in the next nine months.

¶14 V.B. takes issue with the weight the circuit courts gave to evidence regarding her mental illness, asserting that the court "seemed fixated on [her] psychological tests and their results." The weight and credibility of the evidence are left solely to the province of the factfinder, here, the circuit court. ***Morden***, 235 Wis. 2d 325, ¶39. V.B. also asserts that the circuit court did "not consider[] all the relevant facts." However, V.B. does not specify what facts the court ignored that would have suggested that she was likely to meet the conditions of return in the next nine months. Accordingly, I reject V.B.'s arguments.

¶15 Finally, to the extent that V.B. is arguing that the court found her to be unfit because she has an unspecified mental illness and not based on a finding that each of the elements of continuing CHIPS had been established, her argument is without merit. As explained above, the circuit court found that each element of continuing CHIPS had been established. The court found that V.B.'s mental illness is a contributing factor as to why she had not met the conditions of return and was not likely to do so in the next nine months. Nothing in the record supports an assertion that V.B.'s mental illness alone was the reason the court found her to be unfit.

CONCLUSION

¶16 For the reasons discussed above, I affirm.

By the Court.—Orders affirmed.

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