

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 2, 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. 2017AP197

Cir. Ct. No. 2015TP230

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

J. L. C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DAVID C. SWANSON, Judge. *Affirmed.*

¶1 KESSLER, J.¹ J.L.C. appeals the order terminating his parental rights to his son, K.C. We affirm.

BACKGROUND

¶2 K.C. was born on February 9, 2014. On February 13, 2014, K.C. was detained by the Bureau of Milwaukee Child Welfare (BMCW) because K.C.'s mother had not made progress on an on-going CHIPS case and K.C. was determined to be at risk of harm.² J.L.C. was not adjudicated the father at the time of K.C.'s removal from his mother's custody.

¶3 J.L.C. was ultimately adjudicated K.C.'s father. On April 22, 2014, the circuit court entered a dispositional order finding that K.C. continued to be a child in need of protection or services. The order gave J.L.C. multiple conditions to meet for K.C.'s return. The order required J.L.C. to meet certain goals for behavioral change, to maintain a relationship with K.C. by participating in regular visits, and to demonstrate a willingness and ability to provide a safe environment for K.C. In July 2014, J.L.C. moved to Arizona.

¶4 On July 29, 2015, the State filed a petition to terminate J.L.C.'s parental rights, alleging the grounds of Continuing CHIPS and failure to assume parental responsibility. On December 4, 2015, at pre-trial proceedings, the failure to assume parental responsibility ground was dismissed and J.L.C. pled no contest to the Continuing CHIPS ground. The circuit court conducted a colloquy with J.L.C. and then called the family case manager handling J.L.C.'s case, Shawanna

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 versions unless otherwise noted.

² K.C.'s mother's parental rights were also terminated. That termination is not at issue in this appeal.

Bell, to the stand. Bell stated that while J.L.C. completed some of the court-ordered conditions required by the dispositional order, he failed to keep up with regular visits and failed to complete certain recommendations pertaining to AODA. Bell did not feel that J.L.C. would be able to meet the court-ordered conditions within the following nine months given J.L.C.'s inconsistency with AODA, his residence in Arizona, the conditions of his residence in Arizona, and his inconsistency with visitation. Bell also stated that J.L.C. moved to Arizona while the CHIPS action was pending and J.L.C. was aware that his move would impact his chance for reunification with his son. The court found a factual basis to support the allegations in the termination petition and found J.L.C. unfit.

¶5 Following multiple adjournments, the matter ultimately proceeded to a dispositional hearing, where the circuit court heard from multiple witnesses. K.C.'s foster mother testified that K.C. is well-bonded with his foster family and that she hopes to adopt K.C. She stated that she updates J.L.C. and K.C.'s paternal grandmother (J.L.C.'s mother) with pictures of K.C. and has clearly communicated her willingness to facilitate a relationship between K.C. and his biological family. She also stated that neither J.L.C. nor K.C.'s paternal grandmother had visited K.C. in the five months preceding the dispositional hearing, but that J.L.C. was advocating for K.C. to be placed with K.C.'s paternal grandmother.

¶6 Bell testified that J.L.C. did not give the BMCW notice prior to moving to Arizona. She stated that J.L.C. told the BMCW he planned to visit Arizona for one week, but then called and told the Bureau that he was not coming back to Milwaukee. She stated that J.L.C.'s move impacted his ability to visit with K.C. and that visitation only occurs when J.L.C. returns to Milwaukee for court proceedings. She stated that J.L.C. only visited his son three times in the

two years preceding the dispositional hearing. Bell also stated that K.C.'s paternal grandmother visited K.C. approximately five times since the child's birth—two and a half years prior to the dispositional hearing. Bell did not support placement with K.C.'s paternal grandmother, telling the court that K.C. was well-bonded with his foster family and that the grandmother did not follow through with Bureau requests to visit K.C. more frequently. In turn, Bell stated, K.C. had not formed a bond with his paternal grandmother. Bell also testified that K.C.'s paternal grandmother was seventy-three years old and that her age was a concern with regard to K.C.'s permanent placement.

¶7 K.C.'s paternal grandmother admitted that she only visited the child four or five times since his placement in foster care, but stated that she is a licensed foster parent in Illinois and was willing to become the child's guardian.

¶8 After evaluating the evidence and addressing each of the factors articulated in WIS. STAT. § 48.426(3), the circuit court found it was in K.C.'s best interest to terminate J.L.C.'s parental rights. This appeal follows.

DISCUSSION

¶9 On appeal, J.L.C. argues that the circuit court erroneously exercised its discretion by: (1) terminating his parental rights to his son and (2) not considering placing K.C. with K.C.'s paternal grandmother.

The circuit court considered the proper factors when it terminated J.L.C.'s parental rights to K.C.

¶10 J.L.C. argues that the circuit court erroneously terminated his parental rights to K.C. because J.L.C. did not fail to provide a safe environment for his son, he simply moved to Arizona. In essence, J.L.C.'s argument alleges

that the circuit court did not consider the proper statutory factors when terminating J.L.C.'s parental rights. We disagree.

¶11 The ultimate decision of whether to terminate parental rights is a matter of circuit court discretion. See *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). When deciding whether to terminate a parent's parental rights, the circuit court must make its findings on the record, consider the standards and factors found in WIS. STAT. § 48.426(3) relating to the child's best interests, and explain the basis for its disposition. See *Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, ¶¶29-30, 255 Wis. 2d 170, 648 N.W.2d 402. A proper exercise of discretion by a circuit court in the dispositional phase of a termination of parental rights action requires that the court give "adequate consideration of and weight to" each of the factors found in § 48.426(3). See *State v. Margaret H.*, 2000 WI 42, ¶35, 234 Wis. 2d 606, 610 N.W.2d 475. In reviewing a discretionary determination, "we examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach." *Brandon Apparel Grp., Inc. v. Pearson Properties, Ltd.*, 2001 WI App 205, ¶10, 247 Wis. 2d 521, 634 N.W.2d 544.

¶12 At the dispositional hearing, the circuit court must consider the following factors when determining whether a termination is in a child's best interest:

- (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.

WIS. STAT. § 48.426(3). The circuit court did so here.

¶13 The circuit court noted that K.C. had been with his foster family his entire life and that the likelihood of adoption was high. The court acknowledged that K.C. was in good health, was a happy, active child, and was well-bonded with his foster family. The court discussed K.C.'s relationship with his foster family in depth, noting that K.C. thought of his foster parents as his actual parents and recognized his foster sisters as his actual sisters. The court stated that removing K.C. from his foster home would be deeply traumatic for the child. The court recognized that K.C.'s contact with J.L.C. had been limited since J.L.C. moved to Arizona and that K.C. did not have a substantial bond with any biological family member. The court did not feel that severing K.C.'s ties with his biological family would be harmful to K.C. As such, the circuit court properly considered all of the factors when determining that termination of J.L.C.'s parental rights was in K.C.'s best interest.

The circuit court did not erroneously exercise its discretion in refusing to place K.C. with his paternal grandmother.

¶14 J.L.C. argues that the circuit court failed to adequately consider placing K.C. with the child’s paternal grandmother. The circuit court discussed the possibility of placing K.C. with his paternal grandmother and stated that the grandmother did not have substantial contact with K.C. and failed to visit the child regularly. While the court considered that possibility “very deeply,” it also noted that K.C.’s paternal grandmother was seventy-three years old and would be responsible for the child at least for the following sixteen years. The court called the possibility of K.C.’s paternal grandmother caring for a teenager in her eighties an “unrealistic expectation.” The court also discussed the trauma K.C. would endure if he were to be removed from his foster family’s care and placed with a biological relative he was unfamiliar with. Here, the record demonstrates that the circuit court gave thoughtful consideration to the possibility of placing K.C. with his paternal grandmother, but did not feel that such a placement was in the child’s best interest. Accordingly, we conclude that the circuit court properly exercised its discretion.

By the Court—Order affirmed.

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

