COURT OF APPEALS
DECISION
DATED AND FILED

September 6, 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. 2017AP1278
2017AP1279
2017AP1280

Cir. Ct. Nos. 2016TP53
2016TP54
2016TP56

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

C. L. H.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County: LAURA GRAMLING PEREZ, Judge. *Affirmed*.

¶1 BRASH, J[1]. C.L.H. appeals from orders terminating her parental rights for three of her biological children, A.L.H., H.H., and M.J.H. She asserts that the trial court did not appropriately exercise its discretion in its determination that it was not in the best interests of the children to place them with their maternal grandfather, and seeks to vacate the termination of parental rights orders for all three children. We affirm.

BACKGROUND

¶2 M.J.H., born February 27, 2014, H.H., born April 17, 2006, and A.L.H., born November 7, 2001, are the biological children of C.L.H. The children, along with their brother, J.M.H.,[2] born August 14, 2009, were removed from the care of C.L.H. on April 17, 2014, by the Bureau of Milwaukee Child Welfare (BMCW).[3]

¶3 At that time, C.L.H. and the children had been living at Hope House, a shelter for homeless families. However, they had recently been discharged from the shelter for numerous reasons. These included C.L.H. being caught smoking in her room, which is a rule violation. She was also observed returning to the shelter several times with "glossy eyes, slurred speech, and slow reaction/movement,"

[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] The Children in Need of Protection or Services (CHIPS) order in effect for J.M.H. was extended at a hearing on January 30, 2017; thus, the Petition for the Termination of Parental Rights (TPR) as to J.M.H. was dismissed.

[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 these proceedings, all references will be to the BMCW.

leading the staff to suspect that she was under the influence of alcohol or other drugs.

¶4 Furthermore, C.L.H. failed to properly supervise her children at the shelter. She was found regularly to have "nod[ded] off" during the day, leaving the children completely unattended. She was also found unsafely co-sleeping with M.J.H., who was an infant at the time; on at least one occasion staff members found M.J.H. in danger of falling off the bed, and had difficulty rousing C.L.H. Additionally, A.L.H. ran away from the shelter, and the staff had to encourage C.L.H. to look for him. Staff also noted that C.L.H.'s room was not kept clean and her children had an odor from not bathing.

¶5 After discharging C.L.H., Hope House had advised her that it would allow her to return to the shelter, but not with her children. The reasoning behind this directive is that the shelter does not have the necessary staff to provide for the care and supervision of children staying there with their parents; the parents are supposed to provide that basic care. C.L.H. was homeless and had no alternative residence to which she could take the children.

¶6 Upon their initial removal from C.L.H., the children were temporarily placed with C.L.H.'s father, C.H., and his fiancée, E.B. However, shortly after that initial placement the children were removed from the home of C.H. and E.B., at C.H. and E.B.'s request, and placed in different foster homes.

¶7 Children in Need of Protection or Services (CHIPS) petitions were filed for all four children on April 24, 2014. In addition to the problems documented at Hope House, the CHIPS orders also noted that in October 2013, BMCW was contacted after C.L.H. left her children with a friend and failed to

return to get them; she was not heard from for over a week after that. There had also been several other referrals to BMCW dating back to 2007 relating to C.L.H.'s lack of supervision and inability to care for her children.

¶8 Dispositional orders on the CHIPS petitions were entered on September 5, 2014, which set forth conditions that were to be met by C.L.H. before the children could be returned to her. These conditions included participating in the services offered through BMCW such as parenting education, Alcohol and Other Drug Abuse (AODA) assessment and treatment, and a psychological evaluation to determine her mental health needs. A visitation plan with the children was also required to be established, and C.L.H. was to consistently follow that schedule.

¶9 C.L.H. failed to satisfactorily meet the conditions of the CHIPS order. For example, C.L.H. did not engage in individual therapy after her psychological evaluation, performed in November 2014, established that she has some mental health issues. C.L.H. also failed to complete any parenting program as required by the CHIPS order. She further refused to acknowledge the behavioral problems of the older children and the treatment they require. C.L.H. was also very inconsistent with her visits with the children, and when visits did occur they were not very successful: she was often sleepy and did not engage with the children, and relied on other adults present during the visits to take care of the children's needs. Moreover, she remained chronically homeless.

¶10 As a result, a Petition for the Termination of Parental Rights (TPR) of C.L.H. was filed on February 17, 2016.[4] In the petition, the State alleged two grounds for termination: (1) continuing need of protection or services, pursuant to WIS. STAT. § 48.415(2); and (2) failure to assume parental responsibility, pursuant to WIS. STAT. § 48.415(6). C.L.H. entered a no contest plea as to the first count of the TPR petition—the continuing need of protection and services—on September 19, 2016.

¶11 A contested disposition hearing for the second count of failure to assume parental responsibility followed on January 30, 2017, continuing on March 31, 2017. After considering all of the factors set forth in WIS. STAT. § 48.426(3), the trial court found that it was in the best interests of M.J.H., A.L.H., and H.H. that the parental rights of C.L.H. be terminated. This appeal follows.[5]

DISCUSSION

¶12 The sole issue on appeal is C.L.H.'s assertion that the trial court failed to properly consider placing the children with a family member, specifically C.L.H.'s father, C.H., and his fiancée, E.B. C.L.H. claims that this was an erroneous exercise of the trial court's discretion.

[4] As previously noted, the TPR petition also included J.M.H., a fourth child of C.L.H., but the petition was later dismissed as to that child. Additionally, the State alleged grounds in the TPR petition against the fathers of the children. The fathers of A.L.H. and M.J.H. were found in default for failure to join issue and therefore their parental rights were terminated. They are not part of this appeal. The father of H.H. voluntarily consented to the termination of his parental rights and thus is not part of this appeal.

[5] C.L.H. appealed from the three cases under which her parental rights were terminated, which were then ordered consolidated by this court on July 6, 2017.

¶13 "The ultimate determination of whether to terminate parental rights is discretionary with the [trial] court." ***State v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. We will uphold the trial court's decision to terminate parental rights "if there is a proper exercise of discretion." *See* ***id.***, ¶32. This requires that the trial court apply the correct standard of law to the facts of the case. ***Id.***

¶14 In making its determination, "[t]he best interests of the child is the paramount consideration" for the trial court. ***Id.***, ¶33. To establish this, the trial court should reference the factors set forth in WIS. STAT. § 48.426(3), and any other factors it relied upon, in explaining on the record the basis for the disposition. ***Sheboygan Cty. DHHS v. Julie A.B.***, 2002 WI 95, ¶30, 255 Wis. 2d 170, 648 N.W.2d 402.

¶15 Our review of the record shows that the trial court did just that. With regard to the first factor of WIS. STAT. § 48.426(3), the likelihood of adoption after termination, the trial court found that the likelihood was "very high" for all three children, because each of their placements was with foster parents who had been approved for adoption. *See* WIS. STAT. § 48.426(3)(a). The court also discussed the second factor, the age and health of each child. *See* WIS. STAT. § 48.426(3)(b). It noted that M.J.H. had been an infant when he was detained by BMCW. It further stated that the older two boys—A.L.H., who was fifteen years old at the time of the hearing, and H.H., who was ten years old—have significant mental health issues, but that both had made "considerable progress" while in foster care.

¶16 The third factor for consideration was whether the children had "substantial relationships" with their parent and other family members that would

cause harm to the children if they were severed. *See* WIS. STAT. § 48.426(3)(c). The trial court again pointed out that this factor was applicable more to the older boys, who had a relationship with each other that would cause harm to them if severed. The court expressed its hope that the foster parents would coordinate visits among the boys to mitigate that harm. The court also found that, again, the two older boys both had substantial relationships with C.L.H., but that A.L.H., as the oldest, was the only one who could suffer harm from severing that relationship. Nevertheless, the court also noted that because A.L.H. knew how to contact C.L.H., and had in fact done so while in foster care, his relationship with her was likely to continue. Moreover, the trial court acknowledged that C.H. and E.B. could also maintain their relationship with A.L.H. and perhaps also the younger boys in a similar manner.

¶17 The trial court found the next factor, the wishes of the children, to be basically a "neutral factor" for the younger boys: M.J.H. was too young to express his wishes, and H.H. had said he would love to live with his mom if she could care for him, but he was also very happy in his foster home and had bonded well with his foster parent. *See* WIS. STAT. § 48.426(3)(d). As for A.L.H., he expressed a desire for his foster parent to adopt him, realizing that the foster parent was in a better position to care for him than C.L.H.

¶18 With regard to the next factor, the duration of separation from C.L.H., the trial court noted that the boys had been in foster care for approximately three years at the time of the disposition hearing. *See* WIS. STAT. § 48.426(3)(e). The court stated that this was a substantial amount of time in the lives of all three boys: for M.J.H. it was nearly his whole life, for H.H. it was one-third of his life,

and for A.L.H. it encompassed the time that he developed from a child into a teenager and young man.

¶19 In its discussion of the final factor, whether the children would have "a more stable and permanent family relationship" with termination, the trial court pointedly discussed the placement of the boys. *See* WIS. STAT. § 48.426(3)(f). The trial court acknowledged that there had been previous discussions about placing the three boys together with family members, particularly the possibility of placement with C.H. and E.B. This is the premise for C.L.H.'s appeal: C.L.H. argues that the trial court "failed to consider the benefits of a possible placement" with C.H. and E.B. We disagree.

¶20 In the first place, the trial court had, in making its determination, recognized the importance of the relationship between C.H. and E.B. and the children. In fact, the children had initially been placed with C.H. and E.B. when they were detained by BMCW. However, this placement lasted only a matter of days before C.H. and E.B. requested that the children be placed elsewhere after recognizing that the children needed "support services" for their behavioral problems, and because E.B. was seriously ill.

¶21 In its decision, the trial court indicated that it was "unfortunate" that the boys were not placed together. Moreover, the court noted that E.B. "understands the boys and understands the family dynamic very well," and that this may have been a viable placement consideration but for other circumstances. Specifically, the trial court observed that C.H. had problems with alcohol, and at the time of the disposition was incarcerated for his third operating while intoxicated (OWI) conviction. Furthermore, the court recognized that there had been some instability in C.H. and E.B.'s relationship which had resulted in the

filing of a domestic violence injunction by E.B. against C.H. There was also evidence that C.H. had a criminal history from several years ago that involved a weapons charge. Additionally, the trial court noted that E.B. was recovering from a significant health issue, but suggested that she could continue to be a support person for the children.

¶22 For all of these reasons, the trial court found that placement of the children with C.H. and E.B. was not a suitable resolution. It further stated that it was not appropriate to delay the TPR proceedings to continue to work on these placement issues because the behavioral problems of the older boys would be exacerbated by prolonging the uncertainty of their situations.

¶23 After reviewing the record, we reject C.L.H.'s argument that the trial court did not fully consider the option of placing the boys with C.H. and E.B. On the contrary, the trial court's explanation, as described above, demonstrates that it gave ample consideration to the factors involved in such a placement. Accordingly, we find that the trial court properly exercised its discretion in applying the correct standard of law to the facts of the case. *See* ***Margaret H.***, 234 Wis. 2d 606, ¶32. We therefore affirm its decision to terminate the parental rights of C.L.H. for M.J.H., H.H., and A.L.H.

By the Court.—Orders affirmed.

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