COURT OF APPEALS
DECISION
DATED AND FILED

September 13, 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. 2016AP1000
2016AP1001

Cir. Ct. Nos. 2014JC73
2015JG47

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

IN THE INTEREST OF C.C.S., A PERSON UNDER THE AGE OF 18:

WAUKESHA COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

T.C.S.,

RESPONDENT-APPELLANT.

IN THE MATTER OF THE GUARDIANSHIP OF C.C.S.:

WAUKESHA COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

T.C.S.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Waukesha County: WILLIAM DOMINA, Judge. *Affirmed*.

¶1 REILLY, P.J.[1] The issues in this consolidated appeal revolve around a mother's objection to the appointment of a permanent guardian for her son pursuant to WIS. STAT. § 48.977. Mom[2] did not contest that Johnny is a child in need of protection or services (CHIPS) under WIS. STAT. § 48.13, but objects to the permanency plan being changed from reunification to the sole goal of appointing Johnny's grandparents as his permanent guardians. We affirm as the circuit court properly exercised its discretion given the evidence received at the combined fact-finding and dispositional hearing, and neither Mom's fundamental right of "familial integrity" nor her procedural due process rights were violated.

BACKGROUND

¶2 On August 14, 2014, four-year-old Johnny was placed with his grandparents by court order under WIS. STAT. § 48.19(1) as both Mom and Dad were incarcerated. On August 19, Waukesha County (the County) filed a CHIPS petition under WIS. STAT. § 48.13(8) and (10) on the grounds that both Mom and Dad were unavailable to care for Johnny due to their incarceration and Johnny was also at risk of neglect due to domestic violence between his Mom and Dad.[3] On

[1] This appeal is 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.

[2] For ease of readability, we utilize "Johnny" as a pseudonym for C.C.S.; "Mom" for T.C.S., Johnny's mother; "Dad" for M.C., Johnny's father; and "grandparents" for R.W. and A.W., Johnny's paternal great-grandparents.

[3] Mom was convicted of misdemeanor battery in December 2014, for stabbing Dad on July 4, 2014.

October 27, 2014, Dad admitted and Mom did not contest that Johnny was a child in need of protection or services at a plea hearing held pursuant to WIS. STAT. § 48.30. The court placed Johnny with his grandparents for one year and set conditions for reunification with Mom and Dad. The permanency plan goal was concurrent: get Johnny reunited with his family when appropriate and get Johnny into a home providing long-term stability. *See* WIS. STAT. § 48.38(1)(b). The court warned both Mom and Dad that failure to meet the court's conditions could result in the termination of their parental rights.

¶3 Mom is an opiate addict. Between October 2014 and the combined fact-finding and dispositional hearing on March 2, 2016, Mom was twice revoked from probation and had accrued three new criminal charges. Mom's probation violations involved her use of opiates. Between April and June 2015, Mom failed to comply with drug testing and failed to undergo an alcohol and other drug abuse (AODA) assessment despite reasonable efforts by the County to assist her. In June 2015, Mom tested positive for drugs and thereafter completed a week of inpatient treatment.

¶4 Johnny's CHIPS case came before the circuit court on July 20, 2015, for a permanency plan review hearing. The County's permanency plan again recommended reunification of Johnny with his Mom and the concurrent goal of guardianship in the home of the grandparents if he could not be reunited with one or both of his parents. The court determined that the County had made reasonable efforts to reunify Johnny with Mom, but she "has recently entered into rehab … [and] is not yet in the position for return." Johnny's placement with his grandparents continued. Mom was admitted into a drug treatment center on July 27, 2015, but she was terminated eleven days later due to a program policy

violation. On September 19, Mom was arrested for retail theft and possession of a controlled substance.

¶5 Three days later, the County filed the guardianship petition pursuant to WIS. STAT. § 48.977, which indicated that Mom "would like to have [Johnny] in her care, but due to extensive mental health and AODA issues, she is not able to keep herself safe, so she would not be able to keep her child safe." The County recommended the grandparents as guardians. Mom objected to the petition, and the court ordered mediation.

¶6 On October 12, 2015, Johnny's CHIPS case was before the circuit court on the County's petition for a one-year extension. The County requested the extension because Mom had failed to maintain communication with the social worker and to involve herself in certain aspects of Johnny's life. Mom did not object to the one-year extension or to the order that Johnny continue in the care and custody of his grandparents. The circuit court extended the CHIPS order another year.

¶7 In November 2015, Mom suffered a life-threatening overdose, was arrested for shoplifting, and was incarcerated until January 28, 2016, when she entered NOVA Counseling Services, Inc., a drug and alcohol treatment facility, as an alternative to revocation. Mom successfully completed the twenty-eight-day treatment program at NOVA.

¶8 During late 2015, the parties also held two mediations pursuant to a court order in the guardianship proceeding. Mediation failed, and on December 29, 2015, the court set the matter for a "court trial" on March 2, 2016. Mom filed a motion for a continuance on February 10, 2016, so as to give the

court more time to evaluate her progress in treatment. The court denied the motion for a continuance.[4]

¶9 The CHIPS case came before the circuit court commissioner on February 18, 2016, for a permanency plan review hearing. The commissioner determined that the concurrent permanency goal of reunification and guardianship were still proper, but that Mom had not made adequate progress to have Johnny returned to her custody. Mom sought de novo review of the commissioner's decision.

¶10 The fact-finding and dispositional hearing, *see* WIS. STAT. § 48.977(4)(d), (4)(fm), on the guardianship petition as well as the de novo review of the permanency hearing order took place in one combined evidentiary hearing on March 2, 2016. The County was no longer seeking reunification and argued that Mom was not fit to care for Johnny.[5] The County presented six witnesses who testified as to Mom's failure to meet the requirements for return of Johnny to her home; her failure to communicate with County social workers; her continued and recent criminal history; her continued drug issues and progress in treatment;

[4] All interested parties objected to the request for a continuance. In her briefing to this court, Mom claims that it was error for the circuit court to not grant her motion for a continuance. A continuance is not a matter of right, but is a matter of circuit court discretion. *See* ***Rechsteiner v. Hazelden***, 2008 WI 97, ¶92, 313 Wis. 2d 542, 753 N.W.2d 496. The circuit court already provided Mom with more time than is provided under WIS. STAT. § 48.977. Under § 48.977(4), the plea hearing, fact-finding hearing, and dispositional hearing are all to occur within no more than thirty-day increments, which means the final dispositional hearing should have taken place no later than approximately December 21, 2015, which would have been when Mom was still incarcerated and had not yet entered NOVA. Our review of the record does not reveal that the court erroneously exercised its discretion in denying the continuance.

[5] Dad did not contest the guardianship.

and Johnny's grandparents' ability and willingness to provide Johnny a safe, stable home.

¶11 Mom presented nine witnesses, including herself, who testified as to Mom's "difficult catastrophic background," involving health issues since childhood and domestic violence; unsubstantiated allegations of neglect or abuse of Johnny; her desire to succeed in conquering her addictions; and her love for Johnny. A substance abuse addictions counselor testified that Mom's "prognosis is actually fair but guarded due to her history of chronic substance use and her personal unwillingness to follow the treatment team directions and recommendations for her."[6] After completion of testimony, the court issued a briefing schedule in lieu of closing arguments.

¶12 On March 30, 2016, the circuit court entered its written decision granting permanent guardianship of Johnny to his grandparents and issuing the CHIPS permanency hearing order setting forth the sole goal of guardianship. Mom appeals.

DISCUSSION

¶13 This case comes to us on a request for guardianship of a child under WIS. STAT. § 48.977, not a request for termination of parental rights. We note at the outset that § 48.977(4) outlines strict statutory procedures for appointment of a

[6] The counselor explained that Mom was released with a "maximum benefit obtained discharge" instead of the "best discharge" of "with staff approval" as she did not follow all the recommendations for a more intensive treatment program. Mom testified she chose the program she felt was best for her after she was denied from the initial program that NOVA recommended. She claims she was not aware she had other options.

guardian. Although Mom does not object to the lack of precise attention to the statutory procedures, we believe that a review of § 48.977 would be beneficial. A petition under § 48.977 is applicable to a child who has already been adjudged CHIPS under WIS. STAT. §§ 48.13 or 938.13 and has been removed from his or her home pursuant to a court order. Sec. 48.977(2)(a). After the CHIPS adjudication has occurred, the child's guardian, the child's parent, the child's guardian at litem, or the department of children and families or the corresponding county department, among others, may file a petition under § 48.977. Sec. 48.977(4)(a). The petition must include information pertaining to the child, the parents, the proposed guardian/s, the date of the CHIPS adjudication, and a statement of the facts and circumstances supporting the elements under § 48.977(2)(a)-(f).[7] Sec. 48.977(4)(b). The petition must be served on all interested parties as outlined in § 48.977(4)(c)1.

¶14 Within thirty days of filing of the petition, the court must hold a "plea hearing" to determine whether any party wishes to contest the petition. WIS. STAT. § 48.977(4)(cm). At the hearing, the nonpetitioning parties (and the child if he or she is over twelve or otherwise competent) must state whether they wish to contest the petition or plead no contest. Sec. 48.977(4)(cm)1. If the petition is not contested and the court accepts the no-contest plea, then the court may either move to the dispositional hearing under § 48.977(4)(fm) or order an adjournment. Sec. 48.977(4)(cm)2. If, however, the petition is contested or the plea is not

[7] The petition also requires a statement as to the Uniform Child Custody Jurisdiction and Enforcement Act and the Indian Child Welfare Act. WIS. STAT. § 48.977(4)(b)5.-6.

accepted, the court must hold a "fact-finding hearing" within thirty days of the plea hearing, pursuant to para. (4)(d). Sec. 48.977(4)(cm)3.[8]

¶15 At the fact-finding hearing, "any party may present evidence relevant to the issue of whether the conditions specified" in WIS. STAT. § 48.977(2)(a)-(f) have been met. Sec. 48.977(4)(d). If the court finds by "clear and convincing evidence" that the conditions under para. (2)(a)-(f) have been met, then the court must immediately proceed to a "dispositional hearing" unless an adjournment of no more than thirty days is requested. Sec. 48.977(4)(d), (fm). At least forty-eight hours before the dispositional hearing, a "court report" must be filed, wherein "the person or agency primarily responsible for providing services to the child" provides the court with "as much information relating to the appointment of a guardian as is reasonably ascertainable." Sec. 48.977(4)(e).

¶16 At the dispositional hearing, "any party may present evidence, including expert testimony, relevant to the disposition." Sec. 48.977(4)(fm). In determining the appropriate disposition, "the best interests of the child shall be the prevailing factor to be considered by the court," and the court must consider, as is applicable to this case: (1) "[w]hether the person would be a suitable guardian of the child," (2) "[t]he willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years," and (3) "[t]he wishes of the child." Sec. 48.977(4)(g). The court must then enter either a disposition dismissing the petition or a disposition granting the petition. Sec. 48.977(4)(h). After a disposition ordering a guardianship, the

[8] In this case, Mom contested the guardianship petition; Dad did not.

child's permanency plan must continue to be reviewed under WIS. STAT. § 48.38(5). Sec. 48.977(4)(i).

¶17 The decision whether to appoint a guardian under WIS. STAT. § 48.977(2) "is a matter wholly within the [circuit] court's discretion." ***Tina B. v. Richard H.***, 2014 WI App 123, ¶45, 359 Wis. 2d 204, 857 N.W.2d 432 (alteration in original; citation omitted). "Custody determinations are based on first-hand observation and experience with the persons involved and therefore the discretionary decisions of the trial court are given great weight on appeal." ***Barstad v. Frazier***, 118 Wis. 2d 549, 554, 348 N.W.2d 479 (1984). "To find that the court improperly exercised its discretion, we 'must find either that the circuit court has not exercised discretion or that it has exercised discretion on the basis of an error of law or irrelevant or impermissible factors.'" ***Tina B.***, 359 Wis. 2d 204, ¶45 (quoting ***Barstad***, 118 Wis. 2d at 554).

¶18 Our supreme court has acknowledged that "[t]ransfer of legal custody of a child from a parent to a third party does not have the finality of termination of parental rights." ***Barstad***, 118 Wis. 2d at 555. In fact, according to the court, custody "may imply a temporary arrangement that theoretically could be changed as future circumstances might warrant." ***Id.*** WISCONSIN STAT. § 48.977(6) and (7) specifically provide for procedures to revise or terminate a guardianship upon evidence of a "substantial change in circumstances," and Johnny's permanency plan will be reviewed at least every twelve months. *See* WIS. STAT. § 48.38(5), (5m). Our decision in this case, therefore, is informed by the knowledge that the results of these proceedings are not a termination of Mom's relationship with her son during the time Mom works to triumph over her personal struggles.

¶19 Mom makes several overlapping arguments on appeal.[9] We have narrowed our analysis to three main arguments: (1) the circuit court violated Mom's fundamental right of familial integrity as provided by the Fourteenth Amendment, (2) the criteria under WIS. STAT. § 48.977(2) were not met, and (3) the circuit court violated Mom's procedural due process right by limiting the number of witnesses she was allowed to call and scheduling the hearing for only one day. We address each argument below.

Fundamental Constitutional Right of Familial Integrity

¶20 The United States Supreme Court has historically recognized that "freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." ***Santosky v. Kramer***, 455 U.S. 745, 753 (1982). "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life." ***Id.***

¶21 Our supreme court has affirmed this parental protection under Wisconsin law. ***Barstad***, 118 Wis. 2d at 567. We recognize "that parents have a preeminent right to the custody of their children absent a finding of unfitness, inability or compelling reasons due to dissolution of the parent-child relationship or dereliction of parental responsibilities." ***Id.*** at 565. At the same time, a child

[9] To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

has a coexistent right to be properly cared for and protected under the law. "The law casts its protection around the family unit. It follows therefore that what are called parental 'rights' are both rights and responsibilities, and that a neglect of one's responsibilities can result in a forfeiture of one's rights." ***Id.*** at 568. Mom argues that under the standard established under ***Santosky*** and ***Barstad***, the State must establish child neglect under WIS. STAT. ch. 48 or abuse and may not apply the "best interest of the child" test prior to granting a guardianship petition. We disagree.

¶22 In ***Barstad***, the custody dispute was between the child's mother and maternal grandmother. ***Barstad***, 118 Wis. 2d at 551-52. Our supreme court reversed the decision of the lower courts denying custody to the child's mother as it determined "that the 'best interests of the child' is not the proper standard in custody disputes between a natural parent and a third party and also that the record does not support a conclusion of compelling reasons for denying custody to [the child's] mother." ***Id.*** at 554-55. The court held that the rule "in custody disputes between parents and third parties is that a parent is entitled to custody of his or her children unless the parent is either unfit or unable to care for the children or there are compelling reasons for awarding custody to a third party." ***Id.*** at 568. The court explained that "compelling reasons" would "include abandonment, persistent neglect of parental responsibilities, extended disruption of parental custody, or other similar extraordinary circumstances that would drastically affect the welfare of the child." ***Id.*** If the court were to find evidence of a "compelling reason," only then may the court apply the best interests of the child standard to award custody to a third party. ***Id.*** at 568-69.

¶23 The reasoning in ***Barstad*** was explored in ***Tina B.***, 359 Wis. 2d 204, ¶1, which involved a guardianship dispute between a child's biological father and the child's foster parents. We explained that the court's statement that "the 'best interests of the child' is not the proper standard in custody disputes between a natural parent and a third party … does not mean that a biological parent is always entitled to custody." ***Tina B.***, 359 Wis. 2d 204, ¶48. We harmonized the holding in ***Barstad***, noting that "conduct of a biological parent erodes this constitutional wall when the parent 'has otherwise acted in a way that is inconsistent with core parental responsibilities, necessitating governmental intervention so that the child is no longer under the birth-parent's control.'" ***Tina B.***, 359 Wis. 2d 204, ¶49 (quoting ***Richard D. v. Rebecca G.***, 228 Wis. 2d 658, 664, 599 N.W.2d 90 (Ct. App. 1999)). We determined that there was "no constitutional hurdle" to applying the "best interests of the child" test where "compelling reasons" existed. ***Tina B.***, 359 Wis. 2d 204, ¶49 (citation omitted); *see also* ***Richard D.***, 228 Wis. 2d at 663 n.4.

¶24 We conclude that the circuit court properly exercised its discretion in this case as it properly applied the factors under WIS. STAT. § 48.977(2) and (4)(g).[10] At the time of the circuit court's decision, Johnny had been removed from his parents' custody and care for twenty months and was subject to a CHIPS

[10] Mom also makes a cursory "as applied" constitutional challenge to WIS. STAT. § 48.977, but she merely rehashes the same ***Barstad*** argument, claiming that "[f]or all facts and reasons explained in this brief, as if fully set herein, the trial court's application of [§] 48.977 violated Mom's fundamental rights of familial relations, and, thus, this specific application of [§] 48.977 is unconstitutional as applied." We may reject undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). As we explained, the circuit court found compelling reasons to grant the guardianship petition and properly applied the best interest test and § 48.977 in accordance with the case law.

finding. Mom did not contest the CHIPS finding under WIS. STAT. § 48.13(8) and (10). Testimony revealed that during the time Johnny was out of the home, Mom did not meet the conditions for return and supervision. Mom also does not dispute that she suffers from a life-threatening opiate addiction, experienced a near-fatal drug overdose, and was under criminal court jurisdiction and in custody for multiple violations.

¶25 Under the circumstances, the circuit court found compelling reasons for denying custody to Mom and for appointing a guardian as Mom "has been unfit or unable to care for [Johnny] or has engaged in a persistent neglect of her parental responsibilities, or suffered an extended disruption of parental custody due to her significant opiate addiction and criminal activity," and the County had made reasonable efforts to return Johnny to Mom's care. The court made these findings carefully and applied WIS. STAT. § 48.977(2)(f)[11] and (4)(g) to find that under the circumstances it was in the best interest of Johnny to grant permanent guardianship to the grandparents. The circuit court properly exercised its discretion. We also note that Mom has the ability to gain reunification upon a

[11] WISCONSIN STAT. § 48.977(2)(f) requires that the court find

> [t]hat the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's health and safety are the paramount concerns, but that reunification of the child with the child's parent or parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child …. The court shall make the findings specified in this paragraph on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the guardianship order.

showing of a substantial change in her circumstances such that Johnny would not be at risk in her care. *See* WIS. STAT. §§ 48.38(5), (5m) & 48.977(7)(d).

WIS. STAT. § 48.977(2)

¶26 Mom also challenges the court's determination as to the appropriateness of appointing the grandparents as guardians, specifically the court's findings as to WIS. STAT. § 48.977(2)(c) and (e).[12] Section 48.977(2)(c) requires that the court find "[t]hat, if appointed, it is likely that [the grandparents] would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years."[13] Mom takes issue with the grandparents' age, who are sixty-nine and seventy-six, arguing that based on the average life expectancy, the grandparents will likely not be alive when Johnny reaches eighteen years old.

¶27 We see no error in the circuit court's conclusion. The grandfather testified at the hearing that he and his wife were able and willing to meet all Johnny's needs, physical, emotional, financial, and educational. The grandfather explained that while he has a few general health issues that he is currently

[12] Mom does not appear to challenge the court's findings that Johnny "was found to be a child in need of protection or services under [WIS. STAT. ch. 48]," *see* WIS. STAT. § 48.977(2)(a), that the grandparents are who Johnny had been placed with, *see* § 48.977(2)(b), and that "it is not in the best interests of [Johnny] that a petition to terminate parental rights be filed with respect to [Johnny]," *see* § 48.977(2)(d). While we do not address these elements of § 48.977, upon review of the record, we agree with the circuit court that these elements have been met. Mom also generally objects to the court's findings as to § 48.977(2)(f), which we addressed previously.

[13] WISCONSIN STAT. § 48.977(4)(g), the dispositional factors, also requires the court to consider "[w]hether the person would be a suitable guardian of the child" and "[t]he willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years."

managing, he and his wife are in good health. The circuit court found based on the dispositional factors that the grandparents "would be willing and able to serve as the child's guardian for an extended period of time" and that they are "the most stable environment for [Johnny]."[14] At the time of the hearing, the grandparents had already cared for Johnny, provided for him, and kept him safe for nearly two years, and there was no contrary evidence suggesting that this would not continue to be the case in the future.

¶28 Mom also argues that the statutory criteria for WIS. STAT. § 48.977(2)(e) was not met because she was fully able and willing to carry out her parental duties.[15] Section 48.977(2)(e) requires that the court find "[t]hat the child's parent is neglecting, refusing or unable to carry out the duties of a guardian

[14] Mom argued that other members of her own family would be better suited to serve as Johnny's guardians. While the court largely found the argument to be irrelevant as only one guardianship petition, naming the grandparents, was pending, the court addressed this argument in its decision, noting that Mom's mother was on probation at the time Johnny was placed with the grandparents and had her own criminal history involving identity and retail theft and that there were allegations that other members of Mom's family had called the County and misrepresented themselves. WISCONSIN STAT. § 48.977 asks the court to determine whether the grandparents met the requirements for appointment as guardians of Johnny, not whether other members of Mom's family might be better suited in the role. The court properly determined that the grandparents met the requirements and that it was in Johnny's best interest to be placed in their custody.

[15] Mom argued that the County should have attempted trial reunification under WIS. STAT. § 48.358, which she claims would have provided protection for Johnny. We note that the statute provides that "[o]nly the person or agency primarily responsible for implementing the dispositional order may request the court to order a trial reunification. The request shall contain … a statement describing why the trial reunification is in the best interests of the child." Sec. 48.358(2)(a). This request was never before the circuit court, and based on Mom's difficulties over the twenty-month period that Johnny was outside her home and her failure to comply with the requirements of Johnny's return, it is reasonable to conclude that the County did not believe it was in Johnny's best interests to request trial reunification. There is no statutory requirement that trial reunification be considered.

or, if the child has 2 parents, both parents are neglecting, refusing or unable to carry out the duties of a guardian."

¶29 The circuit court found "clear and convincing evidence" that Mom is an undisputed opiate addict and that "[h]er addiction has led … to her lack of her parental capacity." Prior to the proceedings, Mom had two experiences on adult probation, both resulting in revocation. In December 2014, Mom was convicted of misdemeanor battery for injuring Johnny's father with a knife and again placed on probation. During this time, Mom violated the terms of her probation by using opiates, gained three new criminal charges that were still pending at the time of the fact-finding hearing, developed a serious infection in April 2015 as the result of intravenous drug use, suffered a life-threatening overdose, and spent time in custody.

¶30 Mom suggests that the court should not look to prior evidence of her failed parenting, but should look to the future. According to Mom, "[a]n active substance-abusing parent does *not* automatically equate with the conclusion that the parent's children are child neglect victims." Mom argues, and the record supports, that after investigations in 2010, 2013, and 2014, there were no findings of neglect or abuse of Johnny. Mom claims that she had been clean and sober for four months, and at the time of the fact-finding hearing she had voluntarily checked herself into a sober living group home.

¶31 We find no error in the circuit court's conclusions. WISCONSIN STAT. § 48.977(2)(e) addresses whether the parent is "neglecting" or "unable to carry out the duties of a guardian." Mom previously did not contest the court's finding in the CHIPS case that Johnny was a victim of neglect under WIS. STAT. § 48.13(8) and (10). The court did not make a generalization about Mom's ability

to care for her child based only on her addiction. Instead, the court outlined in detail, supported by evidence in the record, Mom's history of neglecting her parental responsibilities due to her opiate use.

¶32 Although Mom testified at the fact-finding hearing that she was committed to conquering her drug addiction and had made great strides toward accomplishing that goal, the circuit court was cautiously optimistic as testimony revealed that Mom had similarly been dedicated to getting better in the past, only to suffer an overdose months later. Accordingly, the court found that Mom was "very early in her recovery path" and "has not yet fully embraced or understood the complete lack of control that she has had over her addiction." We conclude that the circuit court did not err in finding that the statutory elements of WIS. STAT. § 48.977(2) were met.

Procedural Due Process

¶33 The due process clause of the Fourteenth Amendment protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children."[16] ***Nicholas C.L. v. Julie R.L.***, 2006 WI App 119, ¶16, 293 Wis. 2d 819, 719 N.W.2d 508 (quoting ***Troxel v. Granville***, 530 U.S. 57, 66 (2000)). Procedural due process requires "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" ***Mathews v. Eldridge***, 424 U.S. 319, 333 (1976) (citation omitted).

[16] "We examine procedural due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." ***Kentucky Dep't of Corr. v. Thompson***, 490 U.S. 454, 460 (1989) (citations omitted).

¶34 Due process does not mean, however, that parties are afforded unfettered time to present their case.[17] The circuit court has the discretion to control its docket and calendar. *See* ***State v. Chamblis***, 2015 WI 53, ¶63, 362 Wis. 2d 370, 864 N.W.2d 806 ("[A] circuit court should … have the discretion to say enough is enough."); ***State v. Anthony***, 2015 WI 20, ¶75, 361 Wis. 2d 116, 860 N.W.2d 10 (recognizing in a criminal trial "the circuit court's ability to control the presentation of evidence so as to ensure the fairness and reliability of the criminal trial process"). The circuit court also has the authority to impose reasonable limits on evidence that may be presented, *see* WIS. STAT. § 904.03, and to determine the relevance and admissibility of the evidence to the issues to be decided, *see* WIS. STAT. §§ 901.04 and 904.02.

¶35 Mom argues that her procedural due process rights were violated by the circuit court scheduling a one-day fact-finding hearing. She claims she requested a four-day hearing and submitted a witness list with fifty-five names, but was denied the opportunity to present her full case. The County disagrees, noting that the court reminded the parties to be efficient in presenting their cases, Mom was given ample opportunity to cross-examine every witness the County called, the court allowed the parties to stipulate to facts and reports for the purpose

[17] A number of jurisdictions have recognized that circuit courts have the discretion to set reasonable time limits in child custody cases, but that discretion must be balanced against a party's due process rights to a fair and reasonable opportunity to be heard. *See, e.g.*, ***Goodwin v. Goodwin***, 618 So. 2d 579, 583 (La. Ct. App. 1993) ("'[D]ue process' does not mean litigants are entitled to an unlimited amount of the court's time."); ***Moore v. Moore***, 757 So. 2d 1043, 1046 (Miss. Ct. App. 2000) (in domestic violence case, court held father's due process rights were not violated by court's time limitations); ***JKS v. AHF***, 2013 WY 97, ¶¶27, 34, 307 P.3d 852 (Wyo. 2013) (court's decision to limit paternity action, in which father sought child custody and support, to a one-day trial where parties afforded 160 minutes to present their case did not violate father's due process rights).

of judicial efficiency, and at one point reminded Mom what the court was seeking in terms of proof.

¶36 We conclude that Mom's procedural due process rights were not violated. We note that the only legal support Mom cites for her argument that the one-day fact-finding hearing was inappropriate is a list of four Wisconsin cases where the hearings were held for longer than a day. This is not proof that due process requires more than a one-day hearing as the decisions did not include such a discussion. Mom also asserts that "[s]everal of [Mom]'s witnesses could not be heard," but she cites only one example, claiming that a witness would have testified that she was told by the grandparents that "due to their age," they did not feel they would be a "long term resource" for Johnny. The circuit court addressed this issue, questioning the grandfather directly about his health status and noting in its decision that "this Court finds that the clear and convincing evidence supports the conclusion that the proposed co-guardians are able to perform in an appropriate capacity for an extended period in the future just as they have over the past 20 months." The fact-finding hearing went until 7:00 p.m., and at the end of the hearing, Mom had no additional witnesses to call. Under the circumstances, the circuit court did not erroneously exercise its discretion in limiting the fact-finding hearing to one day.

CONCLUSION

¶37 The evidence established that Mom has neglected her parental responsibilities or demonstrated other compelling reasons for granting the guardianship and that the statutory elements of WIS. STAT. § 48.977(2) and (4)(g) were shown by clear and convincing evidence. Mom has not objected to the lack of precise attention to the statutory procedures set forth in § 48.977(4), and we

further note that no resulting prejudice accrued to Mom by the court's failure to follow the § 48.977(4) statutory procedures as Mom was allowed more time than the statute provides. Based on a detailed review of the record and our discretionary standard of review, we conclude that the circuit court properly considered the evidence and applied the correct law to the facts presented to reach a reasonable conclusion.

By the Court.—Orders affirmed.

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