COURT OF APPEALS
DECISION
DATED AND FILED

October 11, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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. 2017AP750

Cir. Ct. No. 2015TP30

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

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

RACINE COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

C.C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County: JOHN S. JUDE, Judge. *Affirmed.*

¶1 GUNDRUM, J.[1] C.C. appeals from an order of the circuit court, entered after a trial to the court, terminating her parental rights to her son, T.A. She asserts the evidence at the fact-finding hearing on the petition to terminate her parental rights was insufficient to establish grounds for termination under WIS. STAT. § 48.415(6).[2] We disagree and affirm.

¶2 Because the fact-finding hearing was tried to the circuit court, we will not set aside the court's finding that C.C. failed to assume parental responsibility unless that finding is "contrary to the great weight and clear preponderance of the evidence." *See* ***State Dep't of Pub. Welfare v. Johnson***, 9 Wis. 2d 65, 74, 100 N.W.2d 383 (1960). We also recognize that "the trier of the fact who saw and heard the witnesses is in a better position to determine credibility and weight of evidence than a court which merely reads the transcript of the testimony." ***Id.*** at 75. At the hearing, the Racine County Human Services Department (County) had the burden to prove by clear and convincing evidence that C.C. failed to assume parental responsibility. *See* ***Steven V. v. Kelley H.***, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856; WIS. STAT. §§ 48.31(1), 48.415(6). On appeal, however, it is C.C.'s burden to show that the circuit court

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[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] The circuit court also found that an additional ground for terminating C.C.'s parental rights to T.A. existed—because T.A. continued to be a child in need of protection or services (CHIPS). On appeal, C.C. also challenges this finding. The County only needed to establish one ground to terminate C.C.'s parental rights. *See* WIS. STAT. § 48.415. Because we affirm on the basis that the court properly found that C.C. failed to assume parental responsibility with regard to T.A., we do not address the continuing CHIPS issue. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) ("As one sufficient ground for support of the judgment has been declared, there is no need to discuss the others urged.").

erred. *See* ***Seltrecht v. Bremer***, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997). C.C. has failed to meet this burden.

¶3 Failure to assume parental responsibility is established by proving that the parent has not had a "substantial parental relationship" with the child. WIS. STAT. § 48.415(6)(a). "Substantial parental relationship" means "the acceptance *and exercise* of significant responsibility for the daily supervision, education, protection and care of the child." Sec. 48.415(6)(b) (emphasis added). In deciding whether a parent has failed to assume parental responsibility, a fact finder must apply a totality-of-the-circumstances test and "should consider any support or care, or lack thereof, the parent provided the child throughout the child's entire life." ***Tammy W-G. v. Jacob T.***, 2011 WI 30, ¶¶3, 22, 27, 333 Wis. 2d 273, 797 N.W.2d 854. "This analysis may include the reasons why a parent was not caring for or supporting [his or] her child." ***Id.***, ¶3.

¶4 Following the fact-finding hearing in this case, the circuit court found that C.C. failed to assume parental responsibility for T.A. because C.C.

> lacks the capacity to develop and sustain a parental relationship with [T.A.] Her social and interactive skills are so lacking that [T.A.] was basically failing to thrive in [C.C.'s] care. After removal to foster care and with schooling, [T.A.] is now verbal and interacting with others…. [C.C.] has failed to assume parental responsibility because she lacks the capacity to be a meaningful parent.

The court based this determination primarily on the testimony of T.A.'s pediatrician, a forensic psychologist who followed T.A. for several years, T.A.'s special education teacher, and T.A.'s foster mother. The circuit court also noted C.C.'s testimony, finding that she "clearly loves [T.A.] and wants to be his mother. She recognizes that she needs help and believes that her group of friends

give her the help she needs." The court referred to the testimony of several of C.C.'s friends, who expressed that they would provide C.C. with help in taking care of T.A. Despite that, the court found that C.C. failed to assume parental responsibility essentially because she has not had a substantial *parental* relationship with T.A. due to her inability to "exercise … significant responsibility for the daily supervision, education, protection and care" of him. *See* WIS. STAT. § 48.415(6)(a), (b).

¶5 C.C. argues that the evidence is insufficient to support the circuit court's finding that she failed to assume parental responsibility because she loves T.A., has not subjected him to harm, raised him until he was around the age of five years old (he is now almost ten years old), and has shown a commitment to the relationship through visitation and continued involvement in his life even though he has been placed in foster care. C.C. asserts that the record "establishes that she has established a substantial relationship *to the fullest of her abilities*." (Emphasis added.) She acknowledges "[s]he has her own problems that make it hard for her to care for her child who has special needs, but she tries very hard to do so." This is where C.C.'s appeal loses traction. C.C. may have the best of intentions and, quite understandably, a strong emotional desire to be with T.A.; however, the record supports the conclusion that C.C. has been and will continue to be incapable of "exercis[ing] … significant responsibility for the daily supervision, education, protection and care" of T.A. *See* WIS. STAT. § 48.415(6)(b). We review relevant evidence from the fact-finding hearing.

¶6 T.A.'s pediatrician testified that T.A. has digestive and feeding "problems" called eosinophilic esophagitis. The pediatrician referred T.A. to a specialist due to him "failing to thrive" and "[n]ot growing as a child should" while in C.C.'s care. T.A. uses and requires a gastronomy tube (G-tube) to feed

him directly into his stomach, and the specialist has him on a diet to eliminate foods that could cause troubling inflammation of his esophagus. At the time of the hearing, T.A. was eight years old and was "still using formula" to help him "keep his nutrition and calories up." The pediatrician indicated that the site where the G-tube goes into T.A.'s stomach needs to be kept clean to avoid the "risk of infections, skin breaks down, bleeding, problems like that." T.A. "probably will continue to have the same types of issues with the eosinophilic esophagitis"; it is "an on-going battle."

¶7 According to the pediatrician, T.A. also has "infections with herpes virus in the eye," which is likely a long-term, ongoing problem, for which the pediatrician believed T.A. has anti-inflammatory eye drops and antiviral medication to help maintain care of his eyes "on a regular basis." The herpes virus in the eye "can cause infection" and "painful, long lasting eye irritation, inflammation." The pediatrician also noted T.A.'s "special education needs" due to his "long-term developmental delay[s]" and "speech delays." "[E]arly on we saw he wasn't meeting developmental milestones," but when the pediatrician saw T.A. a month before the fact-finding hearing—three years after living with a foster mother—he had "shown some progress" and "picked up quite a few words whereas I hadn't heard words from him. I was happy about that. He seemed to have a nice personality, friendly and social. He was ambulatory [and] able to move around. But still limited as far as comprehension and speech issues, for example." T.A. "has improved" and "done well … growing in recent years."

¶8 The pediatrician testified that T.A.'s conditions create "a lot of details to keep track of as far as his cares. His feedings and medications and those types of issues." It would be "difficult[] for anyone to handle," but "[m]aybe especially difficult" for C.C. He explained:

> [H]e certainly has needs in regard to his … eye medication. I think he has on-going constipation issues which have been difficult. The feeding issues are difficult to keep track there as far as what he can try, can't try, as well as keeping track of the tube feedings to make sure that he gets [sic] everyday.

¶9 On cross-examination, the pediatrician acknowledged that C.C. was the one who brought T.A. to his medical appointments until he was removed from her care and that she continued to engage in appointments with the pediatrician into 2013 and even up until the time of the hearing. He agreed that there were "early signs" of developmental issues with T.A., and T.A.'s failure to thrive "could be the result of a medical condition."

¶10 A clinical forensic psychologist testified that she first became acquainted with T.A. in 2008, when he was seven to eight months old, after the County had "concerns" and asked her to perform a parenting evaluation of C.C. The psychologist observed C.C. with T.A. and performed an intelligence test on C.C. The psychologist observed that missing from C.C.'s engagement with T.A. was

> [t]he interactions that you often have between mother and child or caregiver and child sitting on a lap and pointing to things and, you know, trying to stimulate their growth, their brain growth and learning. Having that interaction face to face where babies learn social cues and, you know, develop inter-personality just as infant setting a foundation for what they need.

Through the testing, the psychologist learned that C.C. "is likely functioning in the lower extreme category. Then for achievement, her abilities range between first to maybe second or third grade level in reading, comprehension math skills that type of thing." While C.C. parenting T.A. was not "ideal," the psychologist concluded that, at that time, "it was enough that she provided a safe environment for him and

took care" of his needs, such as getting T.A. dressed, fed and bathed. She agreed that in light of "where [T.A.] was in life and where [C.C.] was in life," and the fact that there were "people" and "services" involved, "they were okay and safe at that point."

¶11 In 2012, when T.A. was four years old, the County again asked the psychologist to assess C.C.'s ability to adequately parent T.A. The psychologist did a more detailed assessment and noted that T.A. exhibited "autistic features." She explained that T.A. needed "special types of interactions, … specialized help so [he] can realize [his] full potential. Not stay stuck" at his current level. She acknowledged C.C. was keeping T.A. safe, dressing him, and feeding him, though she expressed that T.A. was "not well fed." She concluded that C.C. "could continue parenting him," but with the "caveat … that human services needed to stay involved" because there likely would not be "follow through due [to C.C.'s] own limitations with the specialized care that [T.A.] was likely going to need." She was afraid that "if human services is not involved with [C.C.] … everything's going to fall off."

¶12 The psychologist again evaluated C.C. approximately fifteen months later, in 2013, after T.A. had been removed from C.C.'s care and placed in foster care "due to malnutrition" and his "GI problem." As part of the evaluation, the psychologist went to the home of the foster mother, who "had been trying to help [C.C.] with some of the skills needed to help with [T.A.]'s feeding problems." C.C. arrived some time during the visit, and the psychologist spoke with her. The psychologist testified that C.C. "could not give me sufficient information about what was happening with [T.A.]" Observing C.C.'s engagement with T.A., the psychologist noted that there was "not a lot of interaction. Basically everything I had seen before, even though he was an infant, that's the pattern. That was a

consistent pattern that I had seen" from 2008 through 2013. She confirmed that during that five-year time period T.A.'s "needs" changed significantly. She was concerned, for example, about C.C.'s ability, or lack thereof, to identify fruit, especially in light of T.A.'s gastrointestinal problems. She ultimately determined it was not safe for T.A. to be returned to C.C. because "while the poor social interaction had pretty much been the same, now with this additional medical complication and really having to stay on top of … his nutrition and the tube and the feeding and the formula … I just didn't think she would … ever have that ability."

¶13 On cross-examination, the psychologist confirmed that during the 2012 evaluation, it appeared to her that T.A. "was making some developmental gains … some progress" with C.C. She acknowledged that C.C. had engaged with one of T.A.'s teachers regarding T.A.'s individual education plan (IEP). She further acknowledged that her belief in 2012 was that if there were sufficient in-home services provided to C.C. and T.A., that T.A. "likely would be able to make good gains in his developmental abilities." She also acknowledged that when she met with C.C. in 2013, C.C. was able to identify "some of the things" that T.A. was and was not able to eat. C.C. expressed her understanding that "if there was a concern with respect to the button [in T.A.'s stomach], specifically if it fell out, she knew that she needed to notify [T.A.]'s doctor."

¶14 The psychologist testified that T.A., who was eight years old at the time of the hearing, "is probably exceeding [C.C.] at this point in terms of his interaction abilities." Counsel for C.C. asked: "[S]o with respect to kind of the trajectory that both [T.A.] and [C.C.] are on, [T.A.'s] needs have outpaced [C.C.'s] ability at this point? That's the bigger concern when we hit the 2013 evaluation?" The psychologist responded: "Yes. The coupling of … the medical

issues with the cognitive limitations and not providing him with the environment that he really needs."

¶15 In response to questioning from T.A.'s guardian ad litem, the psychologist further expressed that she believed T.A. would not be safe in C.C.'s care.

> Because of … her own intellectual deficit, the feeding of [T.A.] had decreased. They had gotten poor. She wasn't feeding him correctly or what was good for him as a growing boy. This led to this medical complication of GI problem, chronic constipation, leaky stool, which resulted in a GI tube at that time.
>
> He had gone into foster care and improved enough through the foster care mom's assistance that he only needed, I think they call it a G-tube … or the button. But this required rigorous standards of how much formula to how much water. You know at the point he was at, he had such a stricted [sic] caloric intake that couldn't be deviated because of this malnutrition….
>
> It was all these factors in which she would need to do that were beyond her cognitive abilities. I have always struggled in this evaluation or working with [C.C.] with her social abilities and her ability to interact. That's always been a concern.
>
> But … when I look at a parenting evaluation … we are not looking for the best or the perfect parent…. [W]e are looking to are parents [sic] who keep a child safe. That had always been my concern.
>
> At this point by 2013 it was clear to me that once I saw him with the foster care mom, he had exceeded [C.C.'s] level of interaction, her level of social abilities. That staying in her care would impede his ability to move forward.

Asked if this was her conclusion "regardless of what services [T.A.] might be receiving from human services or other agencies or school programs," the psychologist responded:

> Yes. I have learned throughout now … having three evaluations has very much informed me … that no matter what is in place, it can't be picked up. That ball can't be picked up by [C.C.] and taken forward because it just exceeds her abilities. She loves him. You know that's clear. But he just has too many needs that she can't meet.

¶16 T.A.'s special education teacher testified that, at the time of the April 2016 hearing, she had been T.A.'s teacher for approximately two years. When she started with T.A., he was "nonverbal one hundred percent," but since that time—a time period when T.A. was in the care of the foster mother instead of C.C.—he "made huge gains." C.C. had contact with the teacher only three times over that two-year period.

¶17 T.A.'s foster mother testified that she has been T.A.'s foster mother since January 31, 2013. At the time of the hearing, T.A. was on "three feeds a day" through the G-tube. She testified that when she first took T.A. into her home, "[h]e actually drank never more than two ounces a day for six months." She testified that, at the time of the hearing, T.A. was still in diapers and they were starting to work on toilet training. She further testified that she took T.A. to occupational therapy in part because when she first received him, "[h]e would fall down multiple times a day," and "[j]ust sitting at the kitchen chair, he would fall off." She testified that she communicates with T.A.'s teacher "every week." When she first received T.A., when he was around the age of five, "[h]e did not speak at all … he kind of made grunting sounds." At the time of the hearing, T.A. was "saying three or four word sentence[s]." Since she received T.A., the foster mother has spoken to T.A. "[a]ll the time." When she first received T.A., he would not make eye contact, "[h]e would look down." After spending significant time working on it with him, by the time of the hearing, T.A. will look her and other people in the eye.

¶18 The foster mother testified that C.C. had been coming to her home to visit T.A. over the three years prior to the fact-finding hearing. She explained that C.C. "has a very hard time interacting" and "communicating," and does not engage in a "back and forth speech pattern" with T.A., "[i]t's usually [C.C.] saying get that [or] [g]o do this. It's not something that would be back and forth." The foster mother explained that C.C. "feels comforted being around" T.A.; "[s]he likes getting attention from him." The foster mother explained how T.A. loves listening to and making music, and that she has "a lot of keyboards at the house" on which T.A. can play music, but when C.C. visited, "[T.A.] would be playing it. [C.C.] would turn it off. Or she would change the music. It would just frustrate him…. I had to tell her to stop doing that because it was frustrating him." The foster mother explained that C.C. "doesn't play with [T.A.]…. [S]he is more [of a] sedentary person…. She will get him to relax with her. His head on her lap. She will rub his head. It makes her feel good to have him." She agreed that C.C. loves T.A. and "does what she can to her ability."

¶19 The foster mother explained that she tried "five or six times" to teach C.C. how to feed T.A. through his tube but she "was not having success…. [C.C.] wasn't remembering." Two nurses then tried to teach C.C., but that "didn't work out." The foster mother testified regarding the variables involved with how much to feed T.A. at different times of the day and at what pace. She stated C.C. "was uneasy with the amount [of formula to use]. The formula is powdered. So how many scoops of powder go into the making of a cup. Things like that." The foster mother also detailed for the circuit court T.A.'s "very limited diet" and how she has to be "very vigilant" about what she feeds T.A., adding that a doctor took T.A. off of wheat, dairy, peanuts, soy, and shellfish to help with inflammation in his esophagus. She expressed that it is "very important" to be able to read labels

on food containers. She explained one situation where she had informed C.C. over the phone that the doctor took T.A. off of these specific food items, but C.C. did not quite understand. At the next visit C.C. came over with "a box of milk chocolate peanut M&Ms" for T.A. The foster mother also testified to trying to engage C.C. in playing with T.A., but "[i]t's not easy for her to play. That's not in her make up, playing. But playing I think is really important at his age."

¶20 On cross-examination, the foster mother acknowledged that C.C. had consistently visited T.A. twice a week. She confirmed that C.C. has made "some strides … with respect to understanding parts of [T.A.]'s routine," specifically referencing T.A.'s bath and bedtime routine. She also acknowledged that C.C. brings over gifts for T.A.

¶21 A case manager with the County testified she was assigned T.A.'s case in February 2013, soon after T.A. was removed from C.C.'s home. She explained that the County has been involved "on and off" with T.A. since his birth. C.C. expressed that she wanted T.A. "to be home," and frequently would ask the case manager to find a full time, "24-7" nurse "that could provide help to her to provide for … his care." Based upon the case manager's "contacts with DDIS [Developmental Disabilities Information Service, Inc.], as well as medical staff," she determined that such nurse care was not "available anywhere." For the County to place T.A. back in C.C.'s care, someone else with "knowledge of the feedings" would have had to be in the home "around the clock." Such assistance was not readily available, if available at all: "If [T.A.] had been placed there and qualified, there was also a waiting list [with DDIS] for 18 months at that time. There is no guarantee that even if he qualified he would have received those services."

¶22 The case manager testified that C.C. had "moved several times" in the three years since she was assigned the case, and there was "some period of time where [C.C.] stayed with friends"; however, C.C. had been at her current residence "for almost a year" and previously at one other residence for around twelve months. The case manager believed that C.C.'s current residence was not suitable for T.A.

¶23 The case manager confirmed that C.C. had been very good about consistently visiting T.A. but had not "been able to consistently meet [T.A.]'s needs and safety since" he was removed from her care. She added:

> [O]ftentimes she wouldn't provide for any of his cares…. [S]he would visit with him but not take an active role in caring for him. Even during some of the times earlier in the case when I would be there during visits, she tended to be a little bit detached. Not really paying attention to what [T.A.] was doing.
>
> She also has not participated in many medical or educational appointments for him. It's my understanding she did attend a well checkup appointment in March of 2015. So a year ago. She also did attend an IEP just this last January.

The case manager believed that meeting with T.A.'s doctors was particularly important because of his special medical needs. She also confirmed that T.A. is a "high special needs learning disabled child."

¶24 The case manager testified that C.C. had completed a parenting class but had been unable to demonstrate any of the skills from that class in her interactions with T.A. She indicated that even if T.A. was able to receive autism services in C.C.'s home, it would not be sufficient to meet T.A.'s needs. The case manager stated that she made various efforts to provide more support and guidance to C.C. in terms of how to take care of T.A.'s medical needs, but her

efforts were unsuccessful "based on just the inability for her to comprehend." The case manager herself worked directly with C.C. in trying to train her how to properly feed T.A. through his G-tube, including how to properly mix the formula and the schedule for his feedings, but

> [a]s of my appointment with her last month, she still couldn't. She could not tell me what the schedule was for those feedings nor tell me how to, how much formula to water. In fact, she seemed somewhat surprised that he would be fed as well on the weekend. I still had some concerns about her ability to comprehend that.

She stated that C.C. had not been a daily care giver for T.A. since she took over the case in February 2013, and she confirmed that it was her opinion that it would be "unsafe for [T.A.] at this time to return" to C.C.'s care. She expressed that "ultimately his needs are just higher than she [has the] ability to meet."

¶25 On cross-examination, the case manager testified that prior to T.A.'s birth, C.C. had been cooperative with getting prenatal care for T.A. After his birth, the County had some initial concerns about C.C.'s ability to care for T.A., and there was a nurse helping out with T.A. The County had initially determined that T.A. should be detained, but it subsequently determined that it was safe for T.A. to go home with C.C. The case manager confirmed the County believed C.C. had a support system, including a parent mentor, "that was sufficient to provide care for her and [T.A.]" The parent mentor worked with C.C. and T.A. on some goals, which were eventually met. C.C. was made aware of and engaged with community resources available to her, she budgeted sufficiently, demonstrated the ability to feed, bathe, and play with T.A., and she "deal[t] with" medical appointments T.A. needed to attend. The case manager read from a report discussing C.C.'s handling of T.A. following a surgery, which report indicated: "Each time [C.C.] was able to show parent mentor how to properly care for [T.A.],

afterwards cleaning his scar, taking care of precautions for clothing, making sure it would heal properly." The case manager acknowledged that in 2008 C.C.'s home had proper furnishings and supplies for T.A. and was not a concern for the County. C.C. earned a certificate for her completion of "Next Generation Now," a "positive solutions parenting" program, and the foster mother had indicated to the case manager that the parenting classes were helpful for C.C.

¶26 The case manager testified that the County again looked into C.C.'s family situation in 2010, after a different child of C.C.'s passed away, but no services were put in place at that time. Notes in the County file from 2011 indicated that T.A. was "clean." In September 2011, C.C. expressed concerns with the County about T.A.'s eating habits. The County entered into a social services agreement with C.C., and had its last contact with her in relation to that agreement in February 2012.

¶27 The County next had contact with C.C. in early 2013, after she had taken T.A. to the hospital with concerns about his health, which ultimately led to T.A. being placed in foster care. Although he was placed in foster care, the case manager confirmed that the County had noted "several strengths" in relation to C.C., those being that she "was bringing [T.A.] to his medical appointments," "was financially able to provide for [T.A.]," and kept "a clean and orderly home." Two individuals came forward on behalf of C.C. as possible guardians for T.A., but they ultimately were not approved.

¶28 The case manager acknowledged that, more recently, C.C. had "shown the ability to engage in services on her own," "reach[ing] out to organizations that assist in the community," and "propos[ing] individuals who she would like to have help her learn how to appropriately deal with [T.A.]" The

County disapproved of some of the individuals C.C. had proposed. The case manager confirmed that C.C. recently had initiated a request to try to better learn how to handle T.A.'s G-tube. The case manager acknowledged that C.C. recently had been assisting with giving T.A. a bath and getting him ready for bed. She further acknowledged that, as far as the County was aware, C.C. was the primary care giver for T.A. during the first five years of his life.

¶29 The case manager gave an example of her concerns regarding C.C.'s interactions with T.A., recalling instances where T.A. fell and cried while C.C. was visiting T.A. at the foster mother's home and the case manager and foster mother both responded to T.A. to see if he was "okay," but C.C. "would not respond. She would just sit at the table." She also recalled T.A. trying to interact with C.C., but C.C. would not respond—she would just focus on her phone. Also concerning was the case manager's observation that T.A. would not drink enough water, yet if C.C. did tell him to drink water and he did not do it "[t]here wouldn't be any follow up." She summarized these concerns as C.C.'s "inattentiveness to responding to [T.A.]" In another instance, the foster mother and the case manager attempted to teach C.C. a "game" to help T.A. learn letters, but they were not able to succeed in teaching C.C. the game. The case manager testified that during all of her visits to the foster mother's home while C.C. was visiting T.A., she never observed C.C. provide T.A. "assistance … of any kind."

¶30 The case manager explained the various services C.C. had been provided to help her with parenting T.A., but expressed that despite receiving those services, it was not safe for T.A. to live with C.C. if she was on her own. While she was aware that there were people who were willing to provide C.C. with support, the case manager did not know of any available community

resources that would "make it safe for [T.A.] to return to [C.C.]'s home at this time."

¶31 C.C. called as a witness the executive director of "ADRC of Racine County," an organization that advocates for people with disabilities. The director testified that when C.C. first called her, the director could not understand her very well, but eventually was able to successfully communicate with C.C. when C.C. called back with a friend assisting her. The director was aware that T.A. had a feeding tube and autism, "some pretty significant needs." The director told C.C. and her friend that she thought C.C. was "eligible for services through ADRC." She believed there "could" be additional support for C.C., such as housing assistance and "nursing care services should be able to provide her th[e] kind of training and support she would need to do medication and any kind of changing." The director talked about the possibility of mentors and family or friends helping C.C. provide T.A. with the care he needs.

¶32 On cross-examination, the director acknowledged that ADRC never received a functional screen regarding C.C. to determine whether it would provide services to her. She acknowledged she did not have a professional diagnosis regarding C.C. or T.A. as to their disabilities, but only knew what C.C. and her friend had told her. She admitted she was "not familiar with any training that nurses have already attempted to provide for [C.C.], particularly with regard to [T.A.]'s feeding tube." She also conceded that she was not aware if C.C. had ever actually applied for services through ADRC. She also agreed that ADRC is "just about advocacy" and it does not actually provide any medical or therapeutic services and that ADRC's advocacy "depends one hundred percent on the willingness of the person who is looking for an advocate."

¶33 C.C. also called as a witness a woman who testified that she has known C.C. for "fifteen or twenty years." She indicated that she had observed C.C. bathing and feeding T.A., keeping his clothes clean, and taking him to activities and shopping. She stated that C.C. is "independent," "self-sufficient," and capable of "getting to an appointment." She also indicated that if C.C. needed "additional support," she would be willing to assist with that. On cross-examination, the woman admitted that she had not seen T.A. in several years and did not know what his current needs were.

¶34 Another witness of C.C.'s testified that she had witnessed C.C. "feeding [T.A.], changing him, playing games with him. Doing what a regular mother does with her child." She agreed that C.C.'s home was "appropriate for a child." She acknowledged assisting C.C. with "seeking out … services" such as "[a]ssist[ing] her going to parenting," going to try to talk to a social worker, and "[c]alling … doctors, trying to see if they can give her help with learning how to do the tube feeding." She indicated that when there was first talk about removing T.A. from C.C.'s care, she "offer[ed] to the human services department to assist with [T.A.]'s care," but was told T.A. could not stay with her because she was not a relative. She said she also offered to help with the feeding of T.A., but "[t]hey wouldn't allow it." She stated she is a certified nursing assistant, has experience with G-tubes and offered to assist C.C. in learning how to work with the G-tube, but she was not allowed to go into the foster mother's home.

¶35 On cross-examination, the woman admitted that C.C. had stayed with her for "a couple of months" after T.A. was taken from C.C., and C.C. then went to "HALO" before getting "her own place." She acknowledged that she was not aware that "trained nurses" had "attempted to train [C.C.] with regard to using the G-tube for feeding." She also acknowledged that she was not aware that T.A.

had been diagnosed with autism. She further acknowledged that she had only seen T.A. twice since he was put into foster care in early 2013.

¶36 C.C. also called to the stand an employment specialist for Lakeside Curative Services, who testified that Lakeside performed an employment assessment of C.C. in the fall of 2015 and determined that she was "appropriately dressed," "on time," and her "[b]ehavior was appropriate." She agreed that C.C. had demonstrated an ability "to learn job related skills" and "be successful in the workplace with appropriate supports." She testified that C.C. had performed a ninety-day internship with TJ Maxx, cleaning and restocking shelves.

¶37 Another witness of C.C.'s testified to observing C.C. with T.A. "at least 50 times." During that time, he observed that T.A. "always ha[d] on clean clothes … [and C.C.] would always feed him. If she needed rides to doctor's appointment or to get him to school, she would call one of us to ask for a ride." He stated he "just never really noticed anything that was out of the ordinary or anything" of concern. While T.A. was still living at C.C.'s home, the witness observed the home to be "well furnished. She had all the things that I felt a kid should have as far as toys, clothing, furnishings, things of that nature"; however, he conceded he was aware that "at this point," C.C. did "not have a significant amount of furnishings in her house." He stated that he informed C.C. that she could have extra furniture from his house if T.A. was to return to her home. He further stated he lived very close to C.C.'s home and he and his wife would "definitely be able to support her," if T.A. were to return to her home.

¶38 C.C. called another witness, who testified that she has known C.C. for fifteen years. The witness testified that when she had observed C.C. taking care of T.A., C.C. "was taking good care of him from a newborn" until T.A. was

taken away from C.C. When T.A. was a newborn, C.C. "knew how to make his infant meal, keep him changed, keep him happy." C.C. had a "beautiful apartment" during the time T.A. lived with her, and the witness confirmed that she had no concerns "with respect to anything that [T.A.] needed at the apartment." She was aware of the situation leading to T.A.'s removal from C.C.'s home because

> I am the one that was there the whole time when he was taken to the hospital. She would call me. She noticed that her son wasn't eating well. She was very much concerned about that. She was concerned that his bowel movements [weren't] coming the way they should. She would call me or Sherry and take her up to the emergency room. Make sure that he was treated.

She added that C.C. "always addressed [T.A.]'s needs. I couldn't have done it better. She loved her son. She knew what she had to do." Regarding T.A.'s early 2013 hospital admission, eventually leading to his removal from C.C.'s care, the witness testified that C.C. "didn't need no assistance. She would call me, ask me to come get her to take her home to change clothes. [C.C.] slept at the hospital with her son [on] a daily basis until he was taken from her." She confirmed that she had offered to be a source of support for C.C. and T.A. and assist with caring for T.A. She testified that while T.A. was in C.C.'s care, he "never missed a doctor appointment. He never missed school. He was never dirty or stinky. He was well-groomed, well taken care of." On cross-examination, the witness acknowledged being aware that C.C. has "cognitive disabilities." She indicated it "would be great" to "have a help aid come into the home to assist her."

¶39 C.C. also testified, but her testimony was remarkably brief, accounting for just five of the more than 230 pages of trial testimony. She stated that when she visited T.A., she would bring him "clothes and stuff." When asked

if she had “good supportive friends who are willing to help you with [T.A.],” C.C. responded, “Yes.”

¶40 The County called the case manager in rebuttal. She confirmed that she had concerns that if T.A. was returned to C.C.’s care, the individuals who indicated they would help C.C. with T.A. “might not be long lasting or permanent enough to make that kind of placement work.”

¶41 In this appeal, we must determine whether the circuit court’s finding that C.C. “ha[s] not had a substantial parental relationship with” T.A. is contrary to the great weight and clear preponderance of the evidence. *See* WIS. STAT. § 48.415(6)(a); ***Johnson***, 9 Wis. 2d at 74; ***Steven V.***, 271 Wis. 2d 1, ¶24. Again, “substantial parental relationship” means “the acceptance *and exercise* of significant responsibility for the daily supervision, education, protection and care of the child.” Sec. 48.415(6)(b) (emphasis added).

¶42 The circuit court placed particular weight upon the testimony of the forensic psychologist that, as the court summarized it, “[T.A.]’s needs exceed [C.C.]’s capacity to adequately meet” those needs. After evaluating T.A.’s condition and C.C.’s abilities over a five-year period since T.A.’s birth, the psychologist determined it was not safe for T.A. to be returned to C.C.’s care because “while the poor social interaction had pretty much been the same, now with this additional medical complication and really having to stay on top of … his nutrition and the tube and the feeding and the formula … I just didn’t think she would … ever have that ability.” The totality of the evidence supports a finding that T.A.’s needs were increasing, and due to C.C.’s cognitive limitations, she had been and would continue to be unable to meet those needs, including T.A.’s health and safety needs. Evaluating the totality of the circumstances over the life of T.A.,

the circuit court reasonably concluded that there was clear and convincing evidence that C.C. had not exercised significant responsibility for the daily supervision, education, protection and care of T.A. This had been so since at least early 2013, and a change is not anticipated because T.A.'s needs are not expected to dissipate and C.C.'s abilities are not expected to substantially improve. Based on the record, we cannot say that the circuit court's finding that C.C. failed to assume parental responsibility is against the great weight and clear preponderance of the evidence. As a result, we must affirm.

By the Court.—Order affirmed.

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