

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 13, 2018

Diane M. Fremgen
Acting 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. 2017AP2380
2017AP2381
2017AP2382**

**Cir. Ct. Nos. 2015TP137
2015TP138
2015TP139**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

L. J.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

L. J.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

L. J.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County:
DAVID A. FEISS, Judge. *Affirmed.*

¶1 KESSLER, J.¹ L.J. appeals the orders terminating her parental rights to her children, I.N.J., N.M.K., and T.K. She contends that the circuit court

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.

failed to properly consider whether her children have a substantial relationship with either her or her family members. We affirm.

BACKGROUND

¶2 On February 20, 2014, L.J.’s three children were found to be in need of protection or services. The circuit court entered a dispositional order placing the children outside of the home. On May 20, 2015, the State filed a petition to terminate L.J.’s parental rights alleging grounds of Continuing CHIPS and failure to assume parental responsibility. T.K. waived her right to a jury trial and pled no contest to the continuing CHIPS ground. After hearing testimony from multiple witnesses, the circuit court made the requisite finding of unfitness.

¶3 At the disposition hearing, the circuit court heard testimony from multiple witnesses. F.B., the foster mother for I.N.J. and T.K., testified that two weeks prior to the court date she had a scheduled meeting with L.J. to “bring clarity to a couple concerns,” but that L.J. did not show up. She stated that she did not have a lot of contact with L.J., but that she was not opposed to such contact. She also testified that the boys have contact with their brother N.M.K., and that if she adopted I.N.J. and T.K., she would allow continued contact with their brother. She also stated that L.J. does not attend the boys’ doctors’ appointments or school meetings.

¶4 Cassie Zielinski, the family case manager from Children’s Hospital Community Services, testified that I.N.J. was six years old when he was removed from his mother’s home, N.M.K. was four years old, and T.K. was nine months old. At the time of the hearing, the boys were ten years old, eight years old, and four years old. Zielinski testified that L.J. had never progressed to unsupervised

visits with the children. She also stated that she did not know where L.J. lived and that numerous attempts to see L.J.'s place of residence were met with excuses from L.J. She testified that L.J. has significant cognitive delays and had not been regularly attending therapy sessions. She also stated that L.J. initially had supervised visits with the children twice a week for four hours each, but that L.J. requested the visits be reduced to two hours because the longer visits were overwhelming.

¶5 J.H., the foster mother for N.M.K., testified about the routine that she and her husband have in place for the child and stated that the child is well-bonded with his foster family. She stated that the child expressed a desire to be adopted. She stated that if she adopted N.M.K., she would allow for contact between the child and his biological mother so long as contact with L.J. was beneficial for N.M.K.

¶6 At the close of the hearing, the circuit court addressed each of the WIS. STAT. § 48.426(3) factors. As relevant to this appeal, the court considered the children's relationship with their mother, noting that the children, particularly I.N.J., did indeed have a relationship with L.J. However, the court observed that the children had been out of their maternal home for a significant amount of time, their visits had never progressed to unsupervised, and that I.N.J.'s expectation for a future with his mother and father together was unrealistic. The court acknowledged that severing the relationships between the children and their mother would be harmful in the short-term, but was in the children's long-term interest. The court determined that termination of L.J.'s parental rights was in the best interest of the three children. This appeal follows.

DISCUSSION

¶7 L.J. argues that the circuit court failed to properly consider whether the children had a substantial relationship with either L.J. or any of her family members, and instead erroneously equated the term “substantial relationship” with “substantial parental relationship.” L.J. argues that the court erroneously considered L.J.’s relationship with her children pursuant to WIS. STAT. § 48.415(6), which requires the court to consider a parent’s daily involvement with his or her children at the fact-finding hearing, rather than WIS. STAT. § 48.426(3)(c), which requires the court to consider the emotional and psychological bond between the parent and the children at the disposition hearing.

¶8 We will “sustain the circuit court’s ultimate determination in a proceeding to terminate parental rights if there is a proper exercise of discretion.” *See State v. Margaret H.*, 2000 WI 42, ¶32, 234 Wis. 2d 606, 610 N.W.2d 475. A court properly exercises its discretion “when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach.” *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The court must consider the six factors listed in WIS. STAT. § 48.426(3) before determining whether termination of a parent’s rights is in the child’s best interests, *see* § 48.426(3), and the factors that the court considers “must be calibrated to the prevailing standard[,]” which is the best interests of the child. *See Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶4, 255 Wis. 2d 170, 648 N.W.2d 402.

¶9 The circuit court did indeed use the term “substantial parental relationship” when evaluating the relationship between L.J. and the boys; however, L.J. ignores the fact that the court discussed all aspects of L.J.’s

relationship with the children. Specifically, the court acknowledged the bond the children have with their mother, but noted that in I.N.J.’s case, the bond partially stemmed from an unrealistic expectation that L.J. and the child’s father would reunite and “live happily ever after.” The court acknowledged that L.J. loved her children, but that she never progressed to unsupervised visits, did not actually parent the children during the visits, and could not provide the stability that the children needed. The court also expressed concern about the harm severing the relationship would cause the children, but found that the harm would not be long-term.

¶10 L.J. also argues that the circuit court failed to consider the children’s relationships with other family members. The court acknowledged that two relatives came forward expressing interest in becoming “placement resources” for the children. The court noted that the relatives came forward three years after the children had been removed from L.J.’s care and that the record did not provide evidence of any familial bond between the children and those relatives. Consequently, the court found that it was purely speculative whether the children would thrive with another relative. We conclude that the court properly weighed the children’s relationship with L.J. and her relatives against their need for emotional and physical stability. We will not overturn the court’s findings.

¶11 The WIS. STAT. § 48.426(3) factors are non-exclusive. As the guardian ad litem helpfully summarizes in her brief to this court, the circuit court addressed each factor before making its determination that termination of L.J.’s parental rights was in the children’s best interests.² We conclude that the court

² The circuit court’s analysis is only disputed by L.J. with respect to the question of whether there was a substantial relationship between the children and L.J. and various family members.

properly considered all relevant factors required by the statute, including the testimony of extended family members, and reasonably determined that termination of L.J.'s parental rights was in the best interest of the children.

¶12 Accordingly, we affirm the circuit court.

By the Court.—Orders affirmed.

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

