COURT OF APPEALS
DECISION
DATED AND FILED

February 27, 2018

Sheila T. Reiff
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. 2017AP689
2017AP690

Cir. Ct. No. 2015TP000185

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT 1

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

J. W.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

J. W.,

RESPONDENT-APPELLANT.

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

¶1 DUGAN, J.[1] J.W. appeals the orders of the trial court terminating her parental rights to her son, L.P.P. II, and her daughter, L.P. She also appeals the orders denying her postdispositional motion where she contended that trial counsel was ineffective (1) in advising J.W. to enter a no-contest plea to the continuing child in need of protective services (CHIPS) ground because her incarceration impeded her ability to complete the conditions for return of the children and (2) failing to do more to find a maternal relative with whom the children could have been placed. J.W. also contended that the trial court should have vacated her no-contest plea because J.W. could not have knowingly and intelligently agreed to adjourn the proceedings to work on conditions for the return of the children given that her ongoing incarceration would have thwarted that goal.[2]

¶2 For the reasons stated below, we conclude that the trial court did not err in determining that J.W. was not denied her right to effective assistance of counsel and that J.W. has not established that her no-contest plea was not entered knowingly and intelligently. Therefore, we affirm.

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[1] This consolidated 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] Pursuant to WIS. STAT. RULE 809.107(6)(e), this court is required to issue a decision resolving termination of parental rights appeals within thirty days after the filing of the reply brief. We may extend that deadline pursuant to WIS. STAT. RULE 809.82(2)(a) upon our own motion or for good cause. ***See Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995). On our own motion, we now extend the decisional deadline in this matter through the date of this decision.

¶3 The following background provides context for the issues in this case. Additional relevant facts are included in the discussion section.

BACKGROUND

¶4 L.P.P. II, now seven years old, was born on November 10, 2010. L.P., now six years old, was born on November 29, 2011. J.W. is the mother of both children and L.P.P. Jr. is the father.[3]

¶5 On October 16, 2014, L.P.P. II and L.P. were both found to be a child in need of protective services.[4] A dispositional order placing the children outside the home in a placement approved by the Bureau of Milwaukee Child Welfare (BMCW) was entered on November 26, 2014.[5] Following the BMCW's detention of the children and during the pendency of the dispositional order, they have remained placed continuously outside a parental home.

[3] On August 18, 2014, L.P.P. Jr. was adjudicated to be the father of L.P.P. II and L.P. by default. DNA testing also established to a 99.97% degree of certainty that L.P.P. Jr. is the father of both children.

L.P.P. Jr. did not appear at the July 9, 2015, initial appearance on the termination of parental rights petition and the trial court found him to be in default. No issues relating to the termination of parental rights proceeding against L.P.P. Jr. are before us on appeal.

[4] The separate cases were filed for each child. However, in most instances, the parties' papers and court orders in each case were identical, and joint court proceedings were held for both cases. For ease of reading, we refer to documents that were filed in the singular, even though actually a particular document was filed each case.

[5] The Bureau of Milwaukee Child Welfare (BMCW) has since been renamed the Division of Milwaukee Child Protective Services. The agency was known by its prior name when this case was initiated; therefore, all references will be to the BMCW.

¶6 A petition to terminate J.W.'s parental rights to L.P.P. II and L.P. was filed on June 11, 2015, alleging failure to assume parental responsibility as the grounds for termination.[6] The petition, in part, stated,

> [J.W.] has failed to serve as a primary caregiver of the children for a substantial period of time. The children frequently stayed with relatives or others before their detention, and [J.W.] lived in Indiana for a portion of their childhood. The children's caregivers sometimes in turn would leave them with other caregivers, and [J.W.] did not know at times where her children were. [J.W.]'s failure to provide supervision left L.P.P. II in the hands of [L.P.P. Jr.'s girlfriend]. [L.P.P. II] was admitted to the hospital on June 21, 2014 with a life-threatening brain injury.[7] … He also had a lacerated liver.

The petition goes on to state that "[b]efore [L.P.P. II] sustained his traumatic brain injury, [L.P.P. Jr.'s girlfriend] had texted [J.W.], threatening to hurt her children. [J.W.] did not take it seriously, did not remove the child from the woman's care, and did not call to check on [L.P.P. II]." Other facts alleged to support termination of parental rights will be discussed below.

[6] Wisconsin has a two-part statutory procedure for the involuntary termination of parental rights. ***Steven V. v. Kelley H.***, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. In the grounds phase, the petitioner must prove by clear and convincing evidence that at least one of the twelve grounds enumerated in WIS. STAT. § 48.415 exists. *See* WIS. STAT. § 48.31(1); ***Steven V.***, 271 Wis. 2d 1, ¶¶24-25. In the dispositional phase, the court must decide if it is in the child's best interest that the parent's rights be permanently extinguished. *See* WIS. STAT. § 48.426(2); ***Steven V.***, 271 Wis. 2d 1, ¶27.

[7] L.P.P. Jr.'s girlfriend was charged with multiple counts of physically abusing the L.P.P. II, as well as child neglect, mental harm to L.P.P. II, and several counts of felony intimidation of a victim.

¶7 An initial appearance was held by the trial court on July 9, 2015, and adjourned until August 4, 2015.[8] At the August 4, 2015 initial appearance the case was scheduled for a jury trial.

¶8 At a September 30, 2015 status conference, J.W. appeared and was represented by newly-appointed counsel. Due to new counsel's scheduling conflicts, the time limits were tolled for good cause and the trial was scheduled for February 8, 2016. The trial was adjourned again because of ongoing and extensive discovery and a request to amend the termination of parental rights petition. On March 7, 2016, the trial court granted the State's motion to amend and supplement the petition, and conducted an initial appearance on the amended petition.

¶9 The State filed an amended petition for termination of J.W.'s parental rights on March 7, 2016, alleging two grounds for termination of J.W.'s parental rights—the failure to assume parental responsibility and continuing CHIPS. That petition stated, in part:

> [J.W.] has failed to demonstrate that she understands and can handle the extensive medical needs of [L.P.P.II.]," … Before [J.W.] was incarcerated, she failed to attend his medical and therapy appointments. [J.W.] lacks an understanding of the extensive therapeutic care required to get [L.P.P.II] to his current functional level." Developmental delays have left him functioning at the level

[8] The Honorable David Swanson presided over the termination of parental rights until August 1, 2016. As of August 1, 2016, the Honorable Laura Gramling Perez was assigned to the cases and presided over all subsequent proceedings including the postdispositional proceedings. We refer to the judges collectively as the trial court.

J.W. appeals the orders terminating her parental rights and denying the postdispositional motions, which were entered by Judge Gramling Perez. The appeal does not challenge any orders entered by Judge Swanson.

> of a child roughly half his age. [L.P.P. II] spent time on a [gastrostomy tube] and can eat only soft foods. He has a lazy eye and must turn his head to see to one side. His vision problem affects his ability to keep his balance while walking. He requires frequent medical and therapeutic appointments.

¶10 At a June 3, 2016 final pretrial conference, J.W.'s trial counsel advised the trial court that J.W. was "willing to do a no-contest plea" and "just adjourn this for disposition." The matter was adjourned.

¶11 On June 6, 2016, J.W. entered a no-contest plea to the continuing CHIPS ground and requested an adjourned date for disposition. The trial court's colloquy with J.W. will be discussed below. The trial court accepted J.W.'s plea, finding that it was made freely, voluntarily, and intelligently with full understanding of the nature of the proceedings and the potential consequences of the decision to enter a no-contest plea.

¶12 The June 6, 2016 hearing continued with the State's prove-up. The trial court heard testimony from the ongoing family case manager, Tori Bates, and the trial court found that, based on that testimony and the documentary evidence, a factual basis for the continuing CHIPS ground had been proved by clear, convincing and satisfactory evidence and that J.W. was statutorily unfit. Pursuant the parties' agreement, the failure to assume parental responsibility ground against J.W. was dismissed. The matter was adjourned until September 2, 2016, for a dispositional hearing. Trial counsel also advised the trial court that various relatives were being investigated for placement including J.W.'s cousin F.R., who was present in court.

¶13 A notice of postdisposition change of placement was filed on June 15, 2016, indicating that L.P.P. II's placement would be changed on June 29,

2016, and J.W. filed a notice of objection to the placement. A hearing on the objection was scheduled for July 19, 2016. In the interim, BMCW had to make a change of L.P.P. II's placement on an emergency basis because the foster parents were unwilling to keep him beyond June 29, 2016.

¶14 At the July 19, 2016 hearing on J.W.'s objection to the placement change, trial counsel stated that J.W. wanted L.P.P. II placed with her cousin F.R. The State noted that, earlier that day, family case manager Bates told her that the agency was continuing to vet J.W's relative for potential placement of L.P.P. II. J.W.'s trial counsel noted that they had "given multiple names to the Department, J.W.'s sisters," there were a "whole number of family members that [were] interested in taking both kids," and that one had gone to the family case manager's office and was never seen. Trial counsel also stated that J.W. felt that the agency was ignoring her relatives and that F.R., the cousin, was a certified nursing assistant (CNA) and could handle L.P.P. II's special needs. By contrast, Bates stated that F.R. was the only relative of J.W. who had contacted her. The trial court adjourned the placement objection hearing until the dispositional hearing date.

¶15 The trial court held dispositional hearings the entire day of September 16, and on October 12, 2016. At the close of the October 16 hearing, the trial court issued an oral decision finding that it was in the best interest of L.P.P. II and L.P. to terminate J.W.'s parental rights.

¶16 J.W. appealed those orders by newly-appointed postdispositional counsel and filed notices of intent to seek postdispositional relief. On May 25, 2017, this court granted J.W.'s motions and remanded the termination of parental

rights appeals to the trial court so that J.W. could pursue postdispositional relief. We also retained jurisdiction over the appeals.

¶17 At the September 26, 2017 postdispositional hearing, trial counsel and J.W. testified. At the close of the evidence, the trial court issued an oral decision finding that J.W.'s trial counsel had not been ineffective "in counseling [J.W.] to enter a no-contest plea as to the grounds phase of the case" and was not ineffective in not explicitly seeking transfer of guardianship of the children to a relative.

¶18 At the October 16, 2017 postdispositional hearing, the trial court heard evidence on whether J.W.'s no-contest plea was entered knowingly, intelligently, and voluntarily. At the close of evidence, the trial court found that J.W.'s "no-contest plea was made knowingly, intelligently and voluntarily" and denied J.W.'s request to vacate the no-contest plea and the request for a new trial.

¶19 The trial court entered a written order on October 26, 2017, denying J.W.'s postdispositional motion to vacate the termination of parental rights orders on the basis of ineffective assistance of counsel and to vacate the no-contest plea on the ground that it was not knowingly entered. The record was retransmitted to this court after the trial court's entry of the written order resolving the postdispositional motion and the issues on appeal were then briefed by the parties.

DISCUSSION

I. The Trial Court Properly Concluded that J.W.'s Trial Counsel was not Ineffective

¶20 J.W. asserts that the trial court erred in rejecting the ineffective assistance of counsel claim which was based on the contentions that trial counsel

(1) should not have advised her to enter a no-contest plea to the continuing child in need of protective services ground because her incarceration impeded her ability to complete the conditions of return and (2) should have done more to find a maternal relative with whom the children could have been placed.

A. Standard of Review

¶21 "Wisconsin has adopted the United States Supreme Court's two-pronged ***Strickland*** [***v. Washington***, 466 U.S. 668 (1984)] test to analyze claims of ineffective assistance of counsel." ***State v. Williams***, 2015 WI 75, ¶74, 364 Wis. 2d 126, 867 N.W.2d 736. Wisconsin has extended the ***Strickland*** test to involuntary termination of parental rights proceedings. *See* ***A.S. v. State***, 168 Wis. 2d 995, 1005, 485 N.W.2d 52 (1992).

¶22 "To prevail under ***Strickland***, a defendant must prove that counsel's representation was both deficient and prejudicial." ***Williams***, 364 Wis. 2d 126, ¶74. "The standard of review of the ineffective assistance of counsel components of performance and prejudice is a mixed question of law and fact." ***State v. Johnson***, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). "Thus, the trial court's findings of fact, 'the underlying findings of what happened,' will not be overturned unless clearly erroneous." ***Id.*** (citations omitted). "The ultimate determination of whether counsel's performance was deficient and prejudicial to the defense are questions of law which this court reviews independently." *See* ***id.*** at 128. "[C]ourts may reverse the order of the two tests or avoid the deficient performance analysis altogether if the defendant has failed to show prejudice." ***Id.***

B. Trial Counsel was Not Ineffective in Advising J.W. to Enter a No-Contest Plea

¶23 J.W. asserts that the trial court erred because it did not conclude that trial counsel was ineffective for advising her to enter a no-contest plea because it should have been clear to trial counsel that "J.W.'s incarceration impeded her ability to complete conditions of return" and, therefore, the case should have gone to trial at the grounds phase. J.W. maintains that with respect to the continuing CHIPS ground, as well as the failure to assume parental responsibility ground, trial counsel could have reasonably requested an instruction with respect to an impossibility to perform. *See* WISCONSIN JI—CHILDREN 324A; 346B.

¶24 The trial court found that J.W. had not met her burden of proving that trial counsel's "advice to her was deficient in any way." The trial court found that trial counsel believed in "his sound judgment" that (1) J.W. was not likely to win if they went to trial on the grounds phase, (2) J.W.'s best opportunity to prevent the termination of parental rights would be through finding a potential relative placement for the children, and (3) if J.W. had gone to trial and grounds were found, the matter would have proceeded very promptly depriving J.W. of the opportunity to seek to have the children placed with a relative or put the children in a position where a transfer of guardianship might have been possible. The trial court found that trial counsel exercised an appropriate strategy.

¶25 In analyzing ineffective assistance of counsel, "[w]e start with the proposition that strategic decisions by a lawyer are virtually invulnerable to second-guessing." ***State v. Westmoreland***, 2008 WI App 15, ¶20, 307 Wis. 2d 429, 744 N.W.2d 919 (citing ***Strickland***, 466 U.S. at 690). J.W.'s argument regarding trial counsel's advice to plead no-contest relies on ***Kenosha County Department of Human Services. v. Jodie W.***, which holds that court-ordered

conditions for return must be tailored to a parent's status as an incarcerated person "in cases where a parent is incarcerated and *the only ground for parental termination is that the child continues to be in need of protection or services solely because of the parent's incarceration*." ***Id.***, 2006 WI 93, ¶51, 293 Wis. 2d 530, 716 N.W.2d 845 (emphasis added). ***Jodie W.*** involved a termination of parental rights proceeding under WIS. STAT. § 48.415(2)—continuing CHIPS. *See* ***Jodie W.***, 293 Wis. 2d 530, ¶8.

¶26 However, in this case, the termination of J.W's parental rights is not solely because of J.W.'s incarceration. This case involves an additional ground for termination of parental rights under WIS. STAT. § 48.415(6), the failure to assume parental responsibility. The failure to assume responsibility ground was premised, in part, on J.W.'s failure to be her children's primary caregiver for a substantial period of time. At the prove-up hearing on the no-contest plea, Bates, the family case manager assigned to L.P.P. II and L.P., testified that when J.W. was not incarcerated, she had demonstrated a history of not being the person responsible for the primary care of her children. Bates stated that, prior to L.P.P. II and L.P.'s placement in out-of-home care, J.W. had left her children with others and that the children had been out of J.W.'s care for "a substantial period of time." Bates further testified that when L.P.P. II was in the care of other family members, he was traumatically injured by another individual and had sustained traumatic brain injury, facial burns, and bruising of his body. Citing J.W.'s history of not having stable housing and leaving her children with other caregivers and not being willing to parent her children, Bates testified that, putting aside J.W.'s

incarceration until 2018, J.W. would not be able to meet the conditions of return within the nine months following the hearing.[9]

¶27 Bates further testified that J.W. had been working with BMCW for a longer period of time because J.W. had other children who had been placed in out-of-home care, and was subject to earlier court orders to cooperate in order to have the children returned. Bates testified that, based on the records she reviewed, J.W. had not demonstrated behavioral changes or strides in her parenting abilities such that the other children could potentially be placed back in her care. Bates stated that J.W.'s history contributed to her conclusion that J.W. was not likely to meet the court-ordered conditions of return within the next nine months.

¶28 Moreover, we note that the continuing CHIPS ground identified problems other than J.W.'s incarceration. In ***Jodie W.***, the court explained that there was no indication that the mother "had problems maintaining a home" or had "exhibited any parental deficiencies" before her incarceration. ***Id.***, ¶¶4, 53. The testimony at the prove-up hearing noted above is markedly different than the facts in ***Jodie W.*** regarding the mother.

¶29 Trial counsel was aware of J.W.'s failure to comply with the court-ordered conditions for the return of the children. As found by the trial court, based on that knowledge, trial counsel believed in his "sound judgment" that J.W. was unlikely to win if they went to trial. Therefore, he and J.W. discussed pleading

[9] Bates also testified that J.W. had been recommended to work with a parent aide, but that had not occurred; J. W. had been court-ordered to have regular visitation, but J.W. had not done that consistently throughout the case; and, when J.W. was out of custody, she did not attend scheduled supervised visitation. Bates further testified that J.W. had a substantial prior history of criminal activity, primarily retail theft, throughout the lives of her children and, most recently, J.W. had been released from custody on about October 20, 2015.

no-contest to the CHIPS ground and focusing on having the children placed with a relative. At the postdispositional hearing, trial counsel testified that in some cases where a relative comes forward and the child is placed with the relative, everyone moves in an alternative direction of doing something other than terminating parental rights. Trial counsel's strategy was to focus on getting a family member to step forward and take the children. He discussed the strategy with J.W. and she agreed.

¶30 Based on the foregoing, we conclude that the trial court correctly determined that the strategic choice of pleading no-contest so they could concentrate on finding family members who could care for the children, was not deficient. Because the failure to prove one prong of the *Strickland* test is dispositive, we need not address the prejudice prong. *See* ***Johnson***, 153 Wis. 2d at 128.

C. Trial Counsel was Not Ineffective in Searching for a Maternal Relative

¶31 J.W. also asserts that the trial court erred in rejecting the ineffective assistance of counsel claim based on the contention that trial counsel was deficient in searching for a maternal relative. She then states that early and effective advocacy on behalf of the maternal family could have resulted in the children's placement with relatives.

¶32 By contrast, the trial court ruled that J.W. did not meet her burden of proving that trial counsel did not act reasonably. Rather, the trial court found "ample evidence in the record that [trial counsel] sought repeatedly to contact potential family members for placements" and that "most of those family members did not respond to his contacts." The trial court also determined that trial counsel had collected names of maternal relatives and sought to contact those individuals

but the only person who really responded was F.R. and that trial counsel "worked … very effectively to insure that F.R. would come to the hearings and would express to the court her willingness and desire to take placement." Thus, the trial court found that trial counsel acted reasonably in seeking to effectuate family placement with any family member, including with F.R.

¶33 J.W. further argues that trial counsel was ineffective in failing to file a motion for change in guardianship. As the trial court correctly stated, the first step in seeking guardianship is to ensure that placement can be made with a family member and establish that the statutory requirements can be satisfied. The trial court emphasized that it had "explicitly rejected" F.R. as a potential placement for either child and that BMCW had previously vetted and rejected S.R., another family member. Thus, the trial court stated that although trial counsel tried to fulfill the prerequisites for guardianship, placement was not possible due to family members' actions or inactions and, even if trial counsel had explicitly sought transfer of guardianship to a family member, it would have rejected the argument. Based on the foregoing, we agree with the trial court's determination that J.W. did not establish that there was a reasonable probability that there would have been a different outcome, even if it was determined that trial counsel was deficient in not explicitly seeking a transfer of guardianship.

¶34 J.W. also argues that trial counsel was ineffective in not identifying maternal relatives earlier in the proceedings with whom the children could have been placed. However, the argument is speculative. J.W. has not identified any relative who trial counsel should have contacted or who would have accepted placement of the children. Furthermore the record establishes that, despite trial counsel's efforts, only F.R. emerged as a relative who was willing and potentially able to have the children placed with her. Thus, we conclude that the trial court

properly determined that trial counsel was not deficient in identifying a family member earlier.

II. The Trial Court Properly Determined that J.W.'s Entry of the No-Contest Plea to the Continuing CHIPS Ground was Knowing, Intelligent and Voluntary

¶35 With respect to J.W.'s challenge to the no-contest plea, J.W.'s sole argument is that she believed that by entering her plea, she would have additional time to work on the court-ordered conditions for the return of her children. She then states that she would not be able to fulfill those conditions because she was incarcerated. From this, J.W. argues that she could not have knowingly and intelligently agreed to an adjournment to work on those conditions that she could never fulfill.

¶36 J.W.'s argument is no more than an attempt to repackage her argument that trial counsel was ineffective for advising her to enter a no-contest plea at the grounds phase of the case. She even states the following without explaining how it applies to knowingly, voluntarily, and intelligently entering her plea—"J.W. [was] misinformed by her attorney that entering a plea was the 'best option to go forward.'" J.W. never testified that she believed that by entering her plea, she would have more time to work on the conditions for return of her children.

¶37 In fact, at the plea hearing, J.W. expressly stated that she understood that after she entered the plea, the only issue before the trial court at the dispositional hearing would the best interest of the children. She also stated that she understood that based on her plea, the trial court would find her unfit as a parent. She also stated that she understood that at the dispositional hearing the court could terminate her parental rights and the children would likely be placed

for adoption. She further stated that she understood that the trial court could order a guardianship which would permanently place the children outside the parental home until the age of eighteen. J.W.'s argument misstates the record.

¶38 Additionally, the trial court found that it was "true that J.W. ha[d] not herself articulated very clearly the reasons for entering her plea, however, [trial counsel] ha[d] very clearly stated that all along the purpose to entering the plea was to essentially buy a little more time to allow [J.W.]'s family members to come forward and seek to be licensed and to be in a position to take placement of the children." The trial court also found that "[J.W.] ha[d] never contradicted that." Further, it noted that "while I note that J.W. is not especially expressive herself about her reasoning or what's going on, … her statement that she really only did what she did because her lawyer told her to [was] a self-serving statement in light of [J.W.']s age, relatively high level of education … and relatively high level of intelligence."

¶39 Thus, the trial court found that there was "no indication" that J.W. had entered the no-contest plea for any other reason than that testified to by trial counsel. When a trial court sits as a fact finder, it is the "ultimate arbiter" of the credibility of witnesses and the weight to be given to each witness's testimony. ***Fidelity & Deposit Co. of Md. v. First Nat'l Bank of Kenosha***, 98 Wis. 2d 474, 485, 297 N.W.2d 46 (Ct. App. 1980) (holding that "[w]here the trial court is the finder of fact and there is conflicting evidence, the trial court is the ultimate arbiter of the credibility of witnesses"); ***Milbauer v. Transport Emps.' Mut. Benefit Soc'y***, 56 Wis. 2d 860, 865, 203 N.W.2d 135 (1973) (stating that "the weight of testimony and the credibility of witnesses are primarily for the trial court").

¶40 J.W. does not raise any challenges to the procedures that the trial court followed at the plea hearing. Moreover, she does not attempt to refute the State's response to her argument that her plea was not voluntarily and intelligently made. Therefore, we could end our analysis by concluding that J.W. has conceded that the trial court complied with the mandatory plea procedure. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). (Failure to refute an argument constitutes a concession.)

¶41 However, to be complete, we briefly address whether the trial court followed the proper plea procedures. The mandatory procedures for a trial court to properly accept a plea are established by statute. ***State v. Bangert***, 131 Wis. 2d 246, 260-61, 389 N.W.2d 12 (1986) (citing WIS. STAT. § 971.08). In termination of parental rights proceedings, Wisconsin law requires the trial court to engage in a personal colloquy with the defendant in accordance with WIS. STAT. § 48.422(7).[10] *See* WIS. STAT. § 48.422(3) ("If the petition is not contested the court shall hear testimony in support of the allegations in the petition, including testimony as required in sub. (7).").

¶42 The trial court made extensive factual findings and concluded that based on the testimony at the postdispositional hearings and its review of the plea proceeding transcript, J.W. had knowingly, intelligently, and voluntarily entered

[10] Prior to accepting a no-contest plea, subsection (7) of WIS. STAT. § 48.422 requires the court to: (a) address the parties present and determine that the admission is made voluntarily and understandingly; (b) establish whether any promises or threats were made to elicit an admission; (c) establish whether a proposed adoptive parent of the child has been identified; and (d) make such inquiries as satisfactorily establish a factual basis for the admission. *See* ***Waukesha Cty. v. Steven H.***, 2000 WI 28, ¶39, 233 Wis. 2d 344, 607 N.W.2d 607. In addition, the person entering the no-contest plea must have knowledge of the constitutional rights he or she is giving up by making the plea. ***Bangert***, 131 Wis. 2d at 265-66.

the no-contest plea. The trial court also held that "the factors required by statute and by the ***Bangert*** case have all been appropriately touched upon."

¶43 J.W. has not shown that the trial court erred in concluding that she had not made a prima facie showing that the trial court violated its mandatory duties of informing the party of her rights, or that she did not know or understand the rights that she was waiving. *See* ***Waukesha Cty. v. Steven H.***, 2000 WI 28, ¶42, 233 Wis. 2d 344, 607 N.W.2d 607. Thus, we affirm the trial court's determination that J.W. knowingly, intelligently and voluntarily entered the no-contest plea.

CONCLUSION

¶44 We hold that the trial court did not err in determining that J.W. was not denied her right to effective assistance of counsel and that J.W. has not established that her no-contest plea was not entered knowingly and intelligently. Therefore, we affirm the trial court's orders.

By the Court.—Orders affirmed.

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