COURT OF APPEALS
DECISION
DATED AND FILED

March 27, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP1783 **Cir. Ct. No. 2016TP217**

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO A. S., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

J. C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

¶1 KESSLER, J.[1] J.C. appeals the order terminating her parental rights to her child, A.S. J.C. contends that testimony taken at her fact finding hearing

[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.

was insufficient to establish that the Division of Milwaukee Child Protective Services made reasonable efforts to provide J.C. with the services necessary for the return of her child. We affirm.

BACKGROUND

¶2 A.S. was born on September 18, 2011. The State filed a "child in need of protection or services" petition (CHIPS petition) on the basis that J.C. and A.S.'s father both had untreated mental health issues which lead to impulsive behaviors, endangering A.S. The circuit court entered a CHIPS dispositional order requiring J.C. to meet multiple conditions for A.S.'s safe return. A.S. was returned to her parents under a trial reunification. The trial reunification was modified to actual placement. A.S. remained with her parents for almost two years; however, A.S. was again removed from her parental home after a case manager discovered A.S. home alone with her unconscious father.

¶3 The State filed the termination petition underlying this appeal, alleging that A.S. was in continuing need of protection or services and that J.C. failed to assume parental responsibility.[2] At the final pre-trial hearing, J.C. advised the court that she wished to plead no contest to the continuing CHIPS ground. The circuit court engaged J.C. in a colloquy during which the court explained all of the rights J.C. was giving up, including the right to "have [her] lawyer[] at trial ask questions of the social worker," and to have the State prove that "[she] did not or could not do the things that the judge ordered [her] to do to have [A.S.] safely returned to [her] care … despite the fact that the social workers tried to help [her] do those things by making a reasonable effort to provide the services [the court] ordered them to provide." The court confirmed that J.C.

[2] The petition also named A.S.'s father, however he is not the subject of this appeal.

understood. After completing the colloquy, the court found that J.C.'s no contest plea was knowing, voluntary and intelligent.

¶4 The circuit court then conducted fact finding, where it heard testimony from Karey Endtoff, the social worker managing J.C.'s case. Although Endtoff was not directly asked whether she or the Department made referrals for the services J.C. was required to complete, Endtoff testified about the multiple conditions of return J.C. failed to meet. Endtoff told the court that one of J.C.'s conditions for return required J.C. to refrain from criminal activity; however, as of the time of the fact finding hearing, J.C. had a pending OWI case for a fourth offense. Endtoff stated that J.C. was provided with individual therapy sessions, but that J.C. had not been consistent with her sessions. J.C. and A.S. also had supervised visits, but Endtoff stated that J.C. missed visits, was unable to appropriately discipline A.S. during the visits, and that the child's father complained about the race of the visitation supervisor. Endtoff gave the parents the phone number of the agency so they could express their concerns about the supervisor's race directly. Endtoff stated that J.C. was slow to complete a parental capacity assessment. Endtoff also attempted to get in contact with J.C.'s psychotherapist, but was unable to reach him. The court found that the factual basis for the plea had been established and made the requisite finding of unfitness.

¶5 At the disposition hearing, Endtoff again testified and this time was asked directly about the services offered to J.C. Endtoff stated that J.C. was offered visitation, parenting assessments, AODA assessments, medication management and individual counseling. Endtoff also testified that she offered J.C. bus tickets for various appointments when J.C. expressed concern about transportation. Endtoff stated that J.C. also requested that some services be

provided in Waukesha. Endtoff provided J.C. with a list of available services in the Waukesha area.

¶6 J.C. also testified at the disposition hearing. She stated that she participated in the services offered by the Department. J.C.'s primary complaint with the Department was the race of the visitation supervisor, stating "they should make it more -- make it more so that they can have more whites available for [supervised visitation]."

¶7 In a written decision, the circuit court found termination of J.C.'s parental rights to be in the best interest of her child. J.C. filed a notice of appeal and a postdisposition motion for remand to the circuit court challenging the no contest plea on the basis of insufficient evidence to establish that the Department made reasonable efforts to provide J.C. with the court-ordered services.

¶8 At the remand hearing, counsel for J.C. alleged that J.C. did not understand what "reasonable efforts" meant. J.C. testified that the Department did not adequately assist her in completing the court-ordered conditions for A.S.'s return, particularly with regard to transportation. She also admitted that the role of "Social Services" was explained to her, but she was under the impression that "[t]hey would give us stuff -- information on what was out there and that was basically it."

¶9 The postdisposition court denied J.C.'s motion, finding "that by pleading no contest … [J.C.] gave up the right to litigate whether that meant that [the Department's] efforts fell below the minimal standard of reasonable. And I think the evidentiary record, both explicit and implicit, establishes that they made more than reasonable efforts to provide the services that they were mandated to provide by virtue of the CHIPS order." This appeal follows.

DISCUSSION

¶10 When a parent pleads no contest to a termination petition, WIS. STAT. § 48.222(3) requires a circuit court to "hear testimony in support of the allegations in the petition." J.C. does not allege that her no contest plea was not knowing, voluntary or intelligent. Rather, relying primarily on ***Waukesha County v. Steven H.***, 2000 WI 28, 233 Wis. 2d 344, 207 N.W.2d 207, J.C. contends that the testimony taken at the fact finding hearing was insufficient to establish that the Department made reasonable efforts to provide the services J.C. was required to complete under the CHIPS order.

¶11 According to ***Steven H.***, the legislature intended the circuit court to hear testimony in support of the allegations because testimony safeguards accurate fact finding and protects the parents. ***Id.***, ¶56. As ***Steven H.*** instructs, however, if the circuit court fails to comply with WIS. STAT. § 48.422(3) and bases its decision solely on the no contest colloquy and the statements from the parent, the appellate court may still review the testimony of other witnesses at other hearings and tease out the factual basis for the allegations in the petitions. ***Steven H.***, 233 Wis. 2d 344, ¶¶54, 57-58. The court has since affirmed the principles articulated in ***Steven H.*** *See* ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶¶32-33, 246 Wis. 2d 1, 629 N.W.2d 768.

¶12 J.C. misinterprets ***Steven H.*** In that case, the circuit court failed to hear testimony establishing the factual basis for the parent's no contest plea. *See* ***id.***, 233 Wis. 2d 344, ¶¶11, 52-53. The Wisconsin Supreme Court agreed that the circuit court erred in failing to hear the relevant testimony, but concluded that the support for the factual allegations in the termination petition could be "teased

out" by examining the totality of the record. ***Id***., ¶58. The supreme court found that Steven H. was not prejudiced by the error. ***Id.***

¶13 Assuming, without deciding, that the testimony taken at the fact finding hearing was insufficient to determine that the Department made reasonable efforts to assist J.C., we conclude that J.C. was not prejudiced by the error and that the error was harmless. Examining the totality of the record, we agree with the postdisposition court that there was sufficient testimony to establish reasonable efforts put forth by the Department. Although the case manager was not directly asked about the Department's efforts in facilitating J.C.'s compliance with the CHIPS order at the fact finding hearing, Endtoff testified about the various programs J.C. took part in, including parental assessments and individual therapy. At the disposition hearing, when Endtoff was directly asked about the Department's efforts, Endtoff listed multiple services including parenting assessments, individual therapy, AODA assessments, medication management and supervised visitation. Endtoff also stated that she offered J.C. bus tickets due to J.C.'s transportation difficulties and provided J.C. with a list of services offered closer to J.C.'s residence. The only thing Endtoff refused to do directly was reassign a visitation supervisor due to the parents' concern about the supervisor's race; however, Endtoff provided the parents with the information necessary to do so themselves. Thus, in accordance with ***Steven H.***, we conclude that the totality of the record supports the postconviction court's finding that the Department made reasonable efforts to assist J.C. in meeting her court-ordered conditions for A.S.'s return.

¶14 For the forgoing reasons, we affirm.

By the Court.—Order affirmed.

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