

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2018

Sheila T. Rieff
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. 2018AP376
2018AP377
2018AP378
2018AP379
2018AP380
2018AP381**

**Cir. Ct. Nos. 2015TP253
2015TP254
2015TP255
2015TP256
2015TP257
2016TP213**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE INTEREST OF A.N.B., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

P.J.,

RESPONDENT-APPELLANT.

IN THE INTEREST OF J.J.B., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

P.J.,

RESPONDENT-APPELLANT.

IN THE INTEREST OF A.M.B., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

P.J.,

RESPONDENT-APPELLANT.

IN THE INTEREST OF A.E.M., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

P.J.,

RESPONDENT-APPELLANT.

IN THE INTEREST OF A.L.M., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

P.J.,

RESPONDENT-APPELLANT.

**IN THE INTEREST OF H.S.A.M. IV., A PERSON UNDER THE AGE
OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

P.J.,

RESPONDENT-APPELLANT.

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

¶1 KESSLER, J.¹ P.J. appeals the orders terminating her parental rights to six of her children. P.J. argues that the children are substantially bonded

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.

with their mother and that the circuit court erroneously considered whether the foster parents would allow continued contact between the children and their mother. Thus, P.J. contends termination was not in the children's best interests. We affirm.

BACKGROUND

¶2 The State filed petitions to terminate P.J.'s parental rights to six of her children—A.N.B., J.J.B., A.M.B., A.E.M., A.L.M., and H.S.A.M., IV. Each petition alleged that the child at issue was in continuing need of protection or services and that P.J. failed to assume parental responsibility.

¶3 The cases were tried together in a court trial. The circuit court found that grounds existed to terminate P.J.'s parental rights and made the necessary finding of unfitness.

¶4 The matter proceeded to disposition where multiple witnesses testified, namely, the foster parents for each of the children. Q.W., the foster father for H.S.A.M., IV., testified that P.J. is his distant cousin. Q.W. testified that the child was placed with him in December 2015 after another relative with whom the child was previously placed expressed difficulty dealing with the child's behavioral issues. Q.W. stated that since the child has been placed with him, the child has "calmed down" and has "displayed no behavior." Q.W. stated that the child receives therapy, that Q.W. is actively involved in the child's therapy, and that P.J. is not involved with the child's therapy. Q.W. stated that the child is well-bonded with him, the child is thriving under his care and that the child's needs are being taken care of. Q.W. also said that he intends to adopt the child

and he maintains contact with the foster parents of the other children so that the children can see each other. Q.W. testified that he intends to maintain contact with the other foster parents and he has no objection to the child maintaining contact with P.J.

¶5 A.J., P.J.'s first cousin, testified that she has placement of A.N.B. A.J. testified that she maintains contact with the other foster parents and participates in group outings so that the children can spend time together. A.J. testified that the child is performing well in school, has improved behaviorally and is well-bonded with A.J.'s teenage daughter. A.J. stated that she intends to adopt the child, has no objection to the child maintaining contact with P.J., and will continue to allow the child to have contact with her siblings.

¶6 M.W., the foster mother for J.J.B. and A.M.B., testified that she and her husband intend to adopt the children if P.J. loses her parental rights. She testified that the children are well-bonded with their foster parents and foster siblings. M.W. stated that both children are in therapy for behavioral issues, both children have improved significantly, and that the children refer to M.W. and her husband as "mom and dad." M.W. stated that she and her husband work closely with the children, their schools and their therapists to monitor and manage their behaviors. M.W. stated that she has contact with the other foster parents through an "e-mail chain," in which the parents arrange outings for the children to get together. M.W. stated that if she were to adopt the children she would maintain contact with the other parents, but did not want to maintain contact with P.J. "[a]t this point" because the children "need some healing" and meetings with P.J. are "confusing" for them. M.W. stated that meetings with P.J. are not positive

experiences for the children, but that “there’s a possibility that [they] could talk about [future contact with P.J.]” when the children are more mature.

¶7 L.B., the foster mother for twins A.E.M. and A.L.M., testified that she and her husband are committed to adopting the children. She stated that the twins, then nearly three years old, had been in her placement since they were about five months old and are well-bonded with their foster family. L.B. stated that the twins are developing “great” relationships with their biological siblings and that she participates in group outings with the other foster parents and children. L.B. stated that she and her husband plan to maintain contact with the other foster parents and feel that it is important for the twins to be bonded with their biological siblings. L.B. stated that she did not feel it was “safe” for the children to have frequent contact with P.J., but that she was not opposed to setting up a website or Facebook page for P.J. to see the twins’ progress. L.B. did not rule out the possibility of the twins having contact with P.J. in the future if the contact was safe.

¶8 Jesse Schuller-Hosking, the case worker assigned to the children’s cases, testified that she observed all of the children in their respective placements and participated in meetings with regard to services for P.J. Schuller-Hosking discussed each child and each foster placement and stated that each respective placement has been positive for the children. Schuller-Hosking also stated that legally severing P.J.’s parental rights would not be harmful to the children.

¶9 Ultimately, the circuit court found that terminating P.J.’s parental rights was in the best interests of the children.

¶10 P.J. timely filed a notice of intent to pursue postjudgment relief. There were no postjudgment motions. Instead, P.J. filed a notice of appeal.

DISCUSSION

¶11 On appeal, P.J. contends that “[g]iven the nature of the bond that exists between P[.]J[.] and her children, given the bond that exists between the children, and given P[.]J[.]’s desire to parent the children, it is not in the children’s best interest to terminate P[.]J[.]’s parental rights.” (Bolding omitted.)

¶12 The ultimate decision of whether to terminate parental rights is a matter of circuit court discretion. See *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). When deciding whether to terminate a parent’s parental rights, the circuit court must make its findings on the record, consider the standards and factors found in WIS. STAT. § 48.426(3) relating to the child’s best interests, and explain the basis for its disposition. See *Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶¶29-30, 255 Wis. 2d 170, 648 N.W.2d 402. A proper exercise of discretion by a circuit court in the dispositional phase of a termination of parental rights action requires that the court give “adequate consideration of and weight to” each of the factors found in § 48.426(3). See *State v. Margaret H.*, 2000 WI 42, ¶35, 234 Wis. 2d 606, 610 N.W.2d 475. In reviewing a discretionary determination, “we examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach.” *Brandon Apparel Grp., Inc. v. Pearson Props., Ltd.*, 2001 WI App 205, ¶10, 247 Wis. 2d 521, 634 N.W.2d 544.

¶13 At the dispositional hearing, the circuit court must consider the following factors when determining whether a termination is in a child's best interest:

- (a) The likelihood of the child's adoption after termination.
- (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
- (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
- (d) The wishes of the child.
- (e) The duration of the separation of the parent from the child.
- (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

WIS. STAT. § 48.426(3). The circuit court did so here.

¶14 P.J. contends that the circuit court failed to appropriately consider the substantial bond P.J. has with her children and improperly relied on testimony from the foster parents that the children would have continued contact with each other.

¶15 The Wisconsin Supreme Court's decision in *Margaret H.* essentially rebuts both of P.J.'s arguments. In that case, the Wisconsin Supreme Court acknowledged that continued contact between children and their biological families can be a relevant consideration for circuit courts when determining the

best interests of children in TPR actions, stating “[i]n its discretion, the [circuit] court may afford due weight to an adoptive parent’s stated intent to continue visitation with family members,” *see id.*, 234 Wis. 2d 606, ¶29. Upon remanding a termination matter back to the circuit court, the court in *Margaret H.* noted that the circuit court could “certainly choose to examine the probability that [the adoptive resource] will be faithful to her promise [to allow continued contact between the children and the biological family], at the same time bearing in mind that such promises are legally unenforceable once the termination and subsequent adoption are complete.” *Id.*, ¶30. That is precisely what the circuit court did here.

¶16 In a thorough, well-reasoned decision, the circuit court addressed each of the WIS. STAT. § 48.426(3) factors. The court noted: that each child is placed with an adoptive resource; the length of time each child has been out of P.J.’s placement; the ages and health of each child, particularly the mental health struggles many of the children have; the stability that each child has with his or her respective foster family; that the foster families are meeting the children’s needs; P.J.’s struggle to meet her children’s needs; and whether the children have a substantial relationship with P.J. As to this factor, the court noted that the children do have a substantial relationship with P.J., particularly the older children. The court also found that the children share a substantial relationship with each other. However, the court found that legally severing the relationships was not the equivalent of determining that the children could never see each other or P.J. The court discussed the foster families’ efforts to maintain contact between the children and found that the families have “expressed very genuinely a recognition that it’s very important for the children to know where they come from

and to continue to have a connection to their siblings and their other family members.” The court also acknowledged that two of the children are placed with maternal relatives, making it easier for them to maintain contact with P.J. The court considered the appropriate statutory factors and was not in error for partially relying on the testimony of the foster parents to determine that termination of P.J.’s parental rights was in the best interests of her children.

¶17 For the foregoing reasons, we affirm the circuit court.

By the Court.—Orders affirmed.

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

