COURT OF APPEALS
DECISION
DATED AND FILED

January 26, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal Nos. 2009AP2403
2009AP2404

Cir. Ct. Nos. 2008TP133
2008TP134

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARNIKA E.,

RESPONDENT-APPELLANT,

EDWARD E.,

RESPONDENT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARNIKA E.,

RESPONDENT-APPELLANT,

EDWARD E.,

RESPONDENT.

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

¶1 KESSLER, J.[1] Marnika E. appeals from orders terminating her parental rights to her sons, Trevion E. and Traylon E.[2] Marnika seeks a new dispositional hearing on grounds that the circuit court erroneously exercised its discretion by terminating her parental rights without addressing one of the factors enumerated in WIS. STAT. § 48.426(3) (2007-08).[3] We affirm because we

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08).

[2] The parental rights of the boys' father are not at issue in this appeal and will not be addressed.

[3] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

conclude that the circuit court considered all the requisite statutory factors and properly exercised its discretion.

BACKGROUND

¶2 Trevion and Traylon, who were born in 2001 and 2004, respectively, were found to be in need of protection or services in November 2004 and were placed with their paternal grandmother, Gloria B. It appears undisputed that they had significant contact with Marnika during the time they were placed with Gloria. They were later placed with a paternal aunt, Sylvia E., in 2005 (first Trevion in June and then Traylon in November). During their placement with Sylvia, they again had frequent contact with their mother. The visits Marnika had with the boys when they lived with both Gloria and Sylvia were informal and were not documented by the Bureau of Child Welfare ("the Bureau").

¶3 In April 2008 the boys were placed with their paternal cousin, Antriea B. She subsequently expressed interest in adopting them. After moving to Antriea's home, the boys spent less time with Marnika, who frequently did not take advantage of supervised visits arranged by the Bureau.

¶4 On April 30, 2008, the State moved to terminate Marnika's parental rights pursuant to WIS. STAT. § 48.415(10), based on the prior involuntary termination of Marnika's parental rights to two other children. Because it was undisputed that Marnika's parental rights had been terminated in those cases, the circuit court found grounds for termination as a matter of law and granted the State's motion for partial summary judgment. The case proceeded to a dispositional hearing.

¶5 Testimony was taken over the course of four days, on November 11 and December 23, 2008, and February 3 and April 27, 2009. Numerous witnesses testified, including social workers, members of Marnika's and Antriea's families and others. By letter dated May 1, 2009, the circuit court granted the petition to terminate Marnika's parental rights and entered an order to that effect on May 5, 2009. This appeal follows.

LEGAL STANDARDS

¶6 "The ultimate determination of whether to terminate parental rights is discretionary with the circuit court." ***State v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. An appellate court will sustain the circuit court's exercise of discretion if it applies the "correct standard of law to the facts at hand." ***Id.***, ¶32. ***Margaret H.*** noted that "[t]he best interests of the child is the polestar of all determinations under [WIS. STAT.] ch. 48," and that the "factors that give contour to the standard are codified under WIS. STAT. § 48.426(3)." ***Margaret H.***, 234 Wis. 2d 606, ¶¶33, 34. These factors include, but are not limited to, the following:

> (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.

Sec. 48.426(3).

¶7 In ***Margaret H.***, the court was faced with a situation where the circuit court gave paramount consideration to the mother's interests, rather than the children's interests, which led the court to discuss how and to what extent a circuit court should address the statutory factors. *See* ***id.,*** 234 Wis. 2d 606, ¶¶35-36. ***Margaret H.*** stated: "While it is within the province of the circuit court to determine where the best interests of the child lie, the record should reflect adequate consideration of and weight to each factor." ***Id.***, ¶35. The court determined that the circuit court had erroneously exercised its discretion when it exclusively focused on a single factor. ***Id.***, ¶¶35-36.

¶8 The court in ***Margaret H.*** reversed the termination order and remanded, directing the circuit court on remand to "evaluate all of the applicable factors enumerated under [WIS. STAT.] § 48.426(3)," while focusing on the children's best interests. ***Margaret H.***, 234 Wis. 2d 606, ¶36. In the course of making the decision to remand the case, the court recognized that an appellate court has various approaches it can use when faced with inadequate circuit court findings: "1) look to an available memorandum for findings and conclusions; 2) review the record anew and affirm if a preponderance of evidence clearly supports the judgment; 3) reverse if the judgment is not so supported; or 4) remand for further findings and conclusions." ***Id.***, ¶37. The court elected to follow the fourth option, citing a preference for remanding to the circuit court when confronted with inadequate findings in a family law case. ***Id.***, ¶38.

¶9 In a subsequent case, the Wisconsin Supreme Court offered additional guidance on what a circuit court must do when deciding to terminate parental rights:

> The court should explain the basis for its disposition, on the record, by alluding specifically to the factors in [WIS. STAT.] § 48.426(3) and any other factors that it relies upon in reaching its decision. In every case the factors considered must be calibrated to the prevailing standard ... [which is] "the best interest of the child."

Sheboygan County DHHS v. Julie A.B., 2002 WI 95, ¶30, 255 Wis. 2d 170, 648 N.W.2d 402 (quoting WIS. STAT. § 48.424(3)).

DISCUSSION

¶10 Marnika argues that because the circuit court's written decision does not directly discuss the wishes of the children, the factor identified in WIS. STAT. § 48.426(3)(d), a new dispositional hearing is required pursuant to ***Margaret H.*** and ***Julie A.B.*** Marnika further contends that although "technical noncompliance with the dictates of [] § 48.426(3) can be overcome or cured by a 'paper review' of the record" by an appeals court in some cases, such a review is inappropriate here because the circuit court did not "specifically allud[e] to the wishes of the children in its decision or on the record at [the] hearing."[4]

[4] Marnika also asserts that there was no testimony about the boys' wishes from the guardian ad litem, "any other trained professional" or the boys themselves. This could be read as an attempt to suggest that there was insufficient evidence to support the termination or that trial counsel was ineffective for not presenting certain testimony. These issues have not been explicitly argued or briefed and, therefore, we decline to address them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (stating that this court will not address issues on appeal that are inadequately briefed).

¶11 We need not reach Marnika's second argument concerning whether a paper review would be appropriate here, because we conclude that the circuit court did, in fact, allude to the boys' wishes and thereby satisfied the dictates of ***Margaret H.*** and ***Julie A.B.***

¶12 The circuit court issued a detailed written decision. The circuit court stated that its decision would "apprise [the parties] of [its] analysis of the factors under Wisconsin Statutes sec. 48.426 and [its] dispositional decision in this matter." It began by noting that the children were adoptable and that they had "significantly bonded" with the prospective adoptive mother. It discussed the boys' need for permanency and noted that "an increasingly contentious adult conflict over [the boys'] affections" necessitated a "permanent solution." The circuit court continued:

> As is implicit in my comments above, there is a recognized and valued relationship on the part of the children with their mother (and their mother's relatives).... [However], Marnika's relationship is, at best, casual and inconsistent. The children have never lived independently with her; relatives have always been the primary caregivers and parental figures for the children.
>
> ... Marnika's capacity to adequately meet the responsibilities of parenthood is in serious doubt. Her parental rights to two other children have previously been terminated. She has been remarkably inconsistent in her cooperation with [the Bureau] and the services offered to her. Her relationship with [the boys' father] is highly dysfunctional.... Most recently, she has failed to visit her children as scheduled over a period of two months because "there was too much going on" ... and/or she was too depressed....
>
> There is some risk in the severance of the legal relationship between the children and their mother. The risk is greater if the adults are unable to forge a workable relationship that nurtures, supports and protects the children.... [T]hese children need love, commitment, permanence and stability in a forever home. Anything short of adoption leaves them at great risk of contentious

> instability that has been the hallmark of their upbringing to date. I can't and won't sanction it as it would be wholly inconsistent with their most fundamental needs.

¶13 Having reviewed the entire transcript and the circuit court's written decision, we are convinced that even though the written decision does not include the word "wishes," it reflects that the circuit court gave "adequate consideration of and weight to" the boys' wishes. *See* ***Margaret H.***, 234 Wis. 2d 606, ¶35. First, the circuit court explicitly stated that it had analyzed the WIS. STAT. § 48.426 factors. Second, the circuit court acknowledged that "there is a recognized and valued relationship on the part of the children with their mother (and their mother's relatives)." In doing so, the circuit court was alluding to the boys' wishes to have a relationship with their mother and their mother's relatives, which the circuit court heard extensive testimony about at trial.[5] We read the circuit court's decision as implicitly accepting the testimony that the boys had a significant bond with and desired to spent time with their mother, despite contrary testimony from the case worker and the licensed clinical social worker who conducted a bonding assessment.

¶14 Ultimately, the circuit court noted that there was a risk in severing the recognized and valued relationship between the boys and their mother, but found that other relevant factors outweighed the benefits of continuing the legal parental relationship. In this court's opinion, the circuit court's discussion reflects

[5] The circuit court heard from no fewer than seven relatives and Marnika herself that the boys wanted to be with Marnika. In contrast, the circuit court also heard from the boys' case manager that neither boy told her he wanted to live with their mother and that, in fact, the older boy (who turned eight just before the trial ended) told the social worker that "he lives at [Antriea's] house and this is his house and this is home to him." A licensed clinical social worker who conducted a bonding assessment of the boys and Marnika testified that in her opinion, there was "very little attachment between [Marnika] and the two boys."

serious consideration of all of the requisite factors and a careful balancing of the factors that recognized that some factors did not weigh in favor of termination. We are convinced the circuit court appropriately exercised its discretion and, therefore, we affirm the orders.

By the Court.—Orders affirmed.

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