COURT OF APPEALS
DECISION
DATED AND FILED

July 30, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1371 **Cir. Ct. No. 01 TP 234**

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JULIO G.,

RESPONDENT-APPELLANT.

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

¶1 SCHUDSON, J.[1] Julio G. appeals from the order terminating his parental rights to his daughter, Glamaris G., following a bench trial and dispositional hearing. He primarily argues that the trial court erred in finding that he had not established good cause for failing to visit Glamaris; thus, he challenges the court's conclusion that he abandoned Glamaris, under WIS. STAT. § 48.415(1)(a)2. Julio also contends that even if this court upholds one or more of the trial court's grounds for termination, a new dispositional hearing should be ordered. This court rejects Julio's arguments and, therefore, affirms.

I. BACKGROUND

¶2 On April 16, 1995, Glamaris was born to Gladys N. and Julio who, on June 23, 1995, was adjudicated as Glamaris' father. The day after Glamaris' birth, Gladys and Julio signed a voluntary placement agreement placing her with the Milwaukee County Bureau of Child Welfare and, on January 23, 1996, Glamaris was found to be a child in need of protection or services. Glamaris has never lived in the parental home; instead, she has lived in foster homes.

¶3 On June 15, 2001, the State filed a petition to terminate Julio's parental rights to Glamaris.[2] As grounds for termination, the petition alleged: (1) that Julio had failed to assume parental responsibility for Glamaris, under WIS. STAT. § 48.415(6); (2) that Glamaris was in continuing need of protection or

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e), (3) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] The State also petitioned to terminate Gladys' parental rights to Glamaris. Prior to Julio's trial, Gladys voluntarily terminated her parental rights to Glamaris with the understanding that her termination would be voided if Julio successfully challenged termination. Gladys is not involved in this appeal.

services, under WIS. STAT. § 48.415(2); and (3) that Julio had abandoned Glamaris, under WIS. STAT. § 48.415(1)(a)2. Following a four-day trial, the court found grounds for termination on each of the three bases the State had alleged and, following a dispositional hearing, the court concluded that Glamaris' best interests required that Julio's parental rights be terminated.[3]

II. DISCUSSION

A. Grounds for Termination

¶4 First and foremost, Julio argues that the trial court erred in finding that he had not establish good cause for failing to visit Glamaris and, therefore, in concluding that he had abandoned Glamaris. This court disagrees.

¶5 "Grounds for termination must be proven by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). Whether a trial court has utilized the proper legal standard governing termination of parental rights presents a question of law subject to *de novo* review. *See* ***State v. Patricia A.P.***, 195 Wis. 2d 855, 862-63, 537 N.W.2d 47 (Ct. App. 1995).

¶6 WISCONSIN STAT. § 48.415(1)(a)2 provides, in pertinent part:

> **Grounds for involuntary termination of parental rights.** At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

[3] On appeal, Julio also challenges the trial court's findings that Glamaris was a child in continuing need of protection or services, and that he had failed to assume parental responsibility for her. Because of this court's rejection of Julio's argument on the abandonment grounds for termination, however, this court need not address his additional challenges. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issue need be addressed).

> **(1)** ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:
>
> ….
>
> 2. That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

As applicable to this appeal, WIS. STAT. § 48.415(1)(c) provides:

> Abandonment is not established under [WIS. STAT. § 48.415(1)(a)2] if the parent proves all of the following by a preponderance of the evidence:
>
> 1. That the parent had good cause for having failed to visit with the child [for a period of 3 months or longer].
>
> 2. That the parent had good cause for having failed to communicate with the child [for a period of 3 months or longer].
>
> 3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:
>
> a. The parent communicated about the child with the person or persons who had physical custody of the child during the [period of 3 months or longer in which the parent failed to communicate with the child] or … with the agency responsible for the care of the child during [that period of 3 months or longer].
>
> b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the [period of 3 months or longer in which the parent failed to communicate with the child].

¶7 The trial court found that, for a period of three months or longer, Julio had failed to communicate or visit with Glamaris. Julio does not challenge that finding. The court also found, however, that while Julio had proven, by the

preponderance of the evidence, that he had good cause for failing to communicate with Glamaris, he had not proven that he had good cause for failing to visit her.

¶8 Julio argues that "[t]he circumstances noted by the trial court [in finding that Julio had shown good cause for failing to communicate], and the reasoning it employed on the communication issue should have led to the same decision on the visitation issue." While conceding that he missed his scheduled visits with Glamaris between November 28, 2000 and June 17, 2001, Julio contends:

> The record is replete with examples of the Bureau's failure to tell [him] about visitations directly—workers generally found it easier to tell Gladys and ask Gladys to tell Julio. If the trial court understood Julio's tendency—presumably attributable to the cultural barrier—to wait for permission from authority figures rather than seeking visitation, surely the Bureau could have been sensitive to this fact as well, had they [sic] chosen to do so. Instead, they [sic] scheduled visits without regard to [his] schedule and merely told Gladys she should tell him to contact them [sic] with any objections.[4]

[4] Julio offers no citation in support of this assertion. *See* WIS. STAT. RULE 809.19(1)(e) & (3)(a) (arguments in appellate briefs must be supported by authority and references to the record, and this court need not consider arguments that do not comply); *see also* ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980).

Further, this court notes that Heidi Seymour, the LaCausa employee who was one of the case managers serving as the Bureau's agent supervising Julio's visitation with Glamaris, responding to the trial court's questions, testified that, with respect to the first missed-visitation during the relevant time period, Julio "would have known about [the December 27, 2000 scheduled visitation] because he was at the November 27th visit and that is when we would have discussed the next visit." Ms. Seymour explained how she and Julio would schedule visitation: "We would either schedule the visit— On that same day that the visit occurred, we would sit down and schedule the next visit or I would go to [Julio's] home and inform [Julio] of the date and the time that the visit would occur."

(continued)

> ….
>
> [His] failures from November of 2000 to June of 2001 should have been considered in the context of the Bureau's admitted failures, over six years, to provide adequate services to [him], and help him understand the importance of taking the initiative.
>
> The trial court seems to have found that, while [he] could be excused from communicating with Glamaris (after all, the Bureau had facilitated placements that caused her to abandon Spanish), he could not be excused for failing to take the initiative as to scheduling visits. However, just as with communication, [he] should not have been faulted for not taking the initiative when he had been given no assistance—much less encouragement—in doing so.

(Footnote added.)

¶9 In its decision, however, the trial court reasonably distinguished Julio's failure to communicate from his failure to visit. Regarding Julio's failure to communicate, the court explained that "[t]here's no convincing evidence here that anyone from the Bureau advised [Julio] that he could or should call Glamaris at the foster parents' house or that he could or should send her letters." By contrast, the court declared:

> [D]id he have good cause for his failure to visit with Glamais during this crucial time period? The evidence here is overwhelming.
>
> At best he missed his visitation appointment[s] during this period because he was working. That's at best. First of all, I do not find by the preponderance of the evidence that his work schedule conflicted with these visits.

Later, Ms. Seymour also testified that, because Julio and Gladys "had always come together for previous visits" with Glamaris, advising Gladys to communicate with Julio about subsequent visits had been "an accepted method of communication." Ms. Seymour also explained that, when Julio missed scheduled visitation in January 2001, she wrote to him advising him of a rescheduled visitation date in order to provide "an opportunity to make up the visit that he missed." Julio, however, never responded "to inquire about visits with Glamaris."

> The evidence is insufficient for this finding. He has not met his burden by a preponderance of the evidence.
>
> I also find that this evidence of work was contradicted by his agent Gladys [sic].[5] Second of all, even if there was a conflict with his work schedule, even if there is, I find that that conflict is not good cause for failing to visit his child for over six months.
>
> Third of all, even if [Julio's] work conflicts are somehow narrowly determined to be good cause, I find that he has still not shown good cause for failing to visit with his child because he took absolutely no steps to reschedule visits through the Bureau.
>
> He failed to give the Bureau any information about his employment and totally separate from the Bureau, he failed to visit with Glamaris or make any arrangements to visit with her[. T]herefore, I find no good cause.

(Footnote added.)

¶10 While Julio asserts that "[t]he visitation findings are clearly erroneous for the same reasons that the communication findings are not," his assertion is fatally flawed for at least two reasons. First, ignoring the obvious differences between communication and visitation, Julio's assertion slides by the fact that the trial court anchored its failure-to-show-good-cause finding to facts directly affecting visitation, not communication. Second, while claiming that "[t]he visitation findings are clearly erroneous," Julio specifically challenges none of them; he points to nothing in the record to refute the trial court's findings regarding either his work schedule or his failure to reschedule his visits with Glamaris.

[5] Here, it seems that the trial court misspoke; apparently, the court was referring to the case manager (agent), Heidi Seymour.

¶11 The record supports the trial court's findings. As the State points out, Julio's case manager, Heidi Seymour, testified, "I did everything in my power to facilitate those visits for [Julio] and Glamaris."[6] Nevertheless, from November 28, 2000 to the time of the TPR petition in June 2001, Julio failed to appear for the scheduled visits with Glamaris, and failed to contact Ms. Seymour to arrange for visitation. Indeed, responding to Glamaris' guardian ad litem's questions about scheduling visitation during the period when Julio failed to visit Glamaris, Ms. Seymour testified:

> Q: Did you consider [Julio's] work schedule?
>
> A: Probably the most consistent question that I asked [Julio] at every time we had met … [was] about his current employment status[,] and [Julio] was unable to provide me with a name or telephone number of his current employer.
>
> His typical response to me was that I'm looking for a job or I've just—either he had just quit his job or was laid off or was unable to find work, so I never had a work schedule from [Julio] to work around.
>
> Q: When you would speak to [Julio] about his work schedule or about the next scheduled visit, did he ever ask you for the address or phone number of the foster care providers?
>
> A: No.
>
> Q: And he never gave you a definitive answer as to why he could not attend visits?
>
> A: No. The only response that he gave me that would provide an explanation as to why he could not attend was

[6] In an exchange with Glamaris' guardian ad litem, Ms. Seymour also testified:

> Q: In your professional opinion did you do everything you could to ensure that he received the dates of the visitation?
>
> A: Yes.

> that either he was ill or that he was searching for a job or had to work.

¶12 This court may not disregard a trial court's factual findings unless they are "clearly erroneous." *See* WIS. STAT. RULE 805.17(2). Here, the record supports the trial court's finding that Julio failed to prove, by the preponderance of the evidence, that he had good cause for failing to visit Glamaris.

A. Termination

¶13 "If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit." WIS. STAT. § 48.424(4). "When the fact-finding step has been completed and the court has made a finding of unfitness, the proceeding moves to the second step, the dispositional hearing." ***Sheboygan County DHHS v. Julie A.B.***, 2002 WI 95, ¶28, ___ Wis.2d ___, ___ N.W. 2d ___; *see* WIS. STAT. § 48.427. "The best interests of the child shall be the prevailing factor considered by the court in determining the disposition." ***Julie A.B.***, 2002 WI 95 at ¶28 (citation, alteration and emphasis omitted).

¶14 "The decision whether to terminate a parent's rights to a child can be one of the most wrenching in the law." ***Id.*** at ¶29. Notwithstanding a finding of statutory grounds for termination of parental rights, a trial court still must exercise discretion to determine whether parental rights should be terminated. *See* ***Rock County DSS v. C.D.K.***, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). "The exercise of discretion requires a rational thought process based on examination of the facts and application of the relevant law." ***David S. v. Laura S.***, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993). This court will not overturn a trial court's decision to terminate parental rights absent an erroneous

exercise of discretion. ***Jerry M. v. Dennis L.M.***, 198 Wis. 2d 10, 21, 542 N.W.2d 162 (Ct. App. 1995).

¶15 In determining whether termination is appropriate, the trial court shall consider any report submitted by an agency under WIS. STAT. § 48.425, and it shall consider the factors delineated in WIS. STAT. § 48.426(3), which provides:

> In considering the best interests of the child under this section the court shall consider but not be 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.

¶16 "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." ***Julie A.B.***, 2002 WI 95 at ¶30. Further, "[i]n every case the factors considered must be calibrated to the prevailing [best interests of the child] standard." ***Id.***

¶17 Here, as Julio concedes in his reply brief to this court, "it appears the trial court considered the factors set forth in Wis. Stat. Sec. 48.426(3) and based its

decision on its view of what was in Glamaris's best interest." Julio then adds, however, that the trial court "erroneously exercised its discretion by misapplying the statutory factors." This court disagrees. After examining the required report and holding the required dispositional hearing, the trial court explained the basis for its decision, carefully connecting its factual findings to each of the statutory criteria. Under each of the six criteria, the facts strongly supported termination.

¶17 Julio argues, however, that "a new dispositional hearing is required" because "Glamaris' best interests do not require subjecting Julio to what the trial court agreed was the civil equivalent to the death penalty." He concludes, therefore, that termination is "disproportionate on this record." Again, this court disagrees.

¶18 The trial court noted Julio's difficult circumstances and good efforts, and compassionately considered the devastating consequences of termination *for him*. As the law requires, however, the trial court also correctly and carefully focused on the consequences of termination *for Glamaris*. As the State responds, it is "difficult" to understand Julio's argument because he has not "elaborated on how the trial court erroneously exercised its discretion" in determining that termination was in Glamaris' best interests. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995) (appellate court need not consider "amorphous and insufficiently developed" arguments). Clearly, under the statutory criteria, termination was in Glamaris' best interests.

By the Court.—Order affirmed.

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