**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**April 9, 2013**

**Diane M. Fremgen**
**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. 2012AP2314**
**2012AP2315**
**2012AP2316**

**Cir. Ct. Nos. 2010TP1**
**2010TP2**
**2010TP8**

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

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**NO. 2012AP2314**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO SIERRA B.,**
**A PERSON UNDER THE AGE OF 18:**

**FLORENCE COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**V.**

**JENNIFER B.,**

**RESPONDENT-APPELLANT,**

**SCOTT S.,**

**RESPONDENT.**

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**NO. 2012AP2315**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO JORDAN S.,
A PERSON UNDER THE AGE OF 18:**

**FLORENCE COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**V.**

**JENNIFER B.,**

**RESPONDENT-APPELLANT,**

**SCOTT S.,**

**RESPONDENT.**

**NO. 2012AP2316**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO JOSEPH S.,
A PERSON UNDER THE AGE OF 18:**

**FLORENCE COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**V.**

**JENNIFER B.,**

**RESPONDENT-APPELLANT,**

**EDWARD S.,**

**RESPONDENT.**

APPEALS from orders of the circuit court for Florence County: PATRICK J. MADDEN, Judge. *Affirmed*.

¶1 MANGERSON, J.[1] Jennifer B. appeals orders terminating her parental rights to three of her children: Sierra B., Jordan S., and Joseph S., and an order denying her postdisposition motion. Jennifer voluntarily consented to terminate her parental rights. On appeal, she argues her consent was not knowing and voluntary. We disagree and affirm.

## BACKGROUND[2]

¶2 This consolidated case began in 2010. On January 12, 2010, the Florence County Human Services Department filed a petition to terminate Jennifer's parental rights to Sierra and Jordan.[3] Following a jury trial, the circuit court terminated Jennifer's parental rights. Jennifer appealed. We reversed and remanded for a new fact-finding hearing because the circuit court had improperly answered one of the special verdict questions and because the County conflated the grounds for termination in its closing argument. ***Florence Cnty. Dep't of***

[1] These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] The guardian ad litem's statement of the case includes no citation to the record and some of the "facts" included are absent from the record. We admonish counsel that WIS. STAT. RULE 809.19(1)(d) requires appropriate citations to the record on appeal. Additionally, both the County and the guardian ad litem improperly cite an unpublished opinion that predates 2009. *See* WIS. STAT. RULE 809.23(3)(b).

[3] A third child, Brittany M., was also included in the petition. Brittany is not subject to the current appeal.

***Human Servs. v. Jennifer B.***, Nos. 2011AP88/89, unpublished slip op. ¶¶10-12, 16 (WI App Aug. 11, 2011).

¶3 On July 14, 2010, the County petitioned to terminate Jennifer's parental rights to Joseph S. The circuit court eventually terminated Jennifer's parental rights to Joseph. Jennifer appealed. We reversed and remanded, concluding the record did not establish whether Jennifer voluntarily terminated her rights, entered a no contest plea, or made an admission to the allegations in the petition. ***Florence Cnty. Dep't of Human Servs. v. Jennifer B.***, No. 2011AP84, unpublished slip op. ¶1 (WI App Sept. 29, 2011).

¶4 On remand, the County again prosecuted the petitions to terminate Jennifer's parental rights to Sierra, Jordan, and Joseph. The cases proceeded to trial on May 9, 2012.

¶5 On the second day of trial, the court took a recess following one of the County's witnesses. Back on the record and outside the presence of the jury, the court stated, "[Jennifer], you are now in front of this court in handcuffs because you left and indicated you were not coming back." Jennifer told the court that she believed she could "back out of this anytime I want to." The court asked the officer to remove the handcuffs and advised Jennifer that it was ordering her to remain for trial. It warned Jennifer that, if she attempted to leave, she would be arrested.

¶6 Jennifer's counsel interjected and asked to meet with Jennifer privately in a conference room. Counsel explained that, "I think we may be able to resolve this …. I didn't understand what she was planning on doing until she just said it to you." The court granted counsel's request.

¶7 Back on the record again, the court advised Jennifer that the jury was waiting and ready to resume trial. Jennifer's counsel told the court, "At this time, my client would like to proceed with a voluntary, and she will put information on the record about that through her testimony regarding her consenting to the termination of parental rights to Sierra [B.], Joseph [S.], and Jordan [S.]" Counsel advised the court that Jennifer was "specifically waiving her right to a jury trial." The following colloquy ensued:

> The Court: Ma'am, is that your position?
>
> [Jennifer]: Yes.
>
> The Court: Did anybody make any promises or threats to get you to do this?
>
> [Jennifer]: No.
>
> The Court: Proceed.

¶8 Jennifer was then sworn and questioned by her counsel about her decision to voluntarily consent to terminate her parental rights. Following this colloquy, the circuit court determined Jennifer was "proceeding freely, knowingly, and intelligently," and it released the jury. The court then heard testimony from a former case worker and determined it would be in the children's best interests to terminate Jennifer's parental rights.

¶9 Jennifer filed a postdisposition motion, asking the court to vacate the orders on the ground that her consents to termination were not knowing and voluntary. She argued her consents were not knowing and voluntary because the circuit court was unaware that she had been "advised that, if she voluntarily consented to the termination of her parental rights, she would have a better chance of reuniting with her youngest child, Jaden."

¶10 At the postdisposition hearing, Jennifer testified that Jaden was born on October 26, 2011 and lives in foster care in Michigan. She explained that, in November 2011, she was advised by both her Michigan attorney and her Michigan social worker that "it might be in my best interest regarding getting the baby to come home if I voluntarily terminated my rights [to Sierra, Jordan, and Joseph] rather than involuntarily had them terminated." Jennifer clarified, "[N]obody promised me anything. I was simply advised by numerous people that if I did a voluntary, my chances of getting the baby home would be better than if my rights were involuntar[ily] terminated."

¶11 The circuit court denied Jennifer's motion. It reasoned, in part:

> It was the Defense's turn to present the case. Ms. [B.] chose to absent herself. The Court directed the bailiff to bring her back to the Court so that her attorney would then be able to present her case, and [Jennifer's counsel] informed the Court that she was informed by Ms. [B.] that [Jennifer] chose to voluntarily terminate the rights to her children ….
>
> [Jennifer's counsel] then, at the request of the Court and the observation of the Court and on the record, was very, very thorough in examining her client as to her voluntariness, her understanding, her choice to go forward with a voluntary commitment.
>
> ….
>
> I think that [Corporation Counsel] is correct in stating that there were no promises made. There were no influences that worked on Miss [B.], and that the Court is still satisfied that she has freely, knowingly and intelligently voluntarily terminated her rights to her children ….

## DISCUSSION

¶12 WISCONSIN STAT. § 48.41(1) provides that "the court may terminate the parental rights of a parent after the parent has given his or her consent as specified in this section." WISCONSIN STAT. § 48.41(2) provides that the court may accept the parent's consent to termination

> only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary.

¶13 In ***T.M.F. v. Children's Service Society of Wisconsin***, 112 Wis. 2d 180, 186, 332 N.W.2d 293 (1983), our supreme court stated that, when a parent wishes to consent to termination of his or her parental rights, the circuit court may not simply "rubber-stamp" the parent's consent, but the court "must ensure that the parent has adequately considered the decision to terminate parental rights to the child." In that case, our supreme court was concerned the circuit court did not ensure a fifteen-year-old's consent to terminate her parental rights was knowing and voluntary. ***Id.*** at 196. The girl's parents wanted her to consent to termination, and the girl testified that her stepfather told her he would move out of the family home if she kept her child. ***Id.*** at 193. The court stated, "Consent induced by a threat of harm to loved ones bears particular scrutiny," and it concluded the circuit court should have questioned the girl more closely about psychological pressures and reviewed alternatives which would have allowed her to keep the child and not have forced the stepfather to leave the home. ***Id.*** at 194.

¶14 The ***T.M.F.*** court then set forth "basic information that the circuit court must ascertain to determine on the record" that the parent's consent is voluntary and informed:

> 1. the extent of the parent's education and the parent's level of general comprehension;
>
> 2. the parent's understanding of the nature of the proceedings and the consequences of termination, including the finality of the parent's decision and the circuit court's order;
>
> 3. the parent's understanding of the role of the guardian ad litem (if the parent is a minor) and the parent's understanding of the right to retain counsel at the parent's expense;
>
> 4. the extent and nature of the parent's communication with the guardian ad litem, the social worker, or any other adviser;
>
> 5. whether any promises or threats have been made to the parent in connection with the termination of parental rights;
>
> 6. whether the parent is aware of the significant alternatives to termination and what those are.

***Id.*** at 196-97.

¶15 On appeal, Jennifer argues her consent to terminate her parental rights to Sierra, Jordan, and Joseph was not knowing and voluntary because the court's "colloquy did not address any advice Jennifer received from 'any other advisor,' and the evidence shows that advice she received was a key part of her decision." She asserts the advice—voluntarily consenting to terminate her rights to her older children, as opposed to having her rights involuntarily terminated, might be in her best interests in order to return Jaden home—constituted

significant pressure that was not explored by the court. She argues this advice rendered her consent involuntary.

¶16 Jennifer, however, fails to explain how this advice rendered her consent involuntary. After all, the advice she received was not erroneous. Indeed, if Jennifer continued with the jury trial, and if her parental rights to Sierra, Jordan, and Joseph had been involuntarily terminated, that adjudication constitutes a ground in either Wisconsin or Michigan to terminate her parental rights to Jaden. *See* WIS. STAT. § 48.415(10); MICH. COMP. LAWS § 712A.19b(3)(l) (2012). By voluntarily consenting to terminate her parental rights on the second day of the jury trial, Jennifer avoided the impact of WIS. STAT. § 48.415(10) and MICH. COMP. LAWS § 712A.19b(3)(l) (2012).[4] The involuntariness of her consent is belied by the benefit she does not deny she received.

¶17 Moreover, the advice Jennifer received was simply advice. Unlike ***T.M.F.***, Jennifer was not advised of dire consequences that would happen if she did not voluntarily consent. Jennifer did not testify that she was told that Jaden's return depended on whether she voluntarily consented to terminate her rights to her older children, and she testified unequivocally that she was never promised anything in regard to Jaden's return. Instead, as Jennifer explained, she was

[4] In Michigan, a parent's voluntary relinquishment of his or her rights to a child can serve as a ground for termination of the rights to another child only if it is accompanied by proof of specific forms of high-severity abuse, such as sexual abuse, murder, or attempted murder, or abandonment. *See* MICH. COMP. LAWS § 712A.19b(3)(m) (2012). In Wisconsin, a parent's voluntary consent to terminate his or her parental rights does not serve as a ground to terminate the parent's rights to another child. *See* WIS. STAT. § 48.415(1)-(10).

"simply advised … that if I did a voluntary, my chances of getting the baby home would be better than if my rights were involuntarily terminated."

¶18 Finally, we cannot conclude the advice, by itself, amounted to such a psychological pressure that it rendered Jennifer's consent involuntary. Although Jennifer testified she received this advice sometime before trial, the record shows she disregarded it, choosing instead to proceed with the involuntary termination until the County had presented its entire case-in-chief against her. We agree with the circuit court that when Jennifer decided to halt the involuntary termination proceedings and consent to a voluntary termination, "[T]here were no influences worked on Miss [B.]" We conclude Jennifer's consent to termination was knowing and voluntary.

*By the Court.*—Orders affirmed.

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