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DISTRICT III

January 22, 2025

To:

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Circuit Court Judge
Electronic Notice

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You are hereby notified that the Court has entered the following opinion and order:

2024AP2119

Chippewa County v. J.M.J. (L. C. No. 2023TP27)

Before Hruz, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Janice² appeals an order terminating her parental rights to her daughter, Lily. Janice argues that the circuit court erroneously exercised its discretion during the dispositional phase of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² For ease of reading, we refer to the appellant in this confidential matter using a pseudonym, rather than her initials. We do the same for the child.

the termination of parental rights (TPR) proceedings by failing to consider Lily’s best interests.³ Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. For the reasons that follow, we summarily affirm.

In December 2023, Chippewa County filed a petition for the termination of Janice’s parental rights to Lily. The petition alleged that Janice failed to assume parental responsibility for Lily under WIS. STAT. § 48.415(6)(a). The matter proceeded to the fact-finding phase, during which the circuit court heard testimony from Janice; Ashley Brott, a child protective services manager for the County; Sara Torrence, an initial assessment social worker for the County; Lily’s foster mother; and Hannah LaBelle, a social worker for the County. The court found, based on the totality of the evidence, that Janice had failed to assume parental responsibility for Lily and, pursuant to WIS. STAT. § 48.424(4), it found Janice unfit.

The matter then proceeded to the dispositional phase, during which the circuit court heard additional testimony from Lily’s foster mother, LaBelle, and Janice. The foster mother testified that Lily had been in her care for the last forty-six months—since Lily was nineteen months old. The foster mother stated that Lily had hearing and speech issues when Lily was first placed with her but that she had taken Lily to specialists and those issues were now resolved. Further, the foster mother stated that she takes Lily to a “play therapist” to address “emotional health.” The

³ A contested proceeding for a TPR involves a two-step procedure. *Sheboygan Cnty. Dep’t of Health & Hum. Servs. v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. The first step is a fact-finding hearing in which a jury or the circuit court determines “whether any grounds for the termination of parental rights have been proven.” *Id.*, ¶26; WIS. STAT. § 48.424(3). The termination proceedings then move to the second step, a dispositional hearing, at which the court must consider the best interests of the child. WIS. STAT. § 48.426(2).

foster mother noted that if Janice’s parental rights were terminated, she still intends to allow Lily to have contact with her biological family because “it’s important that [Lily] knows who her biological family is and has a relationship with them.” Finally, the foster mother testified that she is fully committed to adopting Lily, that she has filed the paperwork to do so, and that Lily wants to have the foster mother’s last name.

LaBelle testified that the foster mother is committed to adopting Lily, that Lily is currently healthy, and that Lily is involved in many activities, such as soccer, dance and gymnastics. LaBelle opined that Lily has a relationship with both her biological sister and with Janice, but she noted that Lily only sees Janice for approximately one hour a week. LaBelle also noted that Lily refers to Janice as “mom” and that she has not observed any issues during Janice’s visits with Lily. However, LaBelle then opined that Lily would not be harmed if Janice’s parental rights to her were terminated because “[the foster mother] and [Lily] have a much more substantial relationship than [Janice] and [Lily] do.” LaBelle also noted that she had not talked to Lily about whether she wanted to be adopted. Janice testified about her relationship with Lily, the general importance of “family,” how she thought that terminating her parental rights would affect Lily, and what she thought “would be in [Lily’s] best interest.”

The circuit court then made the following findings:

[A]ll three lawyers have gone through the factors that the statutes provide we have to follow.

The likelihood of adoption. That’s almost a done deal as far as I think [from] what I’m reading here. [Lily] is five now. She was born in May of 2018. She’ll be six in October. She has been out of home since May of 2020.

....

[T]he statute and case law say[] substantial relationship. And I suppose biologically, if you're a biological child of somebody, you have a relationship. Seeing that person only once a week for an hour when you watch a movie, doesn't strike me as being substantial. Even the sibling that she sees part-time apparently is not substantial. I can find I think with some certainty ... that does come into play

The child's wishes. She's made a point to even ask [the foster mother] about adoption. She's been separated, as we said, since [May 2020] all but, I think, two weeks or three weeks of that time and with [the foster mother] for 46 months.

Certainly the stability, the last factor, everybody talked about it, and I think it weighs on the [side of granting the TPR]. [Lily has] been in this placement for this period of time. She is thriving—I'll make a finding that she's thriving based on the testimony that we've heard. She's progressing in her therapy. She's even had some therapy reduced to less regular contact. She's involved in physical activities. She's involved in a lot of things. And her placement going forward seems to be, like I said, ... almost a done deal.

The [c]ourt is going to grant the petition for termination of parental rights.

Janice now appeals. The sole issue that she raises on appeal is whether the circuit court erroneously exercised its discretion by failing to consider Lily's best interests when it decided to terminate Janice's parental rights. Specifically, Janice contends that "the circuit court's decision ... wholly omits consideration of, and reference to, the best interests factor." Janice makes note of the fact that the court did not "even mention the phrase 'best interests.'" Based solely on the foregoing, Janice concludes that the court's "analysis does not reflect that the best interests factor was actually applied, and that a best interest finding was actually made."

We will sustain the circuit court's ultimate determination in a TPR proceeding if the court properly exercised its discretion. *State v. Margaret H.*, 2000 WI 42, ¶32, 234 Wis. 2d 606, 610 N.W.2d 475. A court "properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion

that a reasonable judge could reach.” *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). “Although the proper exercise of discretion contemplates that the ... court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court’s discretionary decision.” *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

During the dispositional phase of a TPR case, the circuit court must consider the best interests of the child. WIS. STAT. § 48.426. In considering the best interests of the child, the court is required to consider the following nonexclusive list of factors: (1) “[t]he likelihood of the child’s adoption after termination,” (2) “[t]he 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,” (3) “[w]hether 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,” (4) “[t]he wishes of the child,” (5) “[t]he duration of the separation of the parent from the child,” and (6) “[w]hether 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).

Contrary to Janice’s argument, the record clearly reflects that the circuit court *did* determine that the termination of Janice’s parental rights to Lily was in Lily’s best interests. After the parties (including the guardian ad litem) repeatedly asked questions and specifically made arguments regarding Lily’s “best interests,” the court considered all six of the required factors in determining Lily’s best interests were met by terminating Janice’s parental rights. While the court did not explicitly use the phrase “child’s best interests,” it was not required to utter those “magic words.” See *State v. B.W.*, 2024 WI 28, ¶78, 412 Wis. 2d 364, 8 N.W.3d 22

(stating that magic word requirements are strongly disfavored); *State v. A.G.*, 2023 WI 61, ¶29, 408 Wis. 2d 413, 992 N.W.2d 75. Our conclusion is consistent with that reached in a nearly identical case, *State v. D.H.*, No. 2022AP1454, unpublished slip op. ¶16 (WI App Dec. 6, 2022),⁴ in which this court rejected the appellant’s argument—i.e., that the circuit court failed to consider the best interests of the subject child because it did not explicitly state the “best interests” standard—due to a lack of a “magic words” requirement.

Janice does not argue that the circuit court examined irrelevant facts, that the court failed to consider relevant facts from her testimony, or that any other relevant factors (based on the specific facts of this case) were ignored, nor does she otherwise challenge the factual basis upon which the court decided that terminating Janice’s parental rights would be in Lily’s best interests. We see no basis in the record to do so either. Rather, the court examined the relevant facts, applied the proper standard of law by considering Lily’s best interests, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. Therefore, the court did not erroneously exercise its discretion.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

⁴ Unpublished opinions authored by a single judge and issued on or after July 1, 2009, may be cited for their persuasive value. WIS. STAT. RULE 809.23(3)(b).