

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2005

Cornelia G. Clark
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. 2005AP2549
2005AP2550**

**Cir. Ct. Nos. 2003TP923
2003TP924**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

NO. 2005AP2549
CIR. CT. NO. 2003TP923

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

RICHARD T., A/K/A RICKEY T.,

RESPONDENT-APPELLANT.

NO. 2005AP2550
CIR. CT. NO. 2003TP924

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,
V.

RICHARD T., A/K/A RICKEY T.,

RESPONDENT-APPELLANT.

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

¶1 FINE, J. Richard T., a/k/a Rickey T., appeals orders terminating his parental rights to Rebecca T. and ShaLay T.¹ He does not contest that there were grounds for the trial court to enter orders of termination, but, rather, limits his challenge to the trial court's conclusion that termination was in the children's best interests.² We affirm.

I.

¶2 Unlike the usual case that comes to us, the children are not infants. ShaLay was born in May of 1990, and her sister Rebecca was born in November of 1991. They have been living with their foster mother since September of 1994. Despite the foster mother's professed love for the children and their desire to

¹ Richard T.'s notice of appeal incorrectly refers to the orders terminating his parental rights to the children as a "judgment."

² The trial court also terminated the parental rights of Rebecca's and ShaLay's mother. Those orders are not before us.

remain with her, their relationship with her and with each other has, at times, been rocky and difficult. Both the social worker involved in the children's case and the foster mother told the trial court, however, that the children wanted to remain with the foster mother and wanted to be adopted by her. Although the foster mother had, before the best-interests hearing, vacillated over whether she wanted to adopt both children, because ShaLay was harder to control than was Rebecca, the foster mother testified that she wanted to, and would, if Richard T.'s parental rights were terminated, adopt both children despite her earlier misgivings.

¶3 Richard T. has been in prison since 2002, and told the trial court that he would remain incarcerated until 2010, when the children would be adults. Although he wrote some letters to the girls, ShaLay, apparently, never read them. The social worker testified that neither child had a substantial relationship with Richard T. Although the foster mother indicated that she would not interfere with the children seeing their birth mother and relatives, she told the trial court that she probably would not take the children to visit Richard T. in prison because she did not "like visiting those facilities."

II.

¶4 Once it is determined that there are grounds to terminate a person's parental rights to his or her children, the trial court must decide whether termination is in the children's best interests. WIS. STAT. §§ 48.424(1), (4); 48.426(2). Whether circumstances warrant termination of parental rights is within the trial court's discretion. *Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993); *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855, 857 (Ct. App. 1996). We will not reverse a trial court's discretionary decision if the trial court applied the relevant facts to the correct legal standard in a

reasonable way. *Brandon S.S.*, 179 Wis. 2d at 150, 507 N.W.2d at 107. We do not disturb a trial court's findings of fact unless they are "clearly erroneous." *See* WIS. STAT. RULE 805.17(2); *State v. Raymond C.*, 187 Wis. 2d 10, 16, 522 N.W.2d 243, 246 (Ct. App. 1994) (applying "clearly erroneous" standard in a termination-of-parental-rights case). We review *de novo* whether the trial court has applied the correct legal standard. *See Kerkvliet v. Kerkvliet*, 166 Wis. 2d 930, 939, 480 N.W.2d 823, 826 (Ct. App. 1992).

¶5 WISCONSIN STAT. § 48.426(3) 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 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.

¶6 Richard T. does not contend that any of the trial court's findings are not amply supported by the evidence. Rather, he contends, in essence, that the trial court placed too much weight on the stated intention of the foster mother not to interfere with the children's contact with their birth relatives. We disagree.

¶7 First, the trial court carefully and insightfully applied the appropriate statutory considerations, recognizing that the polestar for any decision was whether termination was in the children’s best interests. *See* WIS. STAT. § 48.426(2) (“The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.”).

¶8 Second, the trial court carefully analyzed all the appropriate factors in light of the evidence. The trial court found, in connection with WIS. STAT. § 48.426(3)(a), that adoption by the foster mother was “highly likely.” Given the evidence, that finding is not clearly erroneous. It also found, in connection with § 48.426(3)(b), that the foster mother’s love for the children and her ability to give them needed stability made the behavioral problems the children had over the years not an impediment to their adoption by the foster mother. In connection with § 48.426(3)(c), the trial court determined that termination and adoption would keep the children together, and, also, given their age and the foster mother’s promise not to interfere with their communication with their relatives, that termination would not adversely affect whatever relationships the children had with them. The trial court determined, in connection with § 48.426(3)(d), that the children wanted to be adopted, but gave that factor less weight than it did what it appropriately perceived as the children’s need for the stability that adoption would enhance. The trial court also considered that the children had been with the foster mother for ten years, and that under § 48.426(3)(e), this weighed in favor of termination. Finally, in connection with § 48.426(3)(f), the trial court perceived that adoption would promote stability in the children’s lives, noting that the social worker had related that in her view, “some of the disruption in [the foster mother’s] home is due to the uncertainty of what is going to happen in this case,

and whether these children are going to find themselves in a--in the end zone” where involvement of all the social workers and the courts would finally cease.

¶9 Richard T. has not demonstrated that the trial court erroneously exercised its discretion. Accordingly, we affirm.

By the Court.—Orders affirmed.

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

