COURT OF APPEALS
DECISION
DATED AND FILED

October 10, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP1358 **Cir. Ct. No. 2005TP32**

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SHUNDA P.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed; counsel directed to file letter.*

¶1 FINE, J. Shunda P. appeals the trial court's order terminating her parental rights to Dimitri P., who was born in September of 2003.[1] The only issue on appeal is whether the trial court erroneously exercised its discretion in terminating Shunda P.'s parental rights to Dimitri. We affirm.

¶2 A jury determined that Shunda P. had failed to assume her parental responsibility for Dimitri, *see* WIS. STAT. § 48.415(6), and that Dimitri was a child in continuing need of protection or services, *see* § 48.415(2). Shunda P.'s appeal does not challenge these determinations. As noted, her only contention on appeal is that the trial court erroneously exercised its discretion in entering the termination-of-parental-rights order.

I.

¶3 Once a jury (or, if the parent has given up his or her right to a jury determination, the trial-court judge) finds that there are grounds to terminate a person's parental rights to his or her children, the trial-court judge must decide whether termination is in the children's best interests. The parents whose action or inaction results in a finding that there are grounds to terminate their parental rights have no special claim to the children in the best-interests phase. ***Richard D. v. Rebecca G.***, 228 Wis. 2d 658, 672–673, 599 N.W.2d 90, 97 (Ct. App. 1999). 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

[1] The notice of appeal filed by Shunda P.'s lawyer mistakenly refers to Shunda P. as a male reciting that the appeal is from the trial court's order "terminating his parental rights."

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 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).

¶4 Shunda P. was the mother of two other children when she gave birth to Dimitri. Investigating an emergency child-neglect referral when Shunda P. was pregnant with Dimitri, social workers discovered that Shunda P.'s home was a filthy mess, and that her other children, Jerrod and Shundnisha, born in June of 2001 and September of 1996 respectively, were in what can only be, charitably, described as horrendously horrible circumstances—living in filth, rotten food, and with sores and skin infections. Jerrod and Shundnisha, whose situations are not at issue on this appeal, were removed from Shunda P.'s "home." Dimitri was placed in foster care right after he was born. He has never lived with Shunda P., and has spent only fairly minimal supervised-visit time with her. Even then, Shunda P. did not often interact appropriately with him.

¶5 Although the social services agency tried to help Shunda P. with her parenting skills, she did little if anything to cooperate, and there was substantial evidence, which Shunda P. does not substantially dispute on this appeal, that Shunda P. was unable or unwilling to effectively care for her children. Sadly, in his first year and one-half of foster care, Dimitri was in seven different foster homes. In May of 2005, however, he was placed with a foster father who, as the trial court found and Shunda P. does not dispute, is a potential adoptive resource and with whom the boy seems happy.

¶6 WISCONSIN STAT. § 48.426 sets the standards that, if appropriate, the trial court should consider in exercising its discretion in deciding whether termination of parental rights is in a child's best interests. It provides:

> **(1)** COURT CONSIDERATIONS. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.
>
> **(2)** STANDARD. 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.
>
> **(3)** FACTORS. 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.

The trial court in a carefully reasoned oral decision considered the factors appropriate to Dimitri's age, noting that the potential foster father would be able to meet Dimitri's needs and that termination would give the child essential permanency and stability.

¶7 Shunda P.'s contention that the trial court erroneously exercised its discretion is limited to the following assertions:

> Dimitri P. had a relationship with his mother and a loving relationship with his siblings. He recognized Shunda P. as his mother and that relationship was still developing at the time of the termination of parental rights. There was testimony that the parental relationship between Shunda P. and Dimitri P. was growing and developing. He referred to her as "mama." A therapist for a sibling also commented that if the relationship between Shundinsha [*sic*] and Dimitri were to end it would have a detrimental effect on her.

(Citations to the Record omitted.) The trial court, however, found that the assertion of a bond between Dimitri and his siblings was not "fully credible since there's been so little time that this child has really lived with or connected as a sibling with the two other kids we are considering here, Shundnisha and Jerrod."

¶8 A trial court's findings of fact must be accepted by us 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). Further, as the State points out, harm *vel non* to a child's siblings is not a factor that is material in a proceeding to terminate parental rights to that child *unless* that sibling-harm adversely affects the child. *See* WIS. STAT. § 48.426(3)(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.") (emphasis added). This is consistent with the focus on the *child's* best interests.

¶9 The trial court appropriately focused on what would be good for Dimitri. Further, as for the alleged relationship between Dimitri and Shunda P.,

the trial court considered that relationship but viewed it as outweighed by the other factors material to what was in the best interests of Dimitri.

¶10 Shunda P. has not shown that the trial court erroneously exercised its discretion in terminating her parental rights to Dimitri, and, accordingly, we affirm.

II.

¶11 Although Shunda P.'s appellate lawyer, Lynn Ellen Hackbarth, Esq., attested in writing that she complied with WIS. STAT. RULE 809.19(2)(b), she did not. RULE 809.19(2)(b) requires that lawyers filing briefs on appeal submit the following certification:

> I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

Ms. Hackbarth did not comply with either RULE 809.19(2)(a) or her certification that she did so comply: The appendix to her brief on appeal did not have:

> (1) the "relevant trial court record entries," or *any* "record entries," or
>
> (2) the oral decision of the trial court.

Additionally, although WIS. STAT. RULE 809.107(6)(c) requires an appellant, "within 10 days after the service of the respondent's brief," to either file "a reply brief or statement that a reply brief will not be filed," Ms. Hackbarth filed neither a reply brief or the statement.

¶12 Ms. Hackbarth shall, within fifteen days of the date this opinion is filed, file with the clerk of the court a letter explaining why sanctions should not be imposed on her pursuant to WIS. STAT. RULE 809.83(2) ("Failure of a person to comply … with a requirement of these rules … is grounds for … imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.") for violating RULES 809.107(6)(c), 809.19(2)(a), and 809.19(2)(b), as well as, in connection with her false certification, SCR 20:3.3 ("A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal.").

By the Court.—Order affirmed; counsel directed to file letter.

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