

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 20, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-2549

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

IN THE INTEREST OF BRITTANY C.B.:

ROBIN H.,

APPELLANT,

v.

RONALD J.B. AND ONEIDA COUNTY,

RESPONDENTS.

APPEAL from an order of the circuit court for Oneida County:
ROBERT E. KINNEY, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Robin H. appeals an order denying her motion for a change of placement of her sixteen-year old daughter, Brittany C.B. Robin

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

argues that the circuit court erroneously exercised its discretion by applying the wrong legal standard. She additionally argues that the trial court violated her constitutional right to the care and custody of Brittany. We disagree.

BACKGROUND

¶2 On March 31, 1999, Oneida County Department of Social Services filed a request for temporary physical custody of Brittany and a petition for a child in need of protection and services (CHIPS). The request alleged that Robin physically abused Brittany. The circuit court temporarily placed Brittany with Janet and Anton Vlach, in Phillips, Wisconsin.

¶3 A dispositional hearing was held on August 10, 1999. The circuit court ordered that Brittany remain in the Vlachs' custody. Robin was to have visitation with Brittany twice a month with one overnight per month at Robin's home. Robin was also ordered to participate in individual counseling and family counseling with Brittany, to abstain from alcohol and other substances, to comply with all recommendations from her AODA therapist, to cooperate with all in-home services, and to contribute toward Brittany's financial support.

¶4 On June 27, 2000, Robin filed a motion for change of placement. *See* WIS. STAT. § 48.357(2m). She proposed that Brittany be moved from the Vlachs' home in Phillips, to a foster home closer to Robin's home in Rhinelander. The circuit court denied the motion after finding that it was in Brittany's best interests to stay with the Vlachs. The court concluded that Brittany's reunification with Robin was subordinate to her present and future stability. This appeal followed.

STANDARD OF REVIEW

¶5 Revision or extension of a CHIPS' dispositional order based on the best interests of a child is a matter left to the circuit court's discretion. *Sallie T. v. Milwaukee County DHHS*, 219 Wis. 2d 296, 305, 581 N.W.2d 182 (1998). We will not reverse a circuit court's discretionary decision unless the circuit court erroneously exercises that discretion. *Id.*

¶6 To find an abuse of discretion, we must find either that the circuit court has not exercised discretion or that it has exercised discretion on the basis of an error of law or irrelevant or impermissible factors. *Barstad v. Frazier*, 118 Wis. 2d 549, 554, 348 N.W.2d 479 (1984). The circuit court properly exercises its discretion when it employs a rational thought process based on an examination of the facts and application of the correct standard of law. *In re J.L.W.*, 102 Wis. 2d 118, 131, 306 N.W.2d 46 (1981).

DISCUSSION

¶7 Robin argues that the circuit court erroneously exercised its discretion because it applied the wrong legal standard to her motion for a change of placement. Robin contends that the standard the court applied was whether Brittany's current placement was improper instead of the best interests of the child standard.

¶8 WISCONSIN STAT. ch. 48 strives to protect children. The legislature sought to balance that goal with the goal of preserving the unity of the family. Setting forth its legislative purpose within the statute itself, the legislature stated:

The courts and agencies responsible for child welfare, while assuring that a child's health and safety are the paramount concerns, should assist parents ... in changing

any circumstances in the home which might harm the child ... which may require the child to be placed outside the home *The courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family.*

WIS. STAT. § 48.01(1)(a) (emphasis added).

¶9 Whenever appropriate, courts and agencies should preserve the unity of the family. However, the legislature recognized that reunification of the child and parent may be contrary to the child's welfare. While examining either option, the paramount goal is the child's best interests. In other words, in certain situations, it may be more important for the present and future welfare of the child to have the placement remain unchanged, even if it makes it less convenient for attempts at reunification.

¶10 Here, the circuit court found that it was in Brittany's best interests to make reunification subordinate to her personal growth and present stability:

It's really clear that on the basis of this record and the education that I've gotten as a result of hearing this, it's very clear that [reunification] cannot be any longer the overwhelming objective. That, in my opinion, has to be subordinate to her present best interests and her – and in this case, as in so many other cases, at some point we have to accept the idea that, perhaps, there won't be reunification during the child's minority and I think that's the case here.

¶11 Despite the language of WIS. STAT. § 48.01(1)(a) and the circuit court's reasoning, Robin argues that the primary goal of the legislature in developing WIS. STAT. ch. 48 was to preserve the unity of the family while protecting the minor child's best interests. She cites *Barstad* to further her argument.

¶12 In *Barstad*, our supreme court discussed the standard to be applied in a custody dispute between a parent and a third party. It held that “unless the court finds that the parent is unfit or unable to care for the child or that there are compelling reasons for denying custody to the parent, the court must grant custody to the child’s parent.” *Barstad*, 118 Wis. 2d at 551.

¶13 Robin additionally argues that she has worked for an entire year to preserve the unity of her family by complying with the dispositional order. She argues that because she has followed each and every condition placed upon her, her motion should have been granted. Robin cites *Sallie T.* to argue that her compliance with the return home conditions in the CHIPS’ order should result in Brittany being moved closer to Rhinelander.

¶14 In *Sallie T.*, the court stated that “in most cases in which a biological parent has successfully met the conditions of return the child can and should be returned to the parent.” *Sallie T.*, 219 Wis. 2d at 311. However, a closer reading of *Sallie T.* reveals that the best interests of the child standard “is to be defined in relation to the child and not to be used as a euphemism for the biological parent’s compliance with the return home conditions of a dispositional order.” *Id.* Compliance with the conditions of a CHIPS’ dispositional order “does not create a presumption that it is in the child’s best interests to be returned to the biological parents.” *Id.* Additionally, unlike *Sallie T.*, Robin has not met the conditions of the dispositional order. She is complying with the order, but she has an ongoing obligation to continue to comply through the order’s duration.

¶15 A review of the record establishes that the circuit court employed a rational thought process based on an examination of the facts. The court examined Robin’s and Brittany’s past history. It relied on testimony that Brittany had done

exceptionally well as a result of her current placement. Now sixteen years old, she was receiving good grades and had held a job since May 1999. Finally, the court relied on Brittany herself when she stated that she wanted to stay where she was. The court determined that removing Brittany from this environment for Robin's convenience would be contrary to Brittany's best interests.

¶16 Robin argues that the circuit court improperly based its decision on Robin's past. She argues that for the court to base its decision completely on events that happened years ago was erroneous. However, Robin does not cite any authority for this proposition. See *State v. Shaffer*, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980).

¶17 The circuit court relied on the entire record to determine what was in Brittany's best interests. Furthermore, the court was acting in accordance with the express legislative policy of the Children's Code that courts eliminate the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their return to the family. WIS. STAT. § 48.01(1)(a).

¶18 Last, Robin argues that the circuit court violated her constitutional right to the care and custody of Brittany when it denied her motion for a change of placement. Robin argues that a powerful countervailing interest, which would necessitate the interference with Robin's fundamental right to parent Brittany, is required in order to deny her motion.

¶19 "Under ordinary circumstances, a natural parent has a protected right under both state law and the United States Constitution to rear his or her children free from governmental intervention." *Barstad*, 118 Wis. 2d 567. Absent compelling reasons narrowly defined, "it is not within the power of the court to

displace a fit and able parent simply because in the court's view someone else could do a 'better job' of 'parenting.'" *Id.* at 567-58.

¶20 Here, it is not disputed that birth parents have the right to otherwise be free from government intervention in raising their children. It is also undisputed that the State has a compelling interest in becoming involved when a parent is derelict in their parental responsibilities. "[As] long as a parent adequately cares for his or her children, there will normally be no reason for the state to inject itself into the private realm of the family" *Troxel v. Granville*, 120 S.Ct. 2054 (2000). Parental rights are both rights and responsibilities. "[A] neglect of one's responsibilities can result in a forfeiture of one's rights." *Barstad*, 118 Wis. 2d at 568.

¶21 Robin does not recognize that she has, in fact, failed to adequately care for Brittany. She neglected her responsibilities as a parent and, as such, has forfeited certain of her rights. This forfeiture occurred at the dispositional hearing in August of 1999. Robin chose not to appeal that order. The basis of this appeal is from the order denying her motion for a change of placement that occurred in July 2000.

¶22 Therefore, we conclude that the circuit court properly exercised its discretion by denying Robin's motion for a change in placement.

By the Court.—Order affirmed.

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

