COURT OF APPEALS
DECISION
DATED AND FILED

August 5, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP1225 **Cir. Ct. No. 2006TP150**

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

GEORGE B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: WILLIAM S. POCAN, Judge. *Affirmed*.

¶1 FINE, J. George B. appeals the order terminating his parental rights to Georgia B., contending that the trial court erroneously exercised its discretion in finding that termination would be in Georgia's best interests. We affirm.[1]

I.

¶2 The facts underlying this appeal are not disputed. Georgia was born on August 29, 1999, and was living with George B. on July 1, 2004, when she was taken into protective custody by the Bureau of Milwaukee Child Welfare following George B.'s arrest for child neglect, when, while investigating George B.'s possible involvement in a burglary, police found that Georgia was living with George B. in a dangerous and unclean environment. Additionally, Georgia was suffering from strep-throat and had cavities in her baby teeth that were significantly serious to require extraction. That was the last time Georgia lived with George B.

¶3 Ultimately, Georgia was placed with her cousin, Shomacka N., and stayed with her from October 15, 2004, until May 11, 2007, when she was placed in foster care with the couple that wanted to adopt her, Vincent and Susan B. Shomacka N. did not want to adopt Georgia. There was another attempt to keep Georgia with her biological family, an adult daughter of George B. who lived in Chicago, but that failed.

¶4 Following the State's filing of the petition to terminate George B.'s parental rights to Georgia, he waived his right to contest the first phase of the two-

[1] The parental rights of Butana S., Georgia's biological mother, were also terminated. That matter is not before us on this appeal.

part process, *see* WIS. STAT. § 48.424(4), and admitted that there were grounds to terminate his parental rights. George B.'s only complaint on appeal is that the trial court should not have accepted Vincent and Susan B. as Georgia's adoptive resource.

¶5 According to testimony at the dispositional hearing by one of the social workers, Georgia had a "very strong bond" with Vincent and Susan B., and Georgia wanted to be adopted by them. Further, Georgia referred to Vincent and Susan B.'s other adopted children as her brothers, and she wanted to change her last name to that of Vincent and Susan B. Susan B. testified that Georgia called her "Mom," and called her husband "Dad," and that she wanted to be adopted even though Susan B. explained to Georgia that the child "may not have the opportunity to ever see her birth-dad again." Susan B. told the trial court that she would permit George B. to have limited contact with Georgia: "I would think, supervised phone conversation and writing and pictures and that type of thing." On the other hand, Susan B. testified that she has "a lot of contact" with Georgia's cousin, Shomacka N., who visits them "two or three times a month." Susan B. also told the trial court that she and her husband felt that Shomacka N.'s relationship with them was "important to us, because that helps carry on Georgia's heritage" as an African-American. Further, according to Susan B., Georgia was thriving in school ("[t]op of her class"), was active in extra-curricular activities ("piano lessons and soccer"), and wanted to "start ballet." Georgia was also active in church activities. Vincent and Susan B.'s other two adopted children were "[v]ery happy" with the prospect of Vincent and Susan B. also adopting Georgia.

¶6 One of the social workers involved in Georgia's case testified that if the trial court did not grant the State's petition to terminate the parental rights of

Georgia's biological parents, it was "likely" that Georgia would "remain in foster care indefinitely."

II.

¶7 The legislature has set the guideposts that courts must recognize in exercising judicial authority to protect children. WIS. STAT. § 48.01. As material here, the following considerations govern the analysis of both trial and appellate courts:

- "[T]he best interests of the child or unborn child shall always be of paramount consideration." Sec. 48.01(1).

- "[I]mpermanence in family relationships [is] contrary to the welfare of children and [courts] should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their safe return to the family." Sec. 48.01(1)(a).

- "[C]hildren have certain basic needs which must be provided for, including the need for adequate food, clothing and shelter; the need to be free from physical, sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and permanent family." Sec. 48.01(1)(ag).

- "To promote the adoption of children into safe and stable families [is the goal] rather than allowing children to remain in the impermanence of foster or treatment foster care." Sec. 48.01(1)(gg).

Given the overarching emphasis on the best interests of the child, the focus at the dispositional phase is on the child and not on the parent. ***Richard D. v. Rebecca G.***, 228 Wis. 2d 658, 672–673, 599 N.W.2d 90, 97 (Ct. App. 1999). Additionally, a circuit court's decision whether to terminate a person's parental rights to his or her biological children is vested in the circuit court's discretion. ***Brandon S.S. v. Laura S.***, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993) ("A determination of the best interests of the child in a termination proceeding depends on first-hand observation and experience with the persons involved and therefore is committed to the sound discretion of the circuit court. A circuit court's determination will not be upset unless the decision represents an erroneous exercise of discretion."); *see also* ***Darryl T.-H. v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 620, 610 N.W.2d 475, 481 ("The ultimate determination of whether to terminate parental rights is discretionary with the circuit court.").

¶8 WISCONSIN STAT. § 48.426 sets the standards that, if appropriate, circuit courts should consider in exercising their 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.

¶9 George B. concedes, as he expresses it in his main brief on this appeal, that the trial court "examined the factors listed in sec. 48.426." The crux of his complaint is that the trial court erroneously evaluated those factors in applying them to this case, essentially because Georgia, an African-American child, was placed with a white family in Randolph, Wisconsin, a small, predominantly, if not totally, white community, and that termination of George B.'s parental rights and Georgia's adoption by Vincent and Susan B. would also hinder any meaningful chance Georgia would have to remain in contact with her birth family. We disagree.

¶10 In analyzing whether the trial court properly exercised its discretion, we look at its comprehensive oral decision applying the considerations required by WIS. STAT. § 48.426(3).

¶11 As we have seen, the first factor under WIS. STAT. § 48.426(3) that a circuit court must consider is whether it is likely that the child would be adopted if the biological parents' parental rights were terminated. The trial court found that

Georgia's adoption was likely if it terminated the parental rights of her birth parents. George B. does not dispute this.

¶12 The second factor requires consideration of the child's health. The trial court found that although Georgia had significant health problems when removed from George B.'s home, she was doing well with Vincent and Susan B. Assessing this factor, the trial court found that it "would either support termination or not run contrary to it." George B. does not dispute this.

¶13 The third factor is whether severing the child's relationship with his or her biological family "would be harmful to the child." The trial court found, contrary to the State's contention, that "Georgia does have a substantial relationship with both [Shomacka N.] and with [George B.]" The trial court further found that "it would be harmful" to Georgia "if either of those relationships were terminated," but, ultimately, that this factor was outweighed by the benefits to Georgia that would flow from terminating George B.'s parental rights, thus permitting Vincent and Susan B. to adopt her.

¶14 George B. contends on appeal, however, that the trial court gave too much weight to Susan B.'s promise to try to preserve as best she and her husband could Georgia's relationships with her birth family, pointing out that termination severs the child's connections with the birth family and that promises made by an adoptive resource before termination cannot be enforced after the birth parents' parental rights have been terminated. *See* ***Darryl T.-H.***, 2000 WI 42, ¶25, 234 Wis. 2d at 619, 610 N.W.2d at 481 ("As a matter of law, the termination of parental rights results in a legal severance of the relationship between a child and the child's family."). There is nothing in the Record, however, that indicates that the trial court relied on, as opposed to considered, Susan B.'s promise to try to

facilitate Georgia's relationships with her birth family in a way that she and her husband thought best. Thus, although Susan B. indicated that Georgia's contact with George B. would exclude personal visits, the trial court opined that it "hope[d] she [Susan B.] will re-think her position in time and will look at what's best for the Child and will let the Child have a relationship with the Father, with [Shomacka N.], more than letters or telephone calls. I hope that's the direction that this continues down the road." This is fully consistent with ***Darryl T.-H.***, 2000 WI 42, ¶29, 234 Wis. 2d at 621, 610 N.W.2d at 482, which recognized "that WIS. STAT. § 48.426(3)(c) requires only that the circuit court examine the impact of a legal severance on the broader relationships existing between a child and his or her family." The ultimate assessment of this is, however, within the circuit court's discretion. ***Darryl T.-H.***, 2000 WI 42, ¶29, 234 Wis. 2d at 621, 610 N.W.2d at 482 ("In its discretion, the court may afford due weight to an adoptive parent's stated intent to continue visitation with family members, although we cannot mandate the relative weight to be placed on this factor.").

¶15 In assessing the fourth factor, the "wishes of the child," the trial court found, and George B. does not dispute, that Georgia wanted to be adopted and that she was happy with Vincent and Susan B. The trial court tinctured Georgia's desire, however, with its concern that Georgia might not fully comprehend all of an adoption's ramifications because of her age. The trial court noted that although, according to the testimony of Susan B., "Georgia was concerned about never seeing her birth-father again," and "that not seeing her father again, makes her a little sad," Georgia "want[ed] to be adopted." After conscientiously struggling to apply this factor, the trial court determined that Georgia's desire to be adopted by Vincent and Susan B. "either favor[s] termination or [does] not run contrary to it."

¶16 The trial court found that the fifth factor, the "duration of the separation of the parent from the child," supported termination because, insofar as George B. was concerned, the separation was some "three-and-a-half years," which, the trial court opined, was "a really, really long time for an eight-and-a-half-year-old." George B. does not dispute this.

¶17 In considering the sixth factor, the need-for-permanency factor, the trial court noted that Georgia was happy and was doing well with Vincent and Susan B., that she called them "'mom' and 'dad,'" and that "she feels safe and comfortable there." Although expressing concern about the town's lack of racial diversity, the trial court noted that Georgia was thriving there nevertheless: "She is on the top of her Second-[G]rade Class, out of 15. Wants to get into ballet. Active in soccer, piano, and the church." It also noted that Susan B. "indicated that she wants to help Georgia keep and respect her African-American heritage, but she-- and I think she will make the efforts she needs to." The trial court found that the sixth factor supported termination because it and the adoption by Vincent and Susan B. was Georgia's "best chance of stability and permanence … opposed to just lingering around hoping that somehow magically a family placement will work out."

¶18 In sum, the trial court concluded that although Georgia had bonds with George B. and Shomacka N., those bonds did not outweigh Georgia's need for permanence and stability. The trial court's oral decision reveals that it carefully and with great sensitivity analyzed the appropriate factors; it did not by any stretch of the imagination erroneously exercise its discretion. Accordingly, we affirm.

By the Court.—Order affirmed.

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