

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 5, 2009

David R. Schanker
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 No. 2008AP3214

Cir. Ct. No. 2007TP1

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

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

ONEIDA COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

PARIS M. P., A/K/A PARIS M. B.,

RESPONDENT-APPELLANT,

THERESE S.,

RESPONDENT.

APPEAL from orders of the circuit court for Oneida County:
PATRICK F. O'MELIA, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Paris M. P. appeals orders terminating his parental rights to his daughter, Yasmine R. B., and denying his postdisposition motion. Paris argues the evidence presented at his motion hearing was insufficient to prove his no contest plea at the grounds phase of the proceeding was knowing, voluntary, and intelligent. We affirm.

BACKGROUND

¶2 Oneida County filed a petition to terminate Paris's parental rights to Yasmine. The same petition also sought to terminate the parental rights of Yasmine's mother, Therese S. For grounds, the petition alleged, among others, that Yasmine was in continuing need of protection or services. Paris and Therese initially intended to contest the petition and a fact-finding hearing was scheduled. Three days before the hearing, however, Paris signed a stipulated agreement with the County. Under the agreement, he would plead no contest to the continuing need ground and the County would withdraw the other grounds. Therese did not sign an agreement, but, the day of the hearing, the court was informed that she would also plead no contest to the same ground. The court then held plea colloquies, determined Paris's and Therese's pleas were knowing and voluntary, and accepted the pleas. The court later held a disposition hearing and terminated Paris's and Therese's parental rights to Yasmine.

¶3 Both Paris and Therese notified the court they intended to seek postdisposition relief and asked the state to appoint postdisposition counsel. The attorney appointed to assist Paris filed a no-merit report with this court,

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

concluding there was no arguable basis for challenging the order terminating Paris's parental rights. Therese's counsel, however, filed a motion requesting Therese be permitted to withdraw her no contest plea due to deficiencies in the plea colloquy. On appeal in Therese's case, we concluded her colloquy was defective and remanded for the circuit court to determine whether, "at the time Therese entered her no contest plea, she understood: (1) she would be found unfit to parent as a result of the plea, (2) the potential dispositions specified under WIS. STAT. § 48.427, and (3) that the dispositional decision would be governed by Yasmine's best interests." *Oneida County DSS v. Therese S.*, 2008 WI App 159, ¶22, 762 N.W.2d 122. As a result, we rejected Paris's no-merit report, concluding the same deficiencies applied to Paris's colloquy.

¶4 Paris then requested he be permitted to withdraw his plea. The circuit court held a hearing on the motion at which it heard testimony from Paris and his trial counsel. The court found Paris understood the consequences of his plea. It concluded Paris's decision to not contest the grounds phase of the termination proceeding "clearly was his choice and ... was knowingly and intelligently made."

DISCUSSION

¶5 A party challenging a no contest plea "must make a prima facie showing that the circuit court violated its mandatory duties of informing the party of his or her rights," and allege he or she "in fact, did not know or understand [this information]." *Kenosha County DHS v. Jodie W.*, 2006 WI 93, ¶26, 293 Wis. 2d 530, 716 N.W.2d 845. If a party makes this showing, "the burden [then] shifts to the county to establish by clear and convincing evidence that the parent

‘knowingly, voluntarily and intelligently waived the right to contest the allegations in the petition.’” *Id.* (citation omitted).

¶6 The County does not dispute Paris made the requisite prima facie showing. Therefore, the only issue in this appeal is whether the County established Paris knowingly, voluntarily, and intelligently waived the right to contest that grounds existed to terminate his parental rights. This is a question of constitutional fact. *State v. Bangert*, 131 Wis. 2d 246, 283, 389 N.W.2d 12 (1986). When we review questions of constitutional fact, “we will uphold the circuit court’s findings of evidentiary or historical facts unless the findings are ‘contrary to the great weight and clear preponderance of the evidence.’” *Jodie W.*, 293 Wis. 2d 530, ¶28 (quoting *Bangert*, 131 Wis. 2d at 283-84).

¶7 The County argues the evidence presented at the motion hearing demonstrates Paris understood (1) he would be found unfit to parent as a result of his no contest plea, (2) what the potential dispositions were, and (3) the criteria the court would use to determine whether to terminate his parental rights. Thus, it contends, the circuit court correctly concluded Paris’s plea was knowing and voluntary. We agree. The court made numerous factual findings based on Paris’s and his trial counsel’s testimony which amply support this conclusion.

¶8 At the motion hearing, Paris testified he understood that by signing the stipulated agreement he was admitting grounds existed to terminate his parental rights. He also acknowledged that before he signed the agreement his trial counsel, Brian Bennett, explained to him that if he pled no contest, the court would find he was an unfit parent.

¶9 Bennett testified he met with Paris numerous times prior to the plea hearing, and that he and Paris had been discussing the idea of changing his plea for

several weeks. He explained that he told Paris if he pled no contest “we would go to disposition and that we would argue that while he was unfit, termination may not be proper. ... Our odds were not good, but I felt that they were better [than they would be were there] an unsuccessful two-day jury trial on the [grounds] issues.” The court concluded this testimony indicated Paris and Bennett had “discussed [the plea] ... at some length and [the decision to plead no contest] was strategic....” Accordingly, it found Paris understood his plea would result in an automatic finding that he was unfit to parent Yasmine.

¶10 The court also determined the testimony indicated Paris was informed of the potential dispositions under WIS. STAT. § 48.427. Bennett testified he informed Paris what the court could do at the disposition hearing by reading to Paris out of WIS. STAT. ch. 48 and explaining what each option meant. The court concluded Paris understood these options: “I think [Paris] understands what’s going on. [T]he testimony from Bennett was that he explained to him the various dispositions, that is [Paris] you’re going to be found unfit and here’s what can [happen] at disposition.”

¶11 The court further found Paris understood the disposition would be guided by Yasmine’s best interest. Paris explicitly acknowledged at the motion hearing he understood this was the criteria the judge would use when determining whether to terminate his parental rights.

¶12 Paris argues the court did not adequately consider his mental limitations at the motion hearing. This argument is not supported by the record. The court acknowledged “Paris has limitations. ... And with those difficulties it takes more to achieve the level of knowingly and intelligently waiving anything of significance.” As a consequence, it concluded that to show Paris understood his

plea “more time is needed, more face-to-face time and more communication in general.” It determined these requirements were met by virtue of the numerous meetings Paris had with Bennett to discuss his plea, along with testimony indicating Paris in fact understood the consequences of his plea.

¶13 We conclude the circuit court’s factual findings are not clearly erroneous and that these findings provide sufficient support for its conclusion that Paris knowingly and voluntarily waived his right to contest the grounds for terminating his parental rights. Therefore, we affirm the order denying Paris’s request to withdraw his no contest plea.

By the Court.—Orders affirmed.

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

