COURT OF APPEALS
DECISION
DATED AND FILED

June 2, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP788 **Cir. Ct. No. 2008TP4**

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

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

LANGLADE COUNTY DEPARTMENT OF SOCIAL SERVICES,

PETITIONER-RESPONDENT,

V.

BOBBY M.,

RESPONDENT-APPELLANT,

MISTY B.,

RESPONDENT.

APPEAL from an order of the circuit court for Langlade County: PATRICK J. MADDEN, Judge. *Affirmed.*

¶1 PETERSON, J.[1] Bobby M. appeals an order terminating his parental rights to his daughter, MyKarla M. Bobby argues the circuit court did not adequately consider MyKarla's best interests before terminating his parental rights. We affirm.

BACKGROUND

¶2 MyKarla was born in Antigo in August 2004. A few days after MyKarla's birth, her mother, Misty, moved with MyKarla to Milwaukee to join Bobby. In January 2005, Misty and MyKarla returned to Antigo. While in Milwaukee, Misty and MyKarla briefly resided with Bobby's mother. Bobby lived with them part of the time, but he was also incarcerated part of the time. When Misty and MyKarla moved back to Antigo, MyKarla was four months old. For the next year, Misty and MyKarla lived by themselves in Antigo, and Bobby was in Milwaukee.

¶3 In January 2006, Langlade County took MyKarla into custody following a drug raid at Misty's apartment. Two weeks later, the County placed MyKarla in her maternal aunt's home. The County then alleged, and the court found, that MyKarla was a child in need of protection or services (CHIPS). The CHIPS order continued placement with MyKarla's aunt.

¶4 Two years later, the County filed a petition to terminate Bobby and Misty's parental rights. Following a trial, a jury found grounds existed to terminate the parental rights of both parents.

[1] This appeal is 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.

¶5 At the dispositional hearing, the court found both parents unfit. Misty then voluntarily terminated her parental rights. As for Bobby, the court concluded it was also in MyKarla's best interests to terminate his parental rights. The court then addressed the factors set forth in WIS. STAT. § 48.426(3) for determining a child's best interests. These factors are:

> (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.

WIS. STAT. § 48.426(3). The court read these factors from a termination of parental rights order and commented briefly on each factor. It found, among other things, that MyKarla was young and healthy, the duration of her separation from Bobby was significant, and she would be able to enter a more stable and permanent relationship as a result of the termination. It then terminated Bobby's parental rights.

DISCUSSION

¶6 On appeal, Bobby argues the court's consideration of the statutory factors was inadequate for two reasons. First, he contends the court did little more

than read aloud from a form order. Second, he argues the circuit court erred by failing to address the effect of severing MyKarla's legal ties to her African-American relatives. MyKarla is biracial: Misty is white, Bobby is African-American.

¶7 This two-pronged attack boils down to a challenge of the circuit court's discretion. ***State v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475 (termination of a parent's parental rights at a dispositional hearing is an exercise of discretion). We will uphold a circuit court's discretionary decision if the court employed "a rational thought process based on an examination of the facts and an application of the correct standard of the law." ***Sheboygan County DHHS v. Julie A.B.***, 2002 WI 95, ¶43, 255 Wis. 2d 170, 648 N.W.2d 402. The correct standard of the law in a termination of parental rights proceeding is the best interests of the child. WIS. STAT. § 48.426(2). When determining a child's best interests, courts must consider the factors enumerated in § 48.426(3).

¶8 Here, the court stated on the record that it considered the statutory factors; it then read them and commented briefly on each. However, Bobby contends this was insufficient. He argues, "[O]nce the decision to terminate parental rights has already been pronounced from the bench, subsequently reading aloud from the form order … does not amount to an adequate exercise of judicial discretion."

¶9 To the extent Bobby's argument asserts that a court may not pronounce its decision before discussing its rationale, we are not persuaded. There is no requirement that a court must explain the reasons underlying its decision before it announces its conclusions. We also disagree with his suggestion that it was inappropriate for the court to read from a form order. The form to which

Bobby refers is the standard JC-1639 (04/08) ORDER CONCERNING TERMINATION OF PARENTAL RIGHTS (INVOLUNTARY). Among other things, the form lists the statutory factors for determining the child's best interests. All WIS. STAT. § 48.426(3) requires is that the court consider these factors: it does not matter whether the court refers to the statutes directly, reads the factors from a form, or expounds on them extemporaneously.

¶10 We also disagree with Bobby's argument that a proper exercise of discretion required the court to engage in a "more detailed and thoughtful analysis" of the factors. Bobby offers no authority that a more detailed analysis is necessary. Instead he simply quotes language from a case stating that the court "must explore the child's best interest." ***Julie A.B.***, 255 Wis. 2d 170, ¶38. All this language confirms, however, is that the legal standard in a termination of parental rights proceeding is the child's best interests. That standard is statutory. *See* WIS. STAT. § 48.426(2). To apply the standard, the statute requires courts to consider—although they are not limited by—the six factors enumerated in § 48.426(3). Here, the court did just that. While the court's discussion of these factors was summary, it was legally sufficient.

¶11 The second part of Bobby's attack on the circuit court's discretion concerns its failure to consider the effect of severing MyKarla's ties to her African-American relatives. WISCONSIN STAT. § 48.426(3)(c) requires courts to consider a child's substantial family relationships. Bobby does not argue the four months MyKarla resided with Misty at his mother's house created a substantial relationship. Nor does he assert he has any other relatives who forged a bond with MyKarla. Instead he contends that "a shared racial heritage with relatives also creates a substantial relationship concerning matters of culture and history."

¶12 Wisconsin law does not require courts to consider race when determining whether to terminate parental rights, and Bobby cites no authority holding there is such obligation. Instead, he cites as persuasive a twenty-six-year-old case from Pennsylvania. *See* ***Miller v. Berks***, 465 A.2d 614 (Pa. 1983). In ***Miller***, the court determined Pennsylvania's statutory requirement that placement petitions identify the racial background of adopting parents and potential adoptees indicated the legislature intended race to be a factor in determining the best interests of the child. ***Id.*** at 626. The Wisconsin placement statute contains no such requirement, *see* WIS. STAT. § 48.837(2), nor have Wisconsin courts interpreted either our state's termination of parental rights or adoption statutes to require consideration of race.

¶13 In Wisconsin, courts must only consider whether it would be harmful to sever the child's *substantial* relationships with parents or relatives. WIS. STAT. § 48.426(3)(c). A shared racial heritage does not by itself create a substantial relationship. If it did, any familial relationship would be substantial, and the use of the word would be surplusage—a result we avoid when discerning the meaning of statutes. ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110.

¶14 Bobby does not allege MyKarla has any substantial relationships with her African-American relatives, except to the extent she shares a racial heritage with them. Nor does the record indicate any. Therefore, because MyKarla has no substantial relationships with her African-American relatives, the court was not required to consider the effects of severing her legal ties to them.

By the Court.—Order affirmed.

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