

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 28, 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. 2009AP1248

Cir. Ct. No. 2008TP29

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

BOBBIE JO K.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

¶1 FINE, J. Bobbie Jo K. appeals the circuit court's order terminating her parental rights to Angel B. K. She contends that the circuit court did not consider all the factors the legislature directed courts to consider in making a

decision whether to terminate a birth-parent's rights to his or her child. We disagree and affirm.

I.

¶2 Angel B. K. was born in May of 2007. Bobbie Jo K. does not on this appeal dispute the essential facts underlying the circuit court's decision. Accordingly, we take those facts as they are succinctly set out in her appellate brief, as supplemented by the undisputed evidence in the Record.

¶3 The State placed Angel in foster care in November of 2007, after Bobbie Jo K. took him to a hospital and authorities discovered that he had "a leg injury," "a spiral fracture," that "doctors suspected" was "intentionally inflicted."

The Bureau of Milwaukee Child Welfare determined that Bobbie [Jo K.] had been leaving Angel alone with her two emotionally disturbed nephews[,] aged 17 and 10, and they had physically abused Angel. Angel's head was flat, to the point of being concave on the right side, raising suspicion that Angel had been left in a car seat for excessive periods of time.

The circuit court, the Honorable Glenn H. Yamahiro, presiding, "found Angel to be in need of protection or services and entered an order placing Angel outside Bobbie[Jo K.]'s home. Since his removal, Angel remained in the care of foster parents."

¶4 In the course of its oral decision terminating Bobbie Jo K.'s parental rights to Angel, the circuit court, the Honorable Christopher R. Foley, presiding, reflected that Bobbie Jo K. has significant "cognitive limitations" that made her "incapable of providing a safe, appropriate, nurturing environment for her child." Bobbie Jo K. does not on this appeal dispute the circuit court's characterization. The circuit court also found that not only did Bobbie Jo K. not "seek out those

who would be nurturing, supportive, and assist her in meeting her obligations to her child,” but that the efforts of the responsible social worker to help Bobbie Jo K. have a “viable ... support network” so Bobbie Jo K. could keep Angel “in her home while maintaining the safety of the child ... did not work. It dramatically failed.” Again, Bobbie Jo K. does not on this appeal dispute this either. In fact, as a consequence of Bobbie Jo K.’s failings as a parent, her parental rights to four other children were also terminated.

II.

¶5 Termination of parental rights is a two-step process. First, a fact-finder decides whether there are facts that justify governmental interference in whatever relationship there is between the birth-parent and his or her child. WIS. STAT. §§ 48.415, 48.424. If there are grounds to terminate a person’s parental rights to a child, the trial judge then determines whether those rights should be terminated. WIS. STAT. §§ 48.424(3), (4); 48.426; 48.427. As we have seen, the only issue on this appeal concerns the second phase.

¶6 As Bobbie Jo K. recognizes, 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.”). Bobbie Jo K. also recognizes that a decision whether a birth-parent’s parental rights to his or her child should be terminated turns on what is in that child’s best interests. *See* WIS. STAT. § 48.01(1) (“[T]he best interests of the child or unborn child shall always be of paramount consideration.”). Accordingly, 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).

¶7 WISCONSIN STAT. § 48.426(3) sets the principles that, if appropriate, the circuit court must consider in exercising its discretion in deciding whether parental rights should be terminated. It provides:

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.

Contrary to Bobbie Jo K.’s contention, the circuit court considered all of the appropriate factors. Thus, this appeal is not akin to *Margaret H.*, where the circuit

court did not consider the appropriate factors, including the critical factor of whether termination would be in the best interests of the children. *Id.*, 2000 WI 42, ¶¶35–36, 234 Wis. 2d at 623, 610 N.W.2d at 482–483.

¶8 First, the circuit court noted that if Bobbie Jo K.’s parental rights to Angel were terminated, Angel would “be adopted.” Bobbie Jo K. does not dispute that conclusion.

¶9 Second, the circuit court also reflected that Angel’s health was in jeopardy when he was removed from Bobbie Jo K.’s home, and, as a consequence, “[h]e has been out of Bobbie[Jo K.]’s care for a significant part of his life.” Indeed, the circuit court opined that the duration of the separation was “probably ... the biggest concern for me.” Thus, the circuit court considered the factors in WIS. STAT. § 48.426(3)(b) and (e).

¶10 Third, in noting that Bobbie Jo K. did not have a viable support network from which she could draw for help in raising Angel, that Angel was abused by his nephews, and that four of her other children were taken from her, the circuit court considered the factor in WIS. STAT. § 48.426(3)(c), further opining that severing Angel’s relationship with Bobbie Jo K. would not “harm him.” Bobbie Jo K. points to nothing in the Record that indicates that this was error.

¶11 Fourth, Bobbie Jo K. concedes that the consideration set out in WIS. STAT. § 48.426(3)(d), “[t]he wishes of the child,” is not applicable here, given Angel’s age.

¶12 Fifth, the circuit court’s entire decision was founded explicitly on its clear determination that, as WIS. STAT. § 48.426(3)(f) dictates, Angel would be far

better off in the stable relationship that would be offered by his likely adoption than by permitting his life to remain in limbo in the legal custody of a dysfunctional parent without a viable support network. Again, Bobbie Jo K. points to nothing in the Record to dispute the circuit court’s prescient analysis.

¶13 The circuit court considered all of the applicable factors set out by the legislature, pointing out in its oral decision that it was aware of and was referencing what it called “those six factors.” It did not erroneously exercise its discretion in terminating Bobbie Jo K.’s parental rights to Angel. Accordingly, we affirm.

By the Court.—Order affirmed.

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

