

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 30, 2002

Cornelia G. Clark
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. 02-0389
STATE OF WISCONSIN

Cir. Ct. No. 01 TP 43

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

BOBBIE M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

¶1 FINE, J. Bobbie M. appeals from an order entered following a bench trial terminating her parental rights to her daughter Bianca. She claims that the trial court erroneously exercised its discretion. We affirm.

I.

¶2 Bianca was born in October of 1994. She was removed from Bobbie M.'s home in early 1997 because of Bobbie M.'s neglect of her. Indeed, Bobbie M. was convicted of child neglect on her guilty plea in connection with that removal. Although Bobbie M. was placed on probation, her probation was revoked and she was incarcerated on July 12, 2000. She was still in the House of Correction when the petition to terminate her parental rights to Bianca was filed on January 30, 2001. She was released on March 13, 2001.

¶3 Bianca has lived with her foster mother since she was two years old. Bobbie M. testified at the bench trial that she had no face-to-face contact with Bianca from January 2000 until she was incarcerated in July of 2000. Additionally, she never spoke with Bianca from February 2000 to at least August 2000. The foster mother testified that neither she nor Bianca had *any* contact with Bobbie M. from January 2000 to July 2000. The foster mother also testified that she would adopt Bianca if Bobbie M.'s parental rights to her were terminated, and that Bianca wanted to be adopted. She also told the trial court that she had no objection to Bianca maintaining her contact with Bianca's siblings after an adoption. The social worker testified that Bianca was happy in her foster home.

¶4 The trial court found that Bobbie M. had abandoned Bianca during the period between January of 2000 and June of 2000, which, as opined by the trial court during the dispositional phase, "was a period during which [Bobbie M.] had reverted to her drug habit and had cut herself off from contact with her social worker and with the child." The trial court also found, albeit during the disposition phase, that there was no good cause for Bobbie M.'s failure to have contact with her daughter during that time. Additionally, the trial court found that

Bobbie M.'s contacts with Bianca after 1999 were essentially non-existent and that this was "egregious abandonment and egregious loss of continuity."

¶5 In deciding that Bobbie M.'s parental rights to Bianca should be terminated, the trial court noted that Bianca was seven years old at the time of the hearing, and that she had bonded with her siblings and Bobbie M. as well as with the foster mother. The trial court observed that the foster mother knows Bobbie M., and that it believed the foster mother when she testified that "she had no objection to Bianca continuing to see her birth siblings if, in fact, the adoption occurred." The trial court also found that it believed that the foster mother would, in fact, adopt Bianca if Bobbie M.'s parental rights to Bianca were terminated. It also determined that it would not be harmful to Bianca to legally sever her ties to her birth family because Bianca knows them and the foster mother indicated that the "relationships [would] continue." The trial court also opined that although it is "true because in the greater scheme of things, it's – it's very difficult to take a child away from a birth family but, on the other hand, children need permanence." Noting that Bianca had not been in Bobbie M.'s home for some four years, and that "that is a long period of time," the trial court found that Bianca "will be able to enter into a more permanent and stable family relationship as a result of this termination." Accordingly, it granted the petition.

¶6 Bobbie M.'s argument is, in its crux, a sufficiency-of-the-evidence argument—contending that "there was no evidence that the termination would not harm the child" because, contrary to the trial court's finding, termination would harm Bianca by severing her legal relationship with her siblings. Also, in an undeveloped argument that is made for the first time on appeal, Bobbie M. argues that the trial court should have considered less-drastic methods of ensuring Bianca's well-being, such as "perhaps a transfer of guardianship."

II.

¶7 The decision to terminate a person’s parental rights to a child is vested within the trial court’s discretion, provided that the statutory grounds to termination are satisfied. *Brandon S. S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993); *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855, 857 (Ct. App. 1996). We will not reverse a trial court’s discretionary decision if the trial court applied the relevant facts to the correct legal standard in a reasonable way. *Brandon S. S.*, 179 Wis. 2d at 150, 507 N.W.2d at 107 (“The exercise of discretion requires a rational thought process based on examination of the facts and application of the relevant law.”). We review *de novo* whether the trial court has applied the correct legal standard. *Kerkvliet v. Kerkvliet*, 166 Wis. 2d 930, 938–939, 480 N.W.2d 823, 826 (Ct. App. 1992). The trial court’s findings of fact, however, may not be disregarded by us unless those findings are “clearly erroneous.” See WIS. STAT. RULE 805.17(2).

¶8 The prevailing factor that a trial court must consider in deciding whether to terminate parental rights is whether it is in the “best interests of the child.” WIS. STAT. § 48.426(2); *State v. Margaret H.*, 2000 WI 42, ¶¶33–34, 234 Wis. 2d 606, 622, 610 N.W.2d 475, 482. WISCONSIN STAT. § 48.426(3) provides:

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.

Here, as noted, Bobbie M. disputes whether the trial court properly evaluated the effect on Bianca of severing Bianca's legal ties to her siblings. Section 48.426(3)(c) "requires courts to assess the harmful effect of this legal severance on the emotional and psychological attachments the child has formed with his or her birth family," and "examine the probability" that a foster family's promise to help the child maintain informal ties to the birth family will be fulfilled. *Margaret H.*, 2000 WI 42 at ¶¶26, 30. This the trial court here did. Thus, although Bobbie M. may disagree with the trial court's factual findings, she has not shown that any are not supported by evidence in the record. Additionally, Bobbie M. has not established that the trial court did not consider the factors appropriate to its discretionary determination that it was in Bianca's best interests to terminate Bobbie M.'s parental rights to her. Accordingly, Bobbie M. has not demonstrated that the trial court erroneously exercised its discretion. *See Margaret H.*, 2000 WI 42 at ¶35 (record before trial court "should reflect adequate

consideration of and weight to each factor” pertinent to whether a termination of parental rights is in the child’s best interests).¹

By the Court.—Order affirmed.

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

¹ As noted in the main body of this opinion, Bobbie M. argues for the first time on this appeal that the trial court should have considered alternative means of serving Bianca’s best interests other than termination of Bobbie M.’s parental rights. Ordinarily, we do not consider arguments raised for the first time on appeal, see *Wirth v. Ehly*, 93 Wis. 2d 433, 443–444, 287 N.W.2d 140, 145–146 (1980), and will not do so here because the argument is, as also noted, undeveloped, see *Barakat v. Department of Health & Soc. Servs.*, 191 Wis. 2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (appellate court need not consider “amorphous and insufficiently developed” arguments).

