COURT OF APPEALS
DECISION
DATED AND FILED

February 19, 2003

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 Nos. 02-3285 & 02-3286 **Cir. Ct. Nos. 01 TP 97 & 01 TP 98**

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

NO. 02-3285
CIR. CT. NO. 01 TP 97

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARIKA W.,

RESPONDENT-APPELLANT.

NO. 02-3286
CIR. CT. NO. 01 TP 98

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MARIKA W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

¶1 FINE, J. Marika W. appeals from an order terminating her parental rights to Brittany and Tiffany.[1] Brittany and Tiffany are twins and were eight years old when the order terminating Marika W.'s parental rights was entered. We affirm.

I.

¶2 Marika W. has a long and sad history of mental illness. Ultimately, Marika W. stipulated to the grounds alleged by the State in its petition to terminate her rights to Brittany and Tiffany, namely that Marika W. failed to assume her parental responsibilities in connection with the children, *see* WIS. STAT. § 48.415(6), and that they were in continuing need of protection or services, *see* WIS. STAT. § 48.415(2). Despite some question as to whether Marika W. was competent at the hearing when the trial court accepted her stipulation, the trial court found that she was competent, and that finding was supported by a report

[1] Marika W.'s notice of appeal erroneously represents that this is not an appeal under WIS. STAT. § 752.31(2). It is. Marika W.'s notice of appeal also erroneously represents that this appeal is not to be given preference. *See* WIS. STAT. RULE 809.10(b)4. It is. *See* WIS. STAT. § 48.43(6) & WIS. STAT. RULE 809.107(6)(e). Counsel for Marika W. is admonished to be more attentive to the papers that she files with this court than she was in this case.

filed with the trial court by a clinical psychologist, and, also, by statements to the trial court by Marika W.'s lawyer and her guardian *ad litem*.

¶3 Marika W. does not challenge either the trial court's finding that she was competent to stipulate to the State's petition to terminate her parental rights or the validity of that stipulation. Rather, she contends that she was not competent when the trial court determined that it would be in the best interests of the children to terminate her parental rights.

¶4 The trial court went ahead with the dispositional hearing even though: Marika W. was then in a mental hospital, her lawyer indicated that he was unable to communicate with her because of her mental illness, and her guardian *ad litem* said flatly that Marika W. was "not competent." Marika W. argues that the trial court should have postponed the dispositional hearing until she was competent. This presents an issue of law that we review *de novo* but with deference to the trial court's observations because the issue is intertwined with matters uniquely within the trial court's ken (it presided over the earlier hearing at which Marika W.'s competency was fully explored and during which she stipulated to the facts alleged in the State's petition). *See* ***Ballenger v. Door County***, 131 Wis. 2d 422, 427, 388 N.W.2d 624, 628 (Ct. App. 1986).

II.

¶5 Termination of a person's parental rights to his or her children is a grave and serious matter. ***Stanley v. Illinois***, 405 U.S. 645, 651 (1972). Once, however, a birth-parent has "acted in a way that is inconsistent with core parental responsibilities, necessitating governmental intervention so that the child is no longer under the birth-parent's control, there is no constitutional hurdle to determining the child's future by what is in his or her best interests." ***Richard***

D. v. Rebecca G., 228 Wis. 2d 658, 664, 599 N.W.2d 90, 93 (Ct. App. 1999). Stated another way, once the grounds to terminate are proven (and here, as noted, Marika W. stipulated to them), the guiding "polestar" of whether to terminate parental rights is the children's best interests. ***Sheboygan County D.H.S.S. v. Julie A.B.***, 2002 WI 95, ¶¶4, 21, 37, 255 Wis. 2d 170, 176, 183, 190, 648 N.W.2d 402, 404, 408, 411 (applying WIS. STAT. § 48.01(1): "the best interests of the child ... shall always be of paramount consideration"). Simply put, the birth-parent's desires or what may be in the birth-parent's best interests are not material, although they may be relevant to whether grounds for termination exist and, if so, whether termination is in the best interests of the children. *See* ***id.***, 2002 WI 95 at ¶¶38, 42, 255 Wis. 2d at 190–191, 192–193, 648 N.W.2d at 411–412, 412–413.[2]

¶6 Given the paramount nature of the children's best interests, a circuit court must not put on the back burner those best interests merely because a birth-parent may be either physically or mentally unable to participate in a termination-of-parental-rights proceeding. Indeed, the statute specifically recognizes that the parental rights of an incompetent parent may be terminated. WIS. STAT. § 48.41(3). The trial court articulated eloquently the overriding best-interests-of-the-children rationale:

> Here in a termination proceeding the focus is on the rights and the well-being, the best interest of the child. While the parent is having problems, obviously mom is, this is a tragic case in many respects, but these children are going on with their lives. It isn't as if we can put their lives on hold until [Marika W.] would get herself together. From what I have heard here, it is doubtful that she will be able to ever get herself together to act as the parent. In the

[2] Marika W. thus misapprehends the law when she asserts in her main brief on this appeal that her guardian *ad litem* was "not able to argue on behalf of her [Marika W.'s] best interests because of his inability to meaningfully communicate with her."

> meantime the clock is ticking. These girls are maturing. They are growing toward adulthood. They need care. They need a nurturing home. Having all that in mind has prompted the Court to proceed here nonetheless in spite of the sad condition that is presented here by mom.

¶7 We agree. There was no error.

By the Court — Order affirmed.

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