

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 25, 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. 03-2351
03-2352
03-2353
03-2354**

**Cir. Ct. Nos. 02TP000126
02TP000320
02TP000321
02TP000322**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

NO. 03-2351
CIR. CT. NO. 02TP000126

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TECIA D.B.,

RESPONDENT-APPELLANT.

NO. 03-2352
CIR. CT. NO. 02TP000320

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TECIA D.B.,

RESPONDENT-APPELLANT.

NO. 03-2353

CIR. CT. NO. 02TP000321

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TECIA D.B.,

RESPONDENT-APPELLANT.

NO. 03-2354

CIR. CT. NO. 02TP000322

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TECIA D.B.,

RESPONDENT-APPELLANT.

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

¶1 SCHUDSON, J.¹ Tecia D.B. appeals from the circuit court orders terminating her parental rights to Jeremy B., Nyocha B., Hydia B., and Aswad B. Tecia argues that the circuit court, having acknowledged that the foster parents had tried to subvert her reunification with her children, erroneously exercised discretion in terminating her parental rights. She maintains that the “concept of best interests [of the child] must be able to recognize that it is in the children’s best interests that their parent be given a fair opportunity to succeed [before parental rights may be terminated].” This court affirms.

I. BACKGROUND

¶2 On May 2, 2002, the State filed an amended petition requesting the termination of Tecia’s parental rights to Jeremy, Nyocha, Hydia and Aswad, and alleging that: (1) Tecia had failed to assume parental responsibility for the children, under WIS. STAT. § 48.415(6); (2) she had abandoned the children, under § 48.415(1)(a)(2); and (3) the children continued to be in need of the protection and services of the court, under § 48.415(5). Tecia requested a court trial and, on January 23, 2003, the court found that all four children continued to be in need of the protection and services of the court, and that Tecia had abandoned her children.²

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

² The court did not, however, find that Tecia had failed to assume parental responsibility for her children; therefore, it dismissed that claim.

¶3 Evidence at the court trial established that Tecia and her children have had a long history of need of assistance. In December 1996, the four children were removed from Tecia's home due to neglect. At the time of their removal, the children were living in a filthy, rodent and bug-infested apartment. Soiled clothing, dirty diapers, and uneaten food were all over the home. Social workers testified that following the children's removal, Tecia did not meet the conditions for her children's return, failing to: (1) find appropriate housing; (2) demonstrate the ability to manage a household; (3) comply with visitation requirements; and (4) maintain contact with the Bureau of Milwaukee Child Welfare. Although trial evidence supported Tecia's claim that she had experienced difficulties visiting her children at their foster homes due to animosity between the respective foster parents and her, other evidence established that Tecia's own failures had caused or contributed to her sporadic visitation.

¶4 Dawn Richardson, the social worker assigned to Tecia's case in September 1997, testified that Tecia's visits with her children were originally scheduled to take place at Tecia's home, but that arrangement had to stop because Tecia failed to maintain a safe and appropriate residence. Thereafter, Tecia was supposed to visit her children at the homes of the foster parents who, at that time, were open to facilitating the visits. Richardson testified that the foster parents soon complained that Tecia was not visiting her children on a regular basis.

¶5 Tiffany Kneeland, the social worker assigned to Tecia's case in the spring of 1998, testified that she had tried to set up supervised visitation for Tecia and the children but was unable to do so because Tecia had failed to obtain a Tuberculosis test, which was a prerequisite to visitation. She also noted that, for extended periods of time, Tecia failed to contact the Bureau. She testified that

when she located Tecia, her residence was filthy, with dirty clothing and garbage on the floor, and had no working refrigerator.

¶6 Case manager Chandra Mayne testified that tension increased between Tecia and the foster parents, culminating in a June 27, 2001 fight. According to the notes of Audrey Lewis, the social worker then assigned to the case, shortly after the fight, Tecia requested that her children be removed from the foster homes, but her request was denied. After the June 27, 2001 incident, however, the Bureau arranged supervised visits for Tecia. Mayne testified that between August 8, 2001 and March 27, 2002, Tecia did not request any visits with her children. In addition, after the August 8 visit, Tecia only contacted Lewis to apprise her of housing and contact information. According to Mayne, Lewis tried to conduct a home visit with Tecia on July 10, 2002, but Tecia was not available, and although a message was left for her, Tecia did not return Lewis' call or contact her.

¶7 Trial evidence also showed that Tecia's cognitive disabilities greatly affected her ability to parent. Dr. Kenneth Sherry testified that Tecia was mildly retarded and opined that Tecia's "cognitive limitations gave rise to a variety of concerns about her ability to manage ... a family independently."

¶8 The trial court found that Tecia had no good cause for failing to visit her children. In addition, the court found that Tecia had failed to demonstrate an ability to competently manage a household such that it would be suitable and safe for her children. The court also concluded that Tecia would not meet the conditions for return within the next twelve months.

¶9 At the March 12, 2003 dispositional hearing, evidence established that termination of Tecia’s parental rights was in the best interests of the children. Although case worker Mayne was somewhat sympathetic to Tecia’s situation and testified to the difficulties she (Mayne) had experienced with one of the foster mothers, including the foster mother’s refusal to cooperate with home visits, Mayne acknowledged that the foster mother has been approved as an adoptive resource, and that neither of the “adoption workers [has] indicated any problems [with] either [foster parent].” She also acknowledged that Tecia was not ready for the children’s return and that her six-year separation from them would be detrimental to facilitating their return. In addition, evidence established that adoptive resources had been identified and that the children appeared to be in loving and nurturing environments. Consequently, at the conclusion of the dispositional hearing, the court found that termination of Tecia’s parental rights was in the children’s best interests.

II. ANALYSIS

¶10 Whether a trial court has applied the proper legal standards governing termination of parental rights is a legal issue subject to *de novo* review. See *State v. Patricia A.P.*, 195 Wis. 2d 855, 862-63, 537 N.W.2d 47 (Ct. App. 1995). Notwithstanding a finding of statutory grounds for termination of parental rights, a juvenile court still must exercise discretion to determine whether parental rights should be terminated. See *Rock County DSS v. C.D.K.*, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). “The exercise of discretion requires a rational thought process based on examination of the facts and application of the relevant law.” *David S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993). This court will not overturn a juvenile court’s decision to terminate

parental rights absent an erroneous exercise of discretion. *Jerry M. v. Dennis L.M.*, 198 Wis. 2d 10, 21, 542 N.W.2d 162 (Ct. App. 1995). This court will not reverse a court’s discretionary decision unless the record shows that it failed to exercise discretion, the facts fail to support the court’s decision, or the court applied the wrong legal standard. See *Oostburg State Bank v. United Sav. & Loan Ass’n*, 130 Wis. 2d 4, 11-12, 386 N.W.2d 53 (1986).

¶11 In determining whether termination is appropriate, the circuit court shall consider any report submitted by an agency under WIS. STAT. § 48.425, and it shall consider, but not be limited to, the six factors set forth in WIS. STAT. § 48.426(3):

- (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.

“The court should explain the basis for its disposition, on the record, by alluding specifically to the factors in WIS. STAT. § 48.426(3) and any other factors that it relies upon in reaching its decision.” *Sheboygan County DHSS v. Julie A.B.*, 2002 WI 95, ¶30, 255 Wis. 2d 170, 648 N.W.2d 402. Further, “[i]n every case the factors considered must be calibrated to the prevailing [best-interests-of-the-child] standard.” *Id.*

¶12 Tecia does not challenge the court's finding as to each factor, but instead contends that the foster parents' actions prevented her from reunifying with her children. She implies that fairness requires that she be given another opportunity to meet the conditions for the children's return. This court is not persuaded; the record clearly establishes that the trial court took that factor, along with many others, into consideration before terminating Tecia's parental rights.

¶13 After examining the required reports and holding the required dispositional hearing, the court explained:

I have already concluded that to some greater or lesser extent, Gala and Keshia [, the respective foster parents,] did consciously hinder attempts on the part of Tecia to meet the conditions of return, and, in that, my sense of fairness is offended....

The concerns noted above prevent my knowing all that I would like to know. However, the facts I do know lead to one immutable conclusion. Termination and adoption is the best available option for these children[.]

¶14 The court then elaborated the basis for its decision and, alluding to each of the WIS. STAT. § 48.426(3) criteria, noted that Tecia "cannot independently and appropriately care for herself, much less her children." The record supports this conclusion. Clearly, Tecia's cognitive disability renders her incapable of providing a safe, stable and appropriate home for her children. As the court aptly observed:

We could put an army of service providers in the home and I would still not anticipate safe and permanent reunification. In truth, there are far too many intrinsic barriers for Tecia to safely and appropriately parent the children. In that respect, in an ultimate fairness analysis, whatever subversive efforts were engaged in by Gala and Keshia, they had no effect on the final outcome.

¶15 This court agrees. Although Tecia’s circumstances are sympathetic, and although her frustration with what the trial court termed the foster parents’ “conscious[] hinder[ing]” of her efforts is understandable, the record supports the court’s decision to terminate Tecia’s parental rights to Jeremy, Nyocha, Hydia, and Aswad.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

