COURT OF APPEALS
DECISION
DATED AND FILED

August 9, 2011

A. John Voelker
Acting 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. 2010AP1138 **Cir. Ct. No. 2008JG501A**

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

IN THE MATTER OF THE GUARDIANSHIP OF CAMERON S.:

STATE OF WISCONSIN,

RESPONDENT-RESPONDENT,

V.

ELLIS S.,

PETITIONER-APPELLANT.

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

¶1 CURLEY, P.J.[1] Ellis S. appeals the trial court's order denying her petition for guardianship of her grandson, Cameron S.[2] Ellis S. takes issue with

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

many of the trial court's findings, and argues that the trial court erroneously exercised its discretion in denying her petition. This court rejects Ellis S.'s numerous arguments regarding the trial court's findings and concludes the trial court did not erroneously exercise its discretion. This court affirms the trial court's order.

I. BACKGROUND.

¶2 Ellis S.'s grandson Cameron S. was born on May 5, 2003, to Ellis S.'s daughter Cherelle S. Cameron S.'s father remains unknown. For the first two years of his life, Cameron S. lived with Cherelle S. and his younger sister, Carmen S., who was born April 5, 2005. Both Cameron S. and Carmen S. were placed in different homes away from their mother in 2005 after it was determined that Carmen S. had suffered numerous limb fractures while in her mother's care. Carmen S. was placed with a non-relative foster parent while Cameron S. remained with Donetta S., his maternal aunt.

¶3 In an effort to keep the siblings together, Cameron S. and Carmen S. were placed with Ellis S. in early 2006. While the children were in Ellis S.'s care, Cherelle S. gained prohibited access to them, and Carmen S. suffered a skull fracture at the hands of her mother and uncle as a result of their fighting over her in a violent tug of war. Carmen S. was consequently moved to non-relative foster care, and, after a period of time, Cameron S. was again placed with Donetta S.

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[2] In her notice of appeal, Ellis S. claims that she is also appealing from the trial court's denial of her motion for reconsideration. Although the transcript of the motion hearing is in the record, there is no written order denying the motion. An appeal of this sort requires a written order. *See* WIS. STAT. § 808.03(1); *see also* ***Ramsthal Adver. Agency v. Energy Miser, Inc.***, 90 Wis. 2d 74, 75, 279 N.W.2d 491 (Ct. App. 1979) ("An order, to be appealable, must be in writing and filed.").

¶4 Although one of the terms of the subsequent placement with Donetta S. was that Cameron S. was not to have any contact with Ellis S., Ellis S. was in fact never out of contact with Cameron S. Cameron S. was therefore once again removed from Donetta S.'s care.

¶5 On August 29, 2008, during the pendency of the termination of parental rights case involving Cameron S. and Carmen S., Ellis S. filed a petition for permanent guardianship of Cameron S. In the portion of the petition where Ellis S. was instructed to indicate the reason that Cameron "needs a guardian," the answer given was "mother wrongly accused of abusing her daughter."

¶6 By letter decision filed October 19, 2009, the parental rights of Cherelle S. and all fathers were terminated regarding Cameron S. and Carmen S. In that same letter, the trial court indicated its intent to grant guardianship of Cameron S. to Ellis S. The trial court chose Ellis S. as a potential guardian because there was no other identified adoptive resource, because Cameron had a significant relationship with his maternal relatives, and because, being slightly older than his sister, Cameron S. was "perhaps[] capable of some nominally higher level of self protection" from the abuse his younger sister suffered. The court further explained, "[t]oo often, choices for this system's children involve 'the lesser of two evils.' This may be so for Cameron [S.]" The trial court noted that it had serious reservations about Ellis S. as a guardian, including Ellis S.'s financial ability to care for Cameron S., and—more importantly—that, "she has earned the significant distrust of this court regarding her ability and willingness to abide [by] court orders necessary for the protection of Cameron [S.]"

¶7 In light of these reservations, the trial court tolled the limits under WIS. STAT. § 48.427(1) as they related to the disposition of Cameron S. It was

determined that Ellis S. was willing to undergo a foster care licensing home study to allay the trial court's concerns, and that she would begin unsupervised visitation with Cameron S. The matter was then set for further review on January 6, 2010.

¶8 On January 4, 2010, the State filed a letter setting forth numerous concerns regarding Ellis S.'s ability to properly care for Cameron S. Those concerns included the following: (1) Ellis S. had allowed Cameron S. to have contact with a prohibited family member, namely, Chaunsey W., a teenage cousin who had a record of inappropriate sexual behavior in front of others; (2) Ellis S. allowed Cameron S. to have contact with at least two other unauthorized individuals, including a boyfriend who had unfettered access to her house and whose existence Ellis S. had actively tried to conceal from BMCW[3] personnel; (3) Ellis S. repeatedly forgot to administer Cameron S.'s medications; (4) Cameron S.'s behavior at school had deteriorated since he began spending weekends with Ellis S.; and (5) Ellis S. had picked Cameron S. up from school on December 21, 2009 without permission and without notifying his foster parent, who was scheduled to pick him up that day and who was unable to determine Cameron S.'s whereabouts after school.

¶9 Consequently, the matter was set for a contested guardianship hearing on January 29, 2010.

¶10 At the hearing, family foster and adoption services specialist Jessica Partlow testified that regarding Cameron S.'s unauthorized contact with his cousin Chaunsey W., Ellis S. did not appear to have an understanding of the type of

[3] "BMCW" is an acronym standing for the "Bureau of Milwaukee Child Welfare."

danger that someone with Chaunsey W.'s past could present to Cameron S. According to Partlow, Ellis S. told her that she planned on reuniting her family—i.e., keeping Cameron S. and Chaunsey W. together once she was awarded guardianship—because she knew "in her heart" that Chaunsey W. could never hurt Cameron S. Ellis S. also said that because Chaunsey W. had inappropriately exposed himself to a female, that Cameron S. was not in any danger because Cameron S. was male. Furthermore, Ellis S. testified that she knew "for a fact" that nothing inappropriate had occurred between Chaunsey W. and Cameron S. because the unauthorized contact was only for "[t]hree weeks, you don't think I know what's going on in my home, within a three-week time span?"

¶11 Also at the hearing, Jenell Loreck, a supervisor at the Children Service Society, testified that Ellis S. allowed her son, who was not an authorized caregiver, to watch Cameron S., and that Ellis S. provided inconsistent statements regarding who watched Cameron S. at the time in question. Additionally, Ellis S. initially refused to reveal the name of her boyfriend, who had unfettered access to her home—the home that she planned to have Cameron S. live in. Ellis S. indicated to specialist Partlow that she never planned to reveal her boyfriend's existence. Ellis S. also told Partlow that the only mistake that she and her boyfriend made was that he showed up when Partlow was there.

¶12 At the hearing, Ellis S. also admitted that she had forgotten to give Cameron S. his medication on occasion.

¶13 In addition, Steve Gardner, Cameron S.'s treatment foster care worker, testified that Cameron S.'s school behavior had diminished considerably since he began weekend visits with Ellis S. in November 2009. Cameron S.'s teacher advised Mr. Gardner that after the weekend visits began in November

2009, he would be "pretty bad" in school on Monday and Tuesday, better on Wednesday, and then would "decrease again" on Thursday and Friday.

¶14 Gardner also testified that when Ellis S. picked up Cameron S. on December 21, 2009, she did not follow procedure for signing him out and his foster parent did not know that he would not be coming to her home as expected. Consequently, Cameron S.'s whereabouts immediately after school were unknown. Moreover, Ellis S. did not take Cameron S. to his scheduled therapy appointment on December 21, 2009, and Cameron S. was without his prescribed medication from December 21, 2009 to December 23, 2009, when a BMCW supervisor arranged for it to be delivered to her office for Ellis S. to pick up. Ellis S. had never asked about the medication.

¶15 Gardner and Loreck further testified that Ellis S. failed to timely enroll Cameron S. in the after-school program necessary to allow her to pick up Cameron S. late on Fridays.

¶16 The trial court ultimately denied Ellis S.'s petition for guardianship of Cameron S. Ellis S. filed a motion for reconsideration, which was denied, as well as a new petition for guardianship, which was also denied. Ellis S. now appeals.

II. ANALYSIS.

Standard of Review

¶17 The standard in deciding whether a petition for appointment of a guardian for a minor child should be granted is the best interests of the child. WIS. STAT. § 54.15(1); ***Winnebago Cnty. DSS v. Harold W.***, 215 Wis. 2d 523, 528, 573 N.W.2d 207 (Ct. App. 1997). Deciding whether a petition for guardianship is to

be granted is a discretionary decision of the trial court. ***Anna S. v. Diana M.***, 2004 WI App 45, ¶7, 270 Wis. 2d 411, 678 N.W.2d 285.

¶18 This court will not reverse a trial court's discretionary decision unless the trial court erroneously exercised its discretion. *See* ***Schultz v. Darlington Mut. Ins. Co.,*** 181 Wis. 2d 646, 656, 511 N.W.2d 879 (1994). A trial court acts within its discretion when it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach. ***Anna S.***, 270 Wis. 2d 411, ¶7. On the other hand, a court erroneously exercises its discretion if it misapplies or misinterprets the law, ***Midwest Developers v. Goma Corp.***, 121 Wis. 2d 632, 650, 360 N.W.2d 554 (Ct. App. 1984), or if it does not rely on facts in the record, ***Dowd v. Dowd***, 167 Wis. 2d 409, 416, 481 N.W.2d 504 (Ct. App. 1992). While findings of fact will not be upset on appeal unless they are clearly erroneous, *see* WIS. STAT. § 805.17(2), whether discretion was erroneously exercised is a question of law that this court reviews *de novo*, ***Anna S.***, 270 Wis. 2d 411, ¶7.

The trial court did not erroneously exercise its discretion by denying Ellis S.'s guardianship petition.

¶19 On appeal, Ellis S. advances numerous arguments in support of her contention that the trial court erroneously exercised its discretion in denying her petition for guardianship. In essence, her various arguments boil down to a single point; according to Ellis S., the trial court effectively granted her guardianship as of October 2009, and then, without significant evidence beyond what it already knew in October 2009, the court inappropriately changed its mind in February 2010.

¶20 Ellis S.'s first argument is a non-starter. She argues that because the trial court did not *sua sponte* request a hearing at the January 6, 2010 hearing to determine whether the allegations of the January 4, 2010 letter sent by the district attorney were true, that the allegations in the letter—even if proven true—would not sufficiently justify denying Ellis S. guardianship of Cameron S. This argument in no way suggests an erroneous exercise of discretion as to the trial court's determination of guardianship based on the facts actually in the record; nor is there any sufficiently developed allegation of procedural error. This court therefore need not consider Ellis S.'s first argument. *See* ***State v. McMorris***, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 (Court of Appeals "may choose not to consider arguments unsupported by references to legal authority, arguments that do not reflect any legal reasoning, and arguments that lack proper citations to the record.").

¶21 Ellis S.'s second argument is also without merit. Ellis S. takes issue with the trial court's finding that it was overwhelmingly convinced that Ellis S. could not and would not comprehend the significance of the threat that Chaunsey W. represented and could not be relied upon to enforce the court-ordered limitation in that regard. According to Ellis S., the trial court made no findings of fact to support this conclusion, and that conclusion was a "total departure" from its October decision, where it made no reference to Chaunsey W. Ellis S. similarly argues there is no testimony or findings that support the trial court's conclusion that Chaunsey W. very likely victimized Cameron S.

¶22 Ellis S.'s argument is without merit because her characterization of the trial court's findings and the record here are incorrect. Plenty of evidence was

adduced at the hearing to support the trial court's finding that Ellis S. "does not[,] cannot[,] and will not comprehend the significance of the threat that Chaun[s]ey[4] represents to the safety of [Cameron S.]." *See* ***Harold W.***, 215 Wis. 2d at 528; *see also* ***Anna S.***, 270 Wis. 2d 411, ¶7. Partlow testified that Ellis S. told her that she planned on reuniting her family—i.e., keeping Cameron S. and Chaunsey together, despite the fact that the court prohibited contact between them—once she was awarded guardianship because she knew "in her heart" that Chaunsey could never hurt Cameron S. Ellis S. also said that because Chaunsey had inappropriately exposed himself to a female, Cameron S. was not in any danger because Cameron S. was male. Furthermore, Ellis S. testified that she knew "for a fact" that nothing inappropriate had occurred between Chaunsey and Cameron S. because the unauthorized contact was only for "[t]hree weeks, you don't think I know what's going on in my home, within a three-week time span?" And yet, as the trial court noted in October 2009, Ellis S. had every reason not to allow Chaunsey W. and Cameron S. to come into contact, as Cameron S. had already exhibited the same troubling behaviors as his older cousin.

¶23 Similarly, Ellis S.'s third argument mischaracterizes the record. Ellis S. argues that the trial court erred in referencing events that the court already knew about prior to its October 2009 decision—for example, the fact that Cameron S.'s sister suffered three limb fractures before she was four months old, the tug of war between her mother and uncle that led to her skull fracture, that Ellis S. was not forthcoming in the investigation of this incident, and the fact that Ellis S. provided care to Cameron S. despite court restrictions. In other words,

[4] The parties and the trial court use a variety of spellings when referring to Cameron S.'s cousin. This court uses the spelling that his cousin himself uses, "Chaunsey."

Ellis S. argues that because the trial court knew about the skeletons in her closet beforehand and "already made findings" about these matters, they cannot justify the court's February 2010 decision.

¶24 Contrary to what Ellis S. argues, the trial court did *not* award guardianship in October 2009, even if it was strongly considering doing so. Rather, the trial court, for all of the reasons Ellis S. highlights above, was in fact very concerned about awarding guardianship to Ellis S. in October 2009. The trial court explained at that time that Ellis S. had not been honest with the Court and that her dishonesty and inability and/or unwillingness to follow the rules was a real concern in a family where the potential for danger was so great should Cameron S. come into contact with the wrong individuals. Moreover, as the hearing evidence demonstrates, Ellis S. embodied the trial court's concerns several times between October 2009 and January 2010 when she, among other things, lied about her boyfriend, flippantly disregarded the threat that Chaunsey W. posed to Cameron S., and picked up Cameron S. from school when she was not authorized to do so without notifying his foster parent. Furthermore, Ellis S. points to no authority to support her argument that the trial court should not have considered what it knew in October 2009 in conjunction with what it learned in January 2010. *See* ***McMorris***, 306 Wis. 2d 79, ¶30. Therefore, this court concludes that Ellis S.'s third argument is without merit.

¶25 Ellis S.'s fourth argument is also meritless. Ellis S. argues that because the BMCW made no motion to terminate Ellis S.'s contact with Cameron S. after it discovered that she had a secret boyfriend, the trial court erred in considering this information. Ellis S. provides no legal basis for such an argument; and this court will not develop it for her. *See* ***id.***

¶26 This court is also not persuaded by Ellis's fifth argument, in which she argues that the trial court erred in denying the guardianship petition partly on the basis that Ellis S. had allowed her son—who was a convicted felon—to care for Cameron S. when only Donetta S. was authorized as a substitute caregiver. Ellis S. contends that although Ellis S.'s son was not authorized to babysit Cameron S., no testimony was presented that he was actually a threat or a danger to Cameron S., or that he was not capable of babysitting him, and he only watched him one time. While this fact may be trivial to Ellis S., she does not quibble with the fact that she did allow an unauthorized caregiver to watch Cameron S., a fact that no doubt led to the trial court's growing distrust of Ellis S. Because this finding is supported by the record and because it is one of many instances evincing Ellis S.'s unfitness as a guardian and also that her guardianship is not in Cameron S.'s best interest, this court concludes that the trial court did not erroneously exercise its discretion. *See* ***Harold W.***, 215 Wis. 2d at 528; *see also* ***Anna S.***, 270 Wis. 2d 411, ¶7.

¶27 Ellis S.'s sixth argument is also without merit. Ellis S. argues that the trial court erred in finding that Ellis S. taking Cameron S. out of school without following procedure was a problem because, according to her, everyone knew that Ellis S. would be taking Cameron S. for Christmas, and because this was an isolated incident. Ellis S.'s arguments are simply not substantiated by the record. In fact, the record demonstrates that Cameron S.'s whereabouts were unknown after school on December 21, 2009, and that he was also without his prescribed medication until BMCW staff brought them to Ellis S. on December 23. And, with regard to Ellis S.'s disregard for the rules, this was *not*, as the evidence cited above so clearly shows, an isolated incident. The trial court's

finding was supported by credible evidence in the record, and it did not erroneously exercise its discretion. *See* ***id.***

¶28 Finally, this court is also not persuaded by Ellis S.'s seventh and final argument, in which she argues that the trial court erred in finding that she was "in all likelihood" driving Cameron S. around while not legally licensed to drive. Ellis S. points to social worker Hilary Wilke's testimony that another social worker, Miss Hampton, told Wilke that Ellis dropped off Cameron at her (Hampton's) home on a day that Cameron did not have school; Ellis also points to Wilke's testimony that Hampton told her that she saw Ellis driving that day. Ellis argues that this was inadmissible hearsay testimony that the trial court should not have considered, and Ellis S. would have objected to it if she had not been *pro se*. Additionally, Ellis S. notes that she disputed the hearsay testimony, as she testified that she did not drive Cameron S. on the day in question. Ellis S. further argues that the testimony was not that convincing because the trial court used the words, "in all likelihood," and did not say that for certain Ellis S. was driving.

¶29 This argument is yet another non-starter. The trial court did not err in considering testimony that Ellis S. again broke the rules even if it was hearsay, because Ellis S. did not object to it. The trial court was not required to advocate on Ellis S.'s behalf, even if she did appear *pro se* at the hearing. *See* ***Waushara Cnty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (*Pro se* litigants "are bound by the same rules that apply to attorneys" … [w]hile some leniency may be allowed, neither a trial court nor a reviewing court has a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law.").

¶30 In sum, the only conclusion that this court can draw is that each of the trial court's numerous findings in this case was in fact supported by credible evidence in the record. *See* ***Anna S.***, 270 Wis. 2d 411, ¶7; *see also* ***Dowd***, 167 Wis. 2d at 416. The picture that emerges given the facts in the record and those findings is very troubling. As of October, 2009, the trial court has serious misgivings about whether awarding Ellis S. guardianship for Cameron S. was in his best interest; by the end of January 2010, it had no doubt that guardianship was not in Cameron's best interest. Ellis S. allowed Cameron S. contact with Chaunsey W., who had a record of inappropriate sexual behavior, and then flippantly disregarded the threat that Chaunsey W. posed to Cameron S. She allowed Cameron S. contact with at least two other unauthorized individuals, including a boyfriend who freely entered her house and whose existence Ellis S. had actively tried to conceal. She forgot to administer Cameron S.'s medications, and Cameron S.'s behavior at school had deteriorated since he began spending weekends with her. Ellis S. also picked Cameron S. up from school without permission and without notifying his foster parent. These actions proved Ellis S. to be incapable and/or unwilling to play by the rules the trial court had set for her and the family—rules that were meant to protect Cameron S. from numerous dangers and allow for his healthy development. Because Ellis S. could not or would not follow those rules on numerous occasions, she was not a fit guardian, guardianship was not in Cameron S.'s best interest, and therefore the trial court did not erroneously exercise its discretion in denying Ellis S.'s guardianship petition.

By the Court.—Order affirmed.

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