

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 24, 2004

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. 03-3160
03-3161
STATE OF WISCONSIN**

**Cir. Ct. Nos. 02TP000581
02TP000582**

**IN COURT OF APPEALS
DISTRICT I**

**NO. 03-3160
CIR CT. NO. 02TP000581**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DIANE F.,

RESPONDENT-APPELLANT.

**NO. 03-3161
CIR. CT. NO. 02TP000582**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DIANE F.,

RESPONDENT-APPELLANT.

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

¶1 WEDEMEYER, P.J.¹ Diane F. appeals from orders terminating her parental rights to Joanne F., born April 1, 1993, and Deeshawn F., born September 25, 1999. Diane claims the Bureau of Milwaukee Child Welfare failed to make reasonable efforts to help her comply with conditions for the return of the children and that the trial court erroneously exercised its discretion in ruling that termination was in the best interests of the children. Because the trial court's finding that the Bureau made reasonable efforts with respect to Diane is not clearly erroneous, and because the trial court's decision terminating Diane's parental rights did not constitute an erroneous exercise of discretion, this court affirms.

I. BACKGROUND

¶2 On August 14, 1999, Joanne was found to be a child in need of protection or services. The reason for the removal was that Joanne had been left with a neighbor of Diane's ex-boyfriend for approximately six weeks following an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

eviction from Diane's home. During this time, Diane's whereabouts were not known.

¶3 Deeshawn was detained at the hospital following his birth and placed in a foster home two days later. The reason for his detention was that Diane tested positive for cocaine when Deeshawn was born. Diane admitted having used cocaine two weeks before he was born.

¶4 During the next three years, Diane made a variety of attempts to satisfy conditions for the return of her children, including psychological evaluation, therapy and drug screens. Her compliance and recovery, however, were sporadic and inconsistent. Accordingly, on August 1, 2002, the State filed a petition seeking to terminate her parental rights.² Grounds asserted in the petition were the children's continuing need for protection or services, and failure to assume parental responsibility. Specifically, the petition alleged:

[Diane] has failed to meet the conditions established for the return of the children to the home. Specifically:

- a. The mother has failed to consistently cooperate with Bureau workers. She has been described as "hostile" and exhibiting "irrational behavior[.]" She has "frequently been abusive with the previous worker[.]"
- b. [Diane] has failed to demonstrate that she has established and/or maintained a home suitable to care for her children. As of this spring, she has again been evicted from her home for non-payment of rent.
- c. The mother has not consistently maintained contact with or visited her children. Most recently, she had not seen her children for several weeks, having missed a

² The petition also sought to terminate the fathers' parental rights. Neither father appealed the decision to terminate.

number of scheduled visits without explanation or excuse.

- d. Although she previously cooperated with psychiatric treatment through The Milwaukee Women's Center; currently, upon information and belief, she is not complying with treatment.
- e. In the past year, the mother had not participated in urine analysis to document sobriety in more than ten months, finding excuses to avoid participating in AODA programming.
- f. The mother has not attended any appointments on behalf of or in regard to her children, nor demonstrated the ability to meet their physical and emotional needs in any other way.

¶5 Diane contested the petition and the matter was set for a trial to the court. On February 27, 2003, the trial court found that the State met its burden in showing that grounds existed to terminate Diane's parental rights. The dispositional hearing occurred on March 19-20, 2003. After considering the factors outlined in WIS. STAT. § 48.426(3) (2001-02),³ the trial court found that it was in the best interests of both children to terminate Diane's parental rights. Orders were entered to that effect. Diane now appeals from those orders.

II. DISCUSSION

A. Reasonable Efforts.

¶6 Diane claims that the Bureau failed to engage in reasonable efforts to provide her with services she needed in order to comply with the conditions for the return of her children. The trial court found that the Bureau did make reasonable

³ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

efforts in this case. This court will affirm the trial court's finding unless clearly erroneous. WIS. STAT. § 805.17(2).

¶7 According to WIS. STAT. § 48.415(2)(a)2, the Bureau must make a “reasonable effort” to provide the services ordered by the court. “[R]easonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child ..., the level of cooperation of the parent ... and other relevant circumstances of the case.” *Id.*

¶8 Here, the trial court concluded that the Bureau satisfied the “reasonable effort” requirement. Diane claims that the Bureau failed to comply with the standard given her limited cognitive abilities and its failure to assist her with housing. Based on a review of the record, this court concludes that the trial court's finding was not clearly erroneous. There is sufficient credible evidence demonstrating the efforts made by the Bureau to uphold the trial court's finding.

¶9 Specifically, the Bureau referred Diane to the Milwaukee Women's Center for AODA counseling and treatment, provided her with psychiatric and individual therapy services, arranged for unsupervised visits, either providing transportation for Diane to go to the children or the children to come to Diane, the Bureau made repeated referrals for drug testing, and for nurturing/parenting programs. The case manager assigned to Diane's case was not neglectful or inattentive. The Bureau made ongoing efforts in this case despite the difficulty presented by Diane's failure to consistently attend the referrals, keep appointments, or inform the Bureau as to her whereabouts. Based on the foregoing, this court must uphold the trial court's finding that the Bureau made reasonable efforts with respect to Diane's case.

B. Termination.

¶10 Diane contends that the trial court erroneously exercised its discretion when it ruled that termination of her parental rights was in the best interests of the children. The State responds that the court had ample evidence to find the children's best interests were served by terminating Diane's parental rights. This court agrees with the State.

¶11 A trial court's termination decision is reviewed for an erroneous exercise of discretion. *Rock County Dept. of Social Servs. v. K.K.*, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). Therefore, this court will not overturn the trial court's decision as long as it considered the pertinent factors, applied the correct law, and reached a reasonable determination. Here, the law is set forth in WIS. STAT. § 48.426, which provides:

Standard and factors. (1) COURT CONSIDERATIONS. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

(2) STANDARD. The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.

(3) 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.

¶12 The record clearly reflects that the trial court considered the proper statutory factors in rendering its decision. Diane claims that the trial court erroneously exercised its discretion because it ignored the fact that she had a substantial relationship with Joanne and that Joanne wanted to be returned to Diane's home. The trial court did not ignore these facts. It clearly addressed them. The hardest part about this case was that Joanne had a substantial relationship with Diane, and expressed a desire to return to her home. However, this was only a part of the required analysis—which is ultimately based on the best interests of the children.

¶13 Diane, although she made some efforts, failed to achieve sobriety and overcome a cocaine addiction over a three and one-half-year time frame. Moreover, although the relationship with Joanne was substantial, terminating it would not be harmful. Joanne was doing well in her new home and appeared to “act-up” after visits with Diane. Likewise, although Joanne expressed her wishes to be with Diane, such a decision cannot be placed solely on a ten-year-old child who cannot be expected to assess the bigger picture. Diane's continued drug use created an unsafe environment for children of any age. The trial court concluded,

based on the other statutory factors, that it would be in the best interests of the children to terminate parental rights. This decision would allow each child to be adopted and obtain stability and a permanent familial relationship.

¶14 Diane was also concerned with the effect termination would have on Joanne's and Deeshawn's sibling relationship. This concern was addressed by the trial court. The adoptive resources demonstrated the willingness to allow these two children to share time together as siblings and testified that such willingness would continue even after termination. Accordingly, Diane's concerns on this point do not affect the termination decision.

By the Court.—Orders affirmed.

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

