

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 27, 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 Nos. 2011AP1747
2011AP1748
2011AP1749
2011AP1750**

**Cir. Ct. Nos. 2010TP79
2010TP80
2010TP81
2010TP82**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

LAMONT B.,

RESPONDENT-APPELLANT.

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

LAMONT B.,

RESPONDENT-APPELLANT.

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

LAMONT B.,

RESPONDENT-APPELLANT.

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

LAMONT B.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Dane County:
PATRICK J. FIEDLER, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Lamont B. appeals the dispositional orders terminating his parental rights to his children: Lamontae B., Harvierre B., Shealisa B., and Keonytae M. (children). Lamont B. argues that the circuit court erroneously exercised its discretion in terminating his parental rights so that the children could be adopted by his sister and one of the children's foster parents, rather than dismissing the petitions and appointing the two women as the children's guardians under WIS. STAT. § 48.977. Lamont B. does not argue that he should have custody of his children. We disagree, and affirm the dispositional orders.

Background

¶2 Dane County Corporation Counsel, representing the interests of the public, filed petitions in July 2010 to terminate the parental rights of both parents, Lamont B. and Lakitta B. Lakitta B. never appeared and the court terminated her parental rights by default. With respect to Lamont B., as grounds, the petition alleged that the children had been adjudged in need of protection or services and placed outside their home pursuant to WIS. STAT. § 48.415(2)(a) through (e).² At

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² WISCONSIN STAT. WIS. STAT. § 48.977(2)(a) through (e) reads as follows:

(2) TYPE OF GUARDIANSHIP. This section may be used for the appointment of a guardian of the person for a child if the court finds all of the following:

(a) That the child has been adjudged to be in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357,

(continued)

the conclusion of a trial on the petitions, a jury found that grounds existed for the termination of Lamont B.'s parental rights to all of his children. At the disposition hearing, the court concluded that it was in the children's best interests to terminate Lamont B.'s parental rights and that it was not in the children's best interests to transfer guardianship to Lamont B.'s sister, Lisa B., or to Keonytae's foster parent, Kara A. Lamont B. appeals. We refer to additional facts as needed below.

Discussion

¶3 Whether to terminate a parent's rights is left to the sound discretion of the circuit court. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. We review a circuit court's decision whether to terminate a parent's

48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged and placement of the child in the home of a guardian under this section has been recommended under s. 48.33 (1) or 938.33 (1).

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended under par. (a) and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of 18 years.

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child.

(e) That the child's parent is neglecting, refusing or unable to carry out the duties of a guardian or, if the child has 2 parents, both parents are neglecting, refusing or unable to carry out the duties of a guardian.

rights for an erroneous exercise of discretion. *Rock County DSS v. K.K.*, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). “A proper exercise of discretion requires the circuit court to apply the correct standard of law to the facts at hand.” *Margaret H.*, 234 Wis. 2d 606, ¶32. A circuit court’s decision whether to appoint a guardian pursuant to WIS. STAT. § 48.977 rests on a determination of what is in the child’s best interests, and is committed to the court’s proper exercise of discretion. *Anna S. v. Diana M.*, 2004 WI App 45, ¶7, 270 Wis. 2d 411, 678 N.W.2d 285.

¶4 The sole issue on appeal is whether the circuit court properly exercised its discretion by terminating Lamont B.’s parental rights, rather than dismissing the petitions and transferring guardianship of the children to their foster parents. At disposition, a circuit court has, as an alternative to terminating a parent’s rights for the purpose of adoption, the authority to appoint a guardian under WIS. STAT. § 48.977(2) and transfer guardianship to that person. *See* WIS. STAT. § 48.427(3m)(c).³ For a person to be appointed guardian for children found to be in need of protection or services under § 48.977(2), six factors must be met. Lamont B. argues here that five of the factors have been satisfied, and challenges

³ WISCONSIN STAT. § 48.427(3m)(c) states:

If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court shall do one of the following:

....

(c) Appoint a guardian under s. 48.977 and transfer guardianship and custody of the child to the guardian.

only the factor related to whether termination of his parental rights is in each child's best interests. Section 48.977(2)(d). The county does not disagree with Lamont B.'s representation that five of the subsection (2) factors have been met.

¶5 Lamont B. argues that the circuit court improperly exercised its discretion by not appointing the foster mothers as guardians because the court's "decision rested merely on a future possibility that Lamont B. would contest the guardianship, based on the opinion of [social worker] Emily Chybowski." He argues that his sister, Lisa B., foster parent to three of the children, was able to care for the children since they were removed from the parental home, while at the same time giving the children an opportunity to maintain a substantial relationship with him. According to Lamont B., this arrangement worked well for several years, "with little indication that guardianship would pose a threat to it." In his view, "[a] mere potential for future court battles was [an] insufficient reason to completely sever [his] rights and responsibilities to his children, given the option of guardianship by the children's long-time care-givers, Lisa and Kara." We reject this argument.

¶6 Six factors must be satisfied for a court to appoint a guardian under WIS. STAT. § 48.977(2). As noted above, the only factor Lamont B. challenges is set forth in § 48.977(2)(d), whether it is in the children's best interests to terminate a parent's rights. Lamont B.'s argument does not address this factor; rather, Lamont B. narrowly focuses on one of the reasons the court gave for not appointing either foster parent as a guardian.

¶7 In any event, we reject Lamont B.'s assertion that the circuit court rested its decision not to appoint a guardian for the children only on the one

ground. It is readily apparent, from a close reading of the transcript of the court's oral ruling, that the court had seriously considered Lamont B.'s proposal to transfer guardianship. Lamont B. is correct when he argues that the court was concerned that should the foster parents be appointed guardians, that Lamont B. and Lakitta would likely interfere with the care of the children. Lamont B., however, ignores the court's core reason for not appointing a guardian, namely that, in the court's view, no conceivable circumstances existed, "using the law and the resources available ... through the [Dane County] Department of Human Services, that could result in a situation" where Lamont B. would once again have custody and control of the children without government intervention. Lamont B. does not point to any evidence or any reason that would undermine the court's conclusion.

¶8 Lamont B. next argues that, in light of the possible emotional and psychological impact terminating his parental rights could have on the children, this concern should have outweighed the "mere possibility that Lamont B. would someday challenge guardianship." He points to evidence that the children have a "strong relationship" with him, that they have always enjoyed spending time with him, that Lamont B. was a "large part of their lives," that he visited with them regularly, that he attended many of their appointments, and that he contributed to their care and nurturing. Although he acknowledges that he failed to care for the children full-time, he maintains that his children still view him as an important part of the family and "would certainly feel his absence, as their relationship is substantial."

¶9 While it is true that the court found Lamont B. to be an important figure in the children's lives, that Lamont B. loved his children and he worked at

visiting the children regularly, the court also found that the children were thriving emotionally and physically in their respective foster homes. And although Lamont B. had given his best effort at trying to meet the conditions for safe return of the children to his home, the court found that the children did not have a substantial relationship with him. Instead, the court found that the three oldest children had a substantial relationship with Lisa B., and that Keonytae had a substantial relationship with Kara A. Significant here, the court found that the children would not be harmed by severing their legal relationship with Lamont B., and that the children needed permanency and a stable home environment.

¶10 The court also observed that Lisa B. and Kara A. would be excellent adoptive parents. The court explained that “this is a situation where one person has to be the parent” for the children and that Lisa would be that person for the three oldest children and Kara would be the parent for Keonytae M. Concluding its remarks, the court again held that, although Lamont B. sincerely loves his children and his love is important to them, it was in the children’s best interests to terminate Lamont B.’s parental rights.

¶11 Aside from his conclusory assertions, Lamont B. does not argue that the court’s findings are clearly erroneous. We conclude the record supports the court’s findings and the decision not to appoint the foster parents as guardians under WIS. STAT. § 48.977(2). The court carefully examined the relevant facts and carefully considered what was in the children’s best interests under the applicable law, as it is required to do.

¶12 We do not discount Lamont B.’s love for his children and his strong desire to continue to be an important part of their lives. That much is apparent

from the record, as the circuit court eloquently pointed out. However, even by his own admissions, Lamont B. is not, and likely will never be, able to be a full-time parent for his children and be in a position where he can provide the daily nurturing and care that they deserve. As the circuit court found, the children need permanency and stability in their lives and Lisa B. and Kara A. have been very successful in providing that for the children.

¶13 For the foregoing reasons, we conclude that the court properly exercised its discretion by terminating Lamont B.'s parental rights to his children. We therefore affirm.

By the Court.—Orders affirmed.

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

