COURT OF APPEALS
DECISION
DATED AND FILED

February 14, 2012

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2011AP2642 **Cir. Ct. No. 2009TP369**

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARQUIS O.,

RESPONDENT-APPELLANT,

MISHA C.,

RESPONDENT.

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

¶1 FINE, J. Marquis O. appeals the order terminating his parental rights to Mariyana O. He complains that: (1) there was insufficient evidence to support the jury's finding that the Bureau of Milwaukee Child Welfare made "a reasonable effort to provide the services ordered by the court to assist [Marquis O.] in meeting the conditions [for] [Mariyana's] safe return" to him; and (2) the circuit court erred in concluding that Mariyana was likely to be adopted and that termination of Marquis O.'s parental rights to her would allow the child to have a more stable family life. We affirm.

I.

¶2 Mariyana was born in April of 2007, and at the end of November of 2009 the State filed the petition to terminate the parental rights of Marquis O. and Mariyana's birth mother, Misha C., to Mariyana.[1] The authorities removed Mariyana from Marquis O. and Misha C.'s custody in August of 2009, when they were arrested because they let a man eluding the police hide in their basement. When arrested, Marquis O. was on parole for robbery. Marquis O. was in and out of custody during much of the time since the authorities first took Mariyana from him and Misha C. He suffers from a lead-paint-poisoning-induced cognitive disability.

¶3 After the authorities took Mariyana from Marquis O. and Misha C., she was placed with a foster parent, Cleo D. According to the Permanency Plan for Mariyana completed in December of 2009, "Ms. D[.] has waivered [*sic*] back and forth regarding her commitment to adopting Mariyana. Ms. D[.] most

[1] The parental rights of Misha C. to Mariyana are not at issue on this appeal.

recently stated that she can not be the adoptive resource for Mariyana, but is willing to maintain placement of her until an adoptive resour[]ce is located." Social workers took Mariyana from Cleo D. in June of 2010, and then placed Mariyana with Doffree and Bernard W. In June of 2011, the social workers took Mariyana from the W.s and placed her again with Cleo D. The trial court determined that Cleo D. would be an appropriate adoptive resource "[g]iven the level of commitment that was evidenced by Ms. D[.] during her testimony and the improved behavior of Mari[.]" Accordingly, the trial court concluded "that there is a strong likelihood of adoption for Mari."

II.

¶4 As we have seen, Marquis O.'s only challenges on appeal is to: (1) the jury's finding, with one juror dissenting, that the Bureau made "a reasonable effort to provide the services ordered by the court to assist [Marquis O.] in meeting the conditions [for] [Mariyana's] safe return" to him, and (2) the trial court's conclusion that Mariyana would likely be adopted if her parental rights were terminated, and that this would give her a more stable life. We look at these contentions in turn.

A. *Reasonable Efforts to Provide Services.*

¶5 The termination of Marquis O.'s parental rights to Mariyana was based on the child's having, as the jury question answered in the affirmative by the trial court phrases it, "been adjudged to be in need of protection or services and placed outside the home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination of parental rights

notice required by law."[2] When the ground for termination of parental rights is that the child has been in continuing need for protection or services, the State must try to help the person have a safe and nurturing home for the child so the child can return to the parent. Thus, the jury is asked whether: "the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court." WIS. STAT. § 48.415(2)(a)2.b. The term "'reasonable 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 or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case." WIS. STAT. § 48.415(2)(a)2.a.

¶6 Even in the heightened scrutiny we appropriately give to jury decisions that permit the termination of a person's parental rights to his or her children, "[a] jury's verdict must be sustained if there is any credible evidence, when viewed in a light most favorable to the verdict, to support it." ***Sheboygan County Department of Health & Human Services v. Tanya M.B.***, 2010 WI 55, ¶49, 325 Wis. 2d 524, 550, 785 N.W.2d 369, 381. That test has been easily met here, as evidenced by the following testimony, which the jury could have accepted:

- A social worker testified that Marquis O. indicated that he was receiving Supplemental Security Income because, as Marquis O. told

[2] Marquis O. does not complain that the trial court erred in answering this question as a matter of law.

her "he had high lead in his system," and that a psychological evaluation indicated that Marquis O. had "academic and cognitive deficits," but that this would not, according to the psychological evaluation "negatively impact his ability to parent." She admitted, however, that she was not familiar with how lead poisoning could affect someone.

- The social worker testified that she made the following referrals for Marquis O. to help him with his parenting skills: (1) alcohol or drug addiction treatment, but that Marquis O. "did not follow through with the treatment program"; (2) family and nurturing counseling, which, according to the testimony, Marquis O. did not sufficiently complete in order to meet the conditions established for Mariyana's return to him.

- Marquis O. was also given the services of a housing assistant to help him find a safe and secure, affordable home.

- The social worker reviewed with Marquis O. the orders specifying what Marquis O. would have to do in order to get Mariyana back, and did this even though he was incarcerated.

- Although the social worker only met with Marquis O. once, her predecessor on his case met with him three times during the six months he was Marquis O.'s case manager, and the social worker's supervisor also met with Marquis O. once.

- The social worker testified that although there were several team meetings on Marquis O.'s case, he did not "regularly attend."

Based on all of this, it was well within the jury's purview to find that the social workers were not only sufficiently aware of Marquis O.'s disability but also with that in mind "made a reasonable effort to provide the services ordered by the court." *See* WIS. STAT. RULE 48.415(2)(a)2.b. That, as Marquis O. argues, a jury could have followed the dissent's lead and found that the social workers did not, as phrased by the statute, make "a reasonable effort to provide the services ordered by the court," does not mean that the jury's finding to the contrary is not supported by the evidence.

B. *Termination.*

¶7 Once the grounds to terminate a person's parental rights have been found in the first phase of the proceeding, the trial court must decide whether termination is appropriate. WIS. STAT. § 48.427(1). This is a discretionary decision. ***Brandon S.S. v. Laura S.***, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993); ***Darryl T.-H. v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 620, 610 N.W.2d 475, 481. A decision to terminate turns on whether that would be in the child's best interests. *See* WIS. STAT. § 48.01(1) ("[T]he best interests of the child or unborn child shall always be of paramount consideration."); § 48.426(2) ("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."). Thus, the focus at the disposition phase is on the child and not on the parent. ***Richard D. v. Rebecca G.***, 228 Wis. 2d 658, 672–673, 599 N.W.2d 90, 97 (Ct. App. 1999).

¶8 We will not reverse a trial court's discretionary decision if the trial court applied the relevant facts to the correct legal standard in a reasonable way. ***Brandon S.S.***, 179 Wis. 2d at 150, 507 N.W.2d at 107. We review *de novo*, however, whether the trial court has applied the correct legal standard. *See*

Kerkvliet v. Kerkvliet, 166 Wis. 2d 930, 939, 480 N.W.2d 823, 826 (Ct. App. 1992).

¶9 In assessing whether termination is warranted, the trial court must consider the factors in WIS. STAT. § 48.426 in light of the overarching focus on the child's best interests. WIS. STAT. § 48.426(1) & (2). The factors are:

> (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.

WIS. STAT. § 48.426(3). Marquis O. challenges the trial court's finding that factors (a) and (f) were satisfied. First, he complains that the last adoptive resource for Mariyana, Cleo D., was originally ambivalent, and, indeed, relinquished the child for a period before she took her back.

¶10 The issue as framed by § 48.426(3)(a), however, is not *who* would adopt, but whether there is a "likelihood of the child's adoption after termination." In this regard, the trial court heard from the social worker whom we quoted earlier that it was likely that Mariyana would be adopted. Thus, when the State asked

her: "Regardless of where the potential adoptive resource is, whether it's with [Doffree W.] or with [Cleo D.], or somewhere else, do you believe that it's likely that Mariyana is to be adopted?" she responded: "Oh, absolutely." Similarly, a school social worker told the circuit court that she believed that Mariyana "is adoptable." The circuit court also saw Cleo D. testify twice during the trial.

¶11 In its written decision, the circuit court addressed both Mariyana and her two siblings, whose matters are not before us. Commenting on factor (a) in connection with Mariyana, the circuit court wrote, as we have already seen: "Given the level of commitment that was evidenced by Ms. D[.] during her testimony and the improved behavior of Mari, I also believe that there is a strong likelihood of adoption for Mari." The evidence overwhelmingly supports this finding. Further, with respect to the stability factor, factor (f), the circuit court wrote that "the safety of these children can only be reasonably assured through adoption. They have found a haven from the dangerous chaos they experienced in their parents' care in the homes of their substitute caregivers. There is no other viable answer for them." Although it is true, as Marquis O. points out in his brief, that Mariyana has had several placements since she was removed from the custody of her birth parents, adoption, as the circuit court recognized, is the only firm anchor for her long-term stability.

¶12 Under no stretch of the imagination can we say that the circuit court erroneously exercised its discretion in terminating Marquis O.'s parental rights to Mariyana. Accordingly, we affirm.

By the Court.—Order affirmed.

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