

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 28, 2012

Diane M. Fremgen
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. 2012AP1110

Cir. Ct. No. 2010TP242

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

ROBERT T.,

RESPONDENT-APPELLANT,

JESSICA Z.,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
DENNIS FLYNN, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Robert T. appeals the order terminating his parental rights to Anthony T. Robert argues that the trial court erroneously terminated his right to Anthony because no adoptive resource was in place for Anthony at the time of the termination proceedings. Therefore, he contends, Anthony should have been returned to his biological family. We affirm.

BACKGROUND

¶2 Robert T. is the biological father of Anthony T., born on December 13, 2005. In August 2008, a Children in Need of Protection or Services (CHIPS) dispositional order was entered, outlining the conditions Anthony's mother, Jessica Z., and Robert were to meet for reunification. Among the conditions required for Robert's reunification with Anthony were: (1) participation in parenting education classes; (2) weekly visitation with Anthony; and (3) treatment for his (Robert's) drug addiction.

¶3 Anthony was subsequently placed in the home of his paternal grandmother, Deanna J. Anthony was removed from Deanna's home in February 2009 due to Deanna's loss of residence. Anthony was temporarily placed in a foster home and was returned to Deanna's home in July 2009. Anthony was again removed from Deanna's home in March 2010 because Deanna violated a court order by allowing unsupervised contact between Anthony and both of his parents. Anthony was again placed in foster care.

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

¶4 On August 4, 2010, the State filed a petition to terminate Robert's² parental rights pursuant to WIS. STAT. § 48.415(2), due to his substantial non-compliance with the conditions required for reunification. A jury trial was held from July 12 through July 18, 2011, to determine whether grounds existed to terminate Robert's (and Jessica's) parental rights. The jury determined that pursuant to § 48.415(2), Anthony was a child in continued need of protection or services.

¶5 A dispositional hearing was held on November 4, 2011 and continued on December 12, and December 13, 2011. The trial court heard testimony from multiple witnesses, including Kathleen Salmon, the child welfare case worker assigned to Anthony's case, and Trisha Wollin, Anthony's therapist. At the hearing, Salmon told the trial court that Anthony had been removed from his previous foster home due to suspicion of abuse towards Anthony. According to Salmon, Anthony had been placed in the home of Gloria T., the caregiver for Anthony's baby sister. Although Salmon stated that it was premature to discuss Anthony's long-term placement with Gloria, Salmon testified that Gloria had adopted children of Anthony's age in the past, that there was a possibility of pre-adoptive placement with Gloria, and that Anthony was an adoptable child.

¶6 Salmon also testified as to the possibility of again placing Anthony with Deanna.³ Salmon testified that placing Anthony with Deanna would not be in Anthony's best interest, as Deanna had previously expressed concerns about her

² Termination proceedings for Robert and Jessica were held together; however, only Robert's termination is at issue in this appeal.

³ At the time of the dispositional hearing, the trial court also considered Deanna's petition for guardianship. The trial court's denial of that petition is not at issue in this appeal.

ability to care for Anthony and had previously left Anthony unsupervised with both parents.

¶7 Salmon further testified that while Anthony was in good physical health, he had emotional and behavioral issues, including temper tantrums and larcenous behavior. Wollin confirmed Salmon's testimony and testified that she was working with Anthony on his emotional and behavioral issues. Wollin further testified that Anthony was angry with his parents, and that Anthony's anger stemmed, in part, from Robert's lack of attendance at visits with Anthony. Wollin also testified that despite Anthony's anger towards his parents and the instability he experienced from many moves, Anthony was still able to form attachments with adults if given a "nurturing home with structure and boundaries."

¶8 The trial court found that terminating Robert's parental rights was in Anthony's best interest. This appeal follows.

DISCUSSION

Standard of Review.

¶9 At issue is the trial court's determination, at the dispositional phase of the case, that termination was in Anthony's best interest. An appellate court will sustain the trial court's ultimate determination if there is a proper exercise of discretion. *State v. Margaret H.*, 2000 WI 42, ¶32, 234 Wis. 2d 606, 610 N.W.2d 475. "A proper exercise of discretion requires the [trial] court to apply the correct standard of law to the facts at hand." *Id.*

¶10 A trial court's consideration of the children's best interests is guided by WIS. STAT. § 48.426(3), which provides:

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.

The trial court did not erroneously exercise its discretion.

¶11 Robert argues that because an adoptive resource was not in place for Anthony at the time of the dispositional hearing, the trial court essentially left Anthony without a family and did not make a finding in Anthony's best interest. Effectually, Robert argues that the trial court did not properly consider the factors set forth in WIS. STAT. § 48.426(3). We disagree.

¶12 The trial court's findings support its determination that each of the factors in WIS. STAT. § 48.426(3) weighed in favor of terminating Robert's parental rights. First, relying on Salmon's testimony, the trial court found that Anthony is an adoptable child. *See* § 48.426(3)(a). Salmon told the trial court that Anthony was a bright child, with a good sense of humor, and a fun child to spend time with. Although Gloria had not committed to adopting Anthony at the time of the trial court's decision, the trial court noted that there was no testimony to

controvert Salmon's opinion as to Anthony's adoptability and concluded that Anthony was "very adoptable."

¶13 Second, the trial court considered Anthony's health and age. *See* WIS. STAT. § 48.426(3)(b). The trial court pointed out that Anthony celebrated his sixth birthday on the day of its decision. The trial court stated that from the time Anthony was initially detained, the Bureau of Milwaukee Child Welfare had been adequately addressing Anthony's needs. The trial court also noted that Anthony was receiving therapy for his behavioral issues.

¶14 Third, the trial court considered whether the children have a substantial relationship with their parents or other family members, and whether severing the relationships would be harmful. *See* WIS. STAT. §48.426(3)(c). The trial court pointed to Robert's lack of visitation as an indication that he "intentionally and consistently ... refused to participate with the Bureau." Although the trial court pointed out that Anthony "likes to be with his father," it stated that Robert could not provide a "permanent living situation where [he] would be [a parent] as opposed to [a] good friend[] and good budd[y]." In light of these findings, the trial court determined Anthony's relationship with Robert was not substantial and that a severance of that relationship would not be harmful to Anthony.

¶15 The trial court also considered Anthony's relationship with Deanna and found that placing Anthony with Deanna would be impractical. Specifically, the trial court took note of Deanna's difficulties in caring for Anthony, her unrealistic expectations as to the involvement of his parents, and the fact that Anthony had twice been removed from her home. Along the same lines, the trial

court considered Anthony's wishes that he did not want to live with his grandmother. *See* WIS. STAT. § 48.426(3)(d).

¶16 The next factor the trial court considered was the duration of the separation between Robert and Anthony. *See* WIS. STAT. § 48.426(3)(e). The trial court stated that Anthony had been subject to "out-of-home placement" since August 2008, during which time he was twice placed with his paternal grandmother, and twice placed in foster care. The trial court went on to address Robert's unresolved drug issues, missed visits with Anthony, and missed parenting appointments as weighing in favor of termination.

¶17 Finally, the trial court found that a termination of Robert's parental rights would lead to more permanence and stability for Anthony either through adoption or long-term guardianship. *See* WIS. STAT. § 48.426(3)(f). Indeed, the jury had already found that it was substantially unlikely that Robert would meet the conditions of Anthony's return within nine months, and Gloria had not refused the possibility of adding Anthony to her family.

¶18 Robert contends that the trial court was not bound solely by the factors provided by WIS. STAT. § 48.426(3), and should have considered that "the result of this litigation is that Anthony has been left with no family at all." We do not take a stand on Robert's assertion that "[a]n imperfect family is better than no family." Instead we conclude that the trial court applied the proper standard of law to the facts before it and that facts in the record support the trial court's determination. Therefore, the trial court did not erroneously exercise its discretion in terminating Robert's parental rights to Anthony.

¶19 For the foregoing reasons, we affirm the trial court.

By the Court.—Order affirmed.

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

