

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 24, 2009

David R. Schanker
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. 2008AP3171

Cir. Ct. No. 2007TP219

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE INTEREST OF AARON D.A., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LASHAUN J.,

RESPONDENT-APPELLANT,

AARON A.,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM S. POCAN, Judge. *Affirmed and cause remanded with directions.*

¶1 FINE, J. LaShaun J. appeals the circuit court’s order terminating her parental rights to Aaron A.¹ In essence, she contends that the circuit court erroneously exercised its discretion. We disagree and affirm.

¶2 Aaron was born in October of 2005.² LaShaun J. was born in January of 1991. The State’s amended petition to terminate LaShaun J.’s parental rights to Aaron alleged two grounds for termination: (1) that Aaron “remains in continuing need of protection or services, pursuant to sec. 48.415(2), Wis. Stats.”; and (2) that LaShaun J. “has failed to assume parental responsibility, as defined by sec. 48.415(6), Wis. Stats.” A jury found that the State had proven both grounds, and the matter then moved for the circuit court’s determination of whether termination of LaShaun J.’s parental rights to Aaron was in Aaron’s best interests. WIS. STAT. §§ 48.424(3), (4); 48.426; 48.427. The circuit court determined that it was.

¶3 As LaShaun J. recognizes, once a fact-finder has determined, as it has here, that there are grounds to terminate a person’s parental rights to his or her child, a decision whether to terminate parental rights is within the circuit court’s discretion. *Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993); *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855, 857 (Ct. App. 1996). Moreover, we will not reverse a circuit court’s discretionary decision

¹ The circuit court also terminated the parental rights of Aaron A.’s biological father. His case is not at issue on this appeal.

² The order terminating LaShaun J.’s parental rights to Aaron gives Aaron’s birth date as “10/20/2005.” Aaron’s birth certificate in the Record, however, says that he was born on October 30, 2005, which is the date given in the petition and amended petition for termination of parental rights, and is the date used by the circuit court in its oral decision. Although we are affirming the circuit court’s order terminating LaShaun J.’s parental rights to Aaron, we are remanding the matter so that the circuit court can enter an amended order that has Aaron’s proper date of birth.

if it 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. Given the overarching emphasis on the best interests of the child, *see* WIS. STAT. § 48.01(1), the focus at the dispositional 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).

¶4 WISCONSIN STAT. § 48.426(3) sets the principles that, if appropriate, the circuit court should consider in exercising its discretion in deciding whether parental rights should be terminated. It 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.

¶5 In its carefully explained oral decision, the circuit court considered all the applicable factors, and LaShaun J. does not contend otherwise. Thus, the circuit court noted that Aaron has been in foster care with the woman who was proposing to adopt him since February of 2006, when Aaron was but three months

old, and that adoption was likely. In connection with the second factor, the circuit court recounted how Aaron's health had improved significantly during his stay with the woman who wanted to adopt him. As for the third factor, the circuit court opined that although Aaron had "relationships" with LaShaun J. and her family, they were not the requisite "substantial relationships," and that legal severance of those relationships would not "be harmful" to Aaron. Moreover, the circuit court believed the woman who wanted to adopt Aaron when she said that she would permit LaShaun J. and her family to continue seeing Aaron because "she felt it was important for Aaron to know where he came from."

¶6 The circuit court determined that the fourth factor, "[t]he wishes of the child," was not material because Aaron was "too young to tell us what he would like." The circuit court, recounting, as we have seen, that Aaron had spent most of his life with the woman who wanted to adopt him, concluded that the fifth factor, "[t]he duration of the separation of the parent from the child," "would support termination." Finally, in connection with the sixth factor, whether termination would permit Aaron "to enter into a more stable and permanent family relationship," the circuit court opined that it would, noting that LaShaun J. was diagnosed as being "mildly retarded" and with "a verbal I.Q. of 66," and, accordingly, would have a difficult time taking care of Aaron to the degree required because, according to the expert testimony upon which the circuit court relied, although LaShaun J. could do simple things for Aaron, like dressing him, feeding him, supervising him, and meeting his "routine health needs," it would be hard for her "for example, to deal with a medical crisis." In sum, the circuit court relied on the expert's opinion that LaShaun J. "could not independently care for" Aaron because that was "beyond her capacity." The circuit court concluded that, given the length of time that Aaron had lived with the woman who wanted to

adopt him, her success in parenting him, and LaShaun J.'s significant cognitive and motivational impairments, the sixth factor "strongly supports termination."

¶7 As noted, LaShaun J. does not dispute that the circuit court considered all of the appropriate factors. She contends, however, that the circuit court relied on inaccurate information when, according to LaShaun J.'s main brief on this appeal, the circuit court "held that LaShaun did not stay in touch with" the social workers trying to help her. This, however, misstates what the circuit court said, which was:

[LaShaun J.] admitted she *did not do a good job* in staying in touch with the [social workers]. She basically called when she needed bus tickets, and that was basically her only contact. She hasn't been to medical visits for Aaron.... She had not completed the [alcohol and drug dependency] program, she had not completed therapy.

(Emphasis added.) The Record fully supports the circuit court's assessment.

¶8 The social worker assigned to Aaron's case testified that although she saw LaShaun J. "monthly," the social worker had to initiate the meetings by contacting LaShaun J.'s mother, and that LaShaun J. "usually doesn't call me or call my Office and let me know what's going on." (Capitalization in original.) When asked whether she believed that she "stay[ed] in touch with and cooperate[d] with" her social worker, LaShaun J. replied, "[s]ometimes, yes." When asked what she meant by "sometimes," she replied: "Like if I need anything, I call her up and ask her, like, for bus tickets or--That's basically what I do."

¶9 LaShaun J. has not established that the circuit court erroneously exercised its discretion in terminating her parental rights to Aaron. As the guardian *ad litem* points out in her brief, "[i]n an ideal world, all children would

be able [to] live with their parents.” Sadly, our world is less-than-ideal, which is why occasionally children have to be removed from their dysfunctional birth parents and given a chance to thrive in a stable, secure, and loving environment. As the circuit court recognized, termination of LaShaun J.’s parental rights to Aaron is in Aaron’s best interests. Accordingly, we affirm and, as noted in footnote two, remand for the correction of the order terminating LaShaun J.’s parental rights so it reflects Aaron’s correct date of birth.

By the Court.—Order affirmed and cause remanded with directions.

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

