COURT OF APPEALS
DECISION
DATED AND RELEASED

June 27, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0991

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

In re the Termination of Parental Rights of Shalonda D. and King D., Children Under the Age of 18:

State of Wisconsin,

Petitioner-Respondent,

v.

John L.,

Respondent-Appellant,

Dorothea D.,

Respondent-Co-Appellant.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL G. MALMSTADT, Judge. *Affirmed.*

SCHUDSON, J.[1] John L. and Dorothea D. appeal from the trial court order, following a jury trial, terminating their parental rights to Shalonda D. and King D. The jury found that both parents had abandoned the children,[2] and that both parents had disassociated themselves from the children and relinquished their parental responsibilities.[3] Each parent presents several challenges to the trial court's rulings and seeks either dismissal or a new trial. This court affirms.

I. JOHN L.

John L. argues that the trial court: (1) lost jurisdiction over the case when it adjourned the trial date without good cause; (2) erred in admitting evidence of conduct outside the period of alleged abandonment; and (3) erred in disallowing his testimony regarding his relationship with county social workers. He also argues that he is entitled to a new trial because of these evidentiary rulings.

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[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

[2] The State prosecuted this TPR action under § 48.415(1)(a)2, STATS., which provides that "[a]bandonment may be established by showing that ... [t]he child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356(2) [regarding termination of parental rights] and the parent has failed to visit or communicate with the child for a period of 6 months or longer."

[3] Section 48.415(1)(c), STATS., states that "[a] showing under [§ 48.415(1)(a)] that abandonment has occurred may be rebutted by other evidence that the parent has not disassociated himself or herself from the child or relinquished responsibility for the child's care and well-being."

A. Jurisdiction

On the October 23, 1995 trial date, the trial court adjourned the trial because of the insufficient time available to complete the trial before the judge would have to leave to teach at a judicial conference. The trial court scheduled the trial for the next available date, December 18, 1995, and did proceed with the trial at that time. Although John L. contends that he did not agree to the adjournment, the record clearly establishes that he and all the parties did so. Thus, this court concludes that John L. waived this issue.[4]

B. Evidence Outside the Period of Abandonment

John L. next argues that the trial court erroneously exercised discretion in allowing the State to introduce evidence relating to his conduct outside the specific six-month period of his alleged abandonment. The record reflects, however, that counsel for John L. sent mixed messages to the trial court regarding whether, or to what extent he believed that evidence outside the six-month period was relevant and admissible. While objecting at one point, he argued to the trial court that the evidence was "more relevant to us than it is to the State." Compounding the confusion, the trial court, in chambers, seemed to articulate a decision sustaining John L.'s objection but, immediately thereafter in open court, the trial court overruled the objection. The State then proceeded to elicit additional testimony about conduct outside the six-month period, and John L. did not offer any additional objection. This court concludes, therefore, that John L. failed to object to any evidence or testimony with sufficient specificity to preserve this issue for review.[5] *See* § 805.11(2), STATS. ("A party

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[4] *See* § 48.315(1)(b), STATS. (computation of time requirements under Chapter 48 excludes "[a]ny period of delay resulting from a continuance granted ... with the consent of ... counsel"). *See also* § 48.315(2), which in relevant part provides:

> A continuance shall be granted by the court only upon a showing of good cause in open court ... and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

[5] Indeed, although this court has searched the record to locate what *may* be the basis for John L.'s claim, it is additionally instructive to note that, in his brief to this court, John L. failed to provide a single record reference in support of his argument on this issue. *See* § 809.19(1)(e),

raising an objection must specify the grounds on which the party predicates the objection or claim of error.").

C. Evidence of Relationship with Social Workers

John L. also argues that the trial court erred in disallowing his testimony regarding his relationship with county social workers in order to rebut their testimony regarding their efforts to facilitate visitation. Once again, however, the record belies his claim.

When John L. first testified, having been called adversely by the State, he responded to all cross-examination from his lawyer without any objection to any of those questions from any party. Later in the trial, when John L. was testifying after being called by his own lawyer, the State objected to questions about his relationship with the social workers, but the trial court allowed "a limited amount" of inquiry on that subject. Shortly thereafter, the State objected to a question about "how many times" John L. had seen one of the social workers. The trial court initially sustained the State's objection but heard further argument in chambers when counsel for John L. expounded on his theory. There, during the course of the trial court's discussion of the objection, counsel for John L. commented, "That's all right. I'll move on. Let's get this done."

The record remains unclear on whether the trial court would have allowed John L. to pursue the subject to the extent he might have desired. As John L. concedes, however, both the State and the trial court acknowledged the relevance of at least some limited evidence of whether the social workers made adequate efforts to facilitate visitation. This court concludes that John L. has not established that the trial court disallowed his testimony on this subject. If, implicitly, it did so, John L. waived his initial objection by agreeing to the limitations the trial court seemed to impose.

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STATS.; *see also* ***Lechner v. Scharrer***, 145 Wis.2d 667, 676, 429 N.W.2d 491, 495 (Ct. App. 1988) (appellate court need not consider arguments unsupported by record references).

D. New Trial

Finally, John L. argues that he is entitled to a new trial based on these two evidentiary rulings. Having concluded, however, that John L. has failed to establish any trial court error, this court also concludes that he has shown no basis for a new trial. *See* ***Mentek v. State***, 71 Wis.2d 799, 809, 238 N.W.2d 752, 758 (1976) ("Zero plus zero equals zero.").

II. DOROTHEA D.

Dorothea argues that the trial court: (1) erred in granting the State's motion *in limine* excluding evidence of visitation requests she made after the TPR petition was filed, and excluding evidence regarding compliance with the conditions for return of the children; and (2) erred in disallowing evidence regarding social service efforts to help her regain her children. She also argues that the real controversy was not tried because the trial court did not permit the introduction of evidence of bias by the social services department, and that the trial evidence was insufficient to prove that she abandoned her children.

A. Evidence of Visitation Requests and Compliance with Conditions for Return

Dorothea D. first argues that the trial court erred in granting the State's motion *in limine* to exclude evidence that she requested visitation with the children subsequent to the filing of the TPR petition, and to exclude evidence of her compliance with the conditions for return of the children. No objections by Dorothea D., however, appear from the record and, therefore, she has waived this issue.[6]

B. Evidence of Social Service Efforts

[6] Dorothea D. also concedes that the trial court granted the State's motion "with some modifications" allowing her "to submit evidence of her compliance with the conditions for return of Shalonda and King," but not her other children.

Dorothea D. next argues that the trial court erred "in excluding evidence of the efforts of the Milwaukee County Department of Social Services to facilitate visits and to assist in having the children returned" to her home. Dorothea D. fails, however, to point to any specific ruling on this subject to which she objected.[7] Although the evidentiary record, in combination with the surrounding trial court arguments of counsel, suggest that Dorothea D. may believe that the TPR resulted, at least in part, from the department's alleged failure to provide her with adequate assistance, she has not specified any trial court rulings that foreclosed her opportunity to explore that theory. Thus, this court concludes that Dorothea also waived this issue.

C. Evidence of DSS Bias

Dorothea D. also argues that the real controversy was not tried and justice has been miscarried because, when the respective foster parents testified at the trial, the jury did not learn of their alleged bias stemming from their desire to adopt the children. Moreover, Dorothea D. argues, the jury did not learn that the department's social workers based their opinions and reports, in part, on information from the foster parents and, further, that the department "withdrew its active participation to reunite Dorothea with her children and tacitly created an abandonment situation to facilitate the Department's ulterior goal of adoption by the foster parents." Once again, however, the record refutes her contention.

The trial court did allow the potential bias of the foster parents to be exposed. Although initially, in reviewing the State's motions *in limine*, the trial court ruled that "no party be allowed to refer to potential adoption," during the trial, the court overruled the State's objection to questions regarding the foster parents' intentions to adopt the children.[8] Further, Dorothea D. fails

[7] Dorothea D.'s only record reference to any objection on this point is to the discussions and rulings, considered in section I. C., above, resulting from the dispute between the State and John L. Counsel for Dorothea D. never entered those discussions or objected to the trial court's rulings.

[8] Rejecting strenuous argument from the State, the trial court commented that although it agreed that adoption was a dispositional issue in a TPR action, "it certainly goes to bias." The trial court explained, "I don't see how you can avoid the fact that when you have a witness on the witness stand who wants to adopt ... the kids, you tell me how you avoid the fact that that clearly goes to bias."

to identify any trial court ruling that restricted her ability to expose the department's alleged bias. Indeed, this court notes that when Dorothea D. testified, she was allowed to answer all questions without a single objection from any party. Thus, this court concludes that Dorothea D. has failed to establish that the real controversy was not tried.

D. Sufficiency of Evidence

Finally, Dorothea D. argues that the evidence was insufficient to prove that she abandoned Shalonda and King.

In this trial, the State had the burden to prove, by clear, satisfactory, and convincing evidence, that the parents had abandoned Shalonda and King. Dorothea D. could successfully defend against the TPR action if she could establish, that she had not disassociated herself from or relinquished responsibility for the children. *See* §§ 48.415(1)(c) & § 48.31(1), STATS. (allegations in a TPR petition must be proved by clear and convincing evidence). A jury verdict will be approved if there is any credible evidence to support it. *See* ***Giese v. Montgomery Ward, Inc.***, 111 Wis.2d 392, 408, 331 N.W.2d 585, 593 (1983).

The State points out that Dorothea never disputed the evidence of her "complete failure of visitation during the abandonment period." Further, the State correctly argues:

> Dorothea had access to public transportation, which she proved she could use when she traveled by bus to Cudahy and to the necessary court appearances. She had access to a telephone downstairs and just outside of her home. She lived but a few blocks away from Shalonda's foster placement and acknowledged the co-operative spirit of King's foster parent in transporting the child to the family home, when

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This court also notes that this exchange occurred when counsel for John L. sought to cross-examine Shalonda's foster parent. Once again, counsel for Dorothea D. was silent. Nevertheless, this court has considered the issue as if it had been pursued on Dorothea D.'s behalf as well.

> asked. Dorothea's use of a brief (3-day) hospitalization in 1995 to excuse a complete failure of visitation for 18 months for Shalonda D. and 7 months for King D. is ludicrous. Her belated efforts to create visitation on demand during the holidays testified to were in violation of the long-established guidelines on open door visitation. The evidence indicated that open door visitation was established to offer maximum flexibility and accessibility of parents and children to one another. Dorothea D. failed to utilize this liberal visitation policy and demanded immediate gratification, despite her earlier agreement to allow 24-48 hours advance notice to the foster families. The only times visitation was turned down were due to lack of fair and minimal notice to the foster families. Christmas presents to the children remain a figment of Dorothea's imagination. These alleged presents were never given to the children, and neither foster parent had ever been approached by Dorothea D. concerning them.
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> Dorothea D.'s children were in placement for six years, to the day, before an abandonment Petition was issued. The most egregious disassociation from the children occurred during the periods of the abandonment alleged in the Petition and proven at trial, which represented the most recent period of time the children were in placement. The few pathetic half-facts which she now drags out as evidence of non-disassociation with her children are of no substance when weighed against the totality of her abandonment of these children and the ease with which she could have maintained contact with them over the years.

The State's factual references are accurate and the State's inferences, although not the only ones possible, are supported by the trial evidence. Accordingly, this court concludes that the evidence of abandonment and disassociation was sufficient to support the jury's verdicts regarding Dorothea D.

By the Court. – Order affirmed.

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