

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 22, 1997

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(1), STATS.

NOTICE

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

Nos. 96-3154
96-3155

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 96-3154

**IN THE INTEREST OF DAMARIS G.,
a person under the age of 18:**

BROWN COUNTY,

Petitioner-Respondent,

v.

MARSHA A. G.,

Respondent-Appellant.

No. 96-3155

**IN THE INTEREST OF VERLYNN W.,
a person under the age of 18:**

BROWN COUNTY,

Petitioner-Respondent,

v.

MARSHA A. G.,

Respondent-Appellant.

APPEAL from orders of the circuit court for Brown County:
WILLIAM M. ATKINSON, Judge. *Affirmed.*

MYSE, J. Marsha A. G. appeals orders terminating her parental rights to her two children, Damaris G., born March 3, 1994,¹ and Verlynn W., born June 20, 1991. Marsha contends that there was insufficient evidence to support the jury's determination that she failed to comply with conditions required in dispositional orders entered as to each of the two children. Marsha further contends that because the trial court's orders terminating her parental rights were based upon this erroneous jury determination, the orders are invalid. Because this court concludes that there is sufficient evidence to support the jury's determination that Marsha failed to comply with the conditions required of her by dispositional orders made as to each of her two children and that the court properly exercised its discretion by ordering termination of her parental rights to each of these children, the orders are affirmed.

In July 1994, Marsha A. G. was arrested for criminal damage to property. At the time of her arrest, she was intoxicated and advised the police that she had to return home because she had left her four-month-old son, Damaris, home alone. When the police investigated, they found Damaris and three-year-old Verlynn in the apartment without any supervision. An informal dispositional agreement was executed requiring that Marsha undergo an AODA assessment and successfully complete treatment recommendations in regard to her abuse of alcohol, not leave the children alone for any length of time and cooperate with the public health nurse and her assigned social worker.

Marsha did not attend the AODA assessment scheduled pursuant to the order and was advised by the physician who had been treating her

¹ The record is unclear whether Damaris G.'s birthdate is March 3, 1994, or March 2, 1994.

children that he would no longer render care for the children because of the multiple missed appointments. At this point, Damaris had not received any of his required immunizations and Verlynn was also in need of additional immunization shots.

In December, Marsha was arrested when she failed to pay a taxicab driver and was found to be intoxicated at the time of her arrest. After she was taken to jail, Marsha advised jailers that her two children had been left alone. An investigation found that both children had been left unsupervised in the apartment. They were placed in a foster home on an emergency basis and a CHIPS petition was filed.

Following a contested hearing, the children were found to be in need of protective services and a CHIPS order containing certain conditions was entered in February 1995. The conditions required by virtue of that order were:

- (1) Marsha shall obtain a stable and nurturing environment for her children. This environment shall contain all of the necessary items for the care of her children. This environment shall be free of alcohol, drugs, and violence.
- (2) Marsha shall follow through on recommendations resulting from her AODA assessment. She shall demonstrate an ability to maintain sobriety for six months prior to the return of the children to her care.
- (3) Marsha shall cooperate with the present placement of her children, and under no circumstances shall she interfere with their placement.
- (4) Marsha shall visit with her children on a consistent basis as arranged through the Department.
- (5) Marsha shall cooperate with the Parent-Child Interaction Group with her children. She shall consistently attend group and remain in group until she is successfully discharged.
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- (9) Marsha shall cooperate with the Brown County Human Services Department and the assigned social worker. She shall meet for scheduled and

unannounced home visits, as well as to execute unnecessary (sic) releases of information between service providers and the Department.

Marsha completed an alcohol assessment and an intensive out-patient treatment program. She began her after-care treatment, but upon her release from jail began to miss required meetings. In June, Marsha's social worker received information that Marsha had been drinking at a party. She also was very intoxicated during a hospital visit with Damaris and had to be removed by hospital security. In August, Marsha was involved in an altercation at a party and was determined to have been drinking. There was an additional domestic violence incident in August where Marsha was once again determined to have been drinking. In October and December 1995, Marsha appeared for her parent-child meetings smelling of alcohol.

In January 1996, Marsha agreed to re-enroll in the after-care program and met with an alcohol counselor, Darlene Watson. Marsha agreed to weekly co-dependency meetings, bi-weekly Alcoholics Anonymous and individual meetings when scheduled with Watson. It was emphasized that if Marsha missed any of these meetings she would be referred to an intensive out-patient treatment program.

Marsha did miss several of the meetings and a referral to out-patient treatment was made. Marsha failed to appear for the commencement of her second intensive out-patient treatment program and missed a series of appointments which led her to be dropped from the program. In her trial testimony, Marsha admitted that she had been drinking steadily during her counseling and that the counseling did not assist her to quit drinking. She denied that she had an alcohol problem.

During the twenty months during which the CHIPS order was pending, Marsha, who had been evicted from her apartment, which had been found to be a suitable residence by the department of health and social services, resided with her boyfriend, with various other people, as well as in different homeless shelters and at the county jail. Marsha contends she was unable to find an apartment because she could not pass a credit check that was required by a housing organization to which she had been referred by the department of health and social services. She did not advise anyone of her concern that her

credit disqualified her from suitable housing and sought no assistance from any organization in resolving this dilemma.

Marsha contends that the only two conditions she failed to meet were those relating to the requirement that she obtain suitable housing so she could provide a stable and nurturing environment for the children that was free of alcohol, drugs and violence; and that she follow the recommendations received as a result of an AODA assessment and demonstrate the ability to remain sober for six months prior to the return of her children. While the County contends that there is evidence from which the jury could conclude that she failed to meet each of the other conditions imposed as part of the CHIPS order, this court will limit its review to the sufficiency of the evidence to support the jury's findings based on the two conditions identified by Marsha because her failure to comply with any one of the conditions is sufficient to support an order terminating her parental rights. Section 48.415(2)(c), STATS.

The jury found that the Brown County Human Services Department made a diligent effort to provide the services ordered by the court, that Marsha failed to demonstrate substantial progress toward meeting the conditions required for the return of her children and that there was a substantial likelihood that Marsha would not meet these conditions within one year after the termination of parental rights' hearing. Marsha contends there is insufficient evidence to support the jury's answer to each of these inquiries.

In reviewing a jury verdict, an appellate court must sustain the verdict if there is any credible evidence that would permit a reasonable finder of fact to reach the conclusion reached by the jury. *Fehring v. Republic Ins. Co.*, 118 Wis.2d 299, 305-06, 347 N.W.2d 595, 598 (1984), *overruled on other grounds by DeChant v. Monarch Life Ins. Co.*, 200 Wis.2d 559, 547 N.W.2d 592 (1996). The jury's determination must be affirmed even if there is substantial evidence that would permit a fact finder to reach a contrary conclusion, even if the contrary conclusion is supported by the preponderance of the evidence. *See Platz v. United States Fidelity & Guar. Co.*, 195 Wis.2d 775, 782, 537 N.W.2d 397, 400 (Ct. App. 1995). Credibility of the witnesses and the weight to be accorded to the testimony of each witness is a matter solely within the province of the jury. *Fehring*, 118 Wis.2d at 305-06, 347 N.W.2d at 598. When more than one inference may be made from evidence, the reviewing court must accept the inference made by the jury even though contrary inferences may be drawn. *Id.*

It is the appellate court's duty to search the record for credible evidence to sustain the jury verdict. *Id.* at 306, 347 N.W.2d at 598.

Marsha contends that there is insufficient evidence to support the jury's determination that she failed to follow the recommendations resulting from her AODA assessment and demonstrate the ability to remain sober for six months prior to the return of her children and that there was no substantial likelihood she would comply in the future. Marsha contends that an expert's opinion of her inability to maintain sobriety is required before the jury is privileged to make such a finding because sobriety is a medical condition that can be determined only by expert testimony and that the record is devoid of any expert testimony that would permit the jury to conclude that Marsha failed to meet this condition. This court does not accept either of Marsha's contentions.

While alcoholism may be a medical condition and expert testimony may be required as to some issues arising from alcohol abuse, the question whether she followed the recommendations made as a result of her assessment and demonstrated the ability to maintain sobriety are not matters requiring expert testimony. Factual determinations are within the realm of the ordinary experience of mankind and may be made by a jury without the benefit of expert testimony. *Drexler v. All American Life & Cas. Co.*, 72 Wis.2d 420, 428, 241 N.W.2d 401, 406 (1976). The jury is required to rely on the opinions of experts only when the factual determination involves unusually complex or esoteric issues. *Bulik v. Arrow Realty, Inc.*, 154 Wis.2d 355, 361, 453 N.W.2d 173, 176 (Ct. App. 1990).

In this case, the jury was asked to determine whether Marsha complied with the condition that she follow a treatment program resulting from an AODA assessment, whether she had demonstrated sufficient ability to maintain sobriety for a period of six months and whether there was a substantial likelihood she comply in the future. These inquiries are not technical in nature requiring special understanding or experience, but can be made based upon the general experience of mankind. The AODA assessment resulted in a recommendation that Marsha undergo intensive out-patient treatment followed by an after-care program. Marsha completed the out-patient treatment and commenced the after-care treatment program initially proscribed.

Further incidents demonstrating her continued alcohol abuse resulted in a series of other treatment requirements under the supervision of an alcohol counselor. She failed to comply with these requirements and was again referred to an intensive out-patient program which she failed to attend. Her failure to attend the second intensive out-patient program from which she eventually withdrew is sufficient to support the jury's determination that she failed to follow the recommendations resulting from her AODA assessment. The fact that she initially complied with the assessment recommendations is insignificant if she did not continue with the treatment to assist her in becoming sober.

Her continued abuse of alcohol, the fact that she was intoxicated on numerous occasions during a time she was to have undergone treatment and her continued and persistent abuse of alcohol are sufficient to support the jury's finding in regard to this condition. Marsha cannot successfully contend that she satisfied this condition because she completed the initial out-patient treatment program, in light of the fact that she failed to complete the after-care program and failed to complete the second out-patient treatment program recommended as a result of her continued alcohol abuse following the initial treatment. This court concludes there is sufficient evidence to support the jury's conclusion that Marsha failed to meet the requirement that she follow the recommendations resulting from the AODA assessment and demonstrate the ability to maintain sobriety for a period of six months prior to the return of her children and that there was no substantial likelihood that she would comply in the future.

Marsha further contends that there is insufficient evidence to support the jury's determination that the County exercised sufficient diligence to assist her in obtaining a stable and nurturing environment for her children, free of alcohol, drugs and violence. A diligent effort requires the state to put forth a "reasonable", "earnest", and "energetic" effort. *In re D.P.*, 170 Wis.2d 313, 330-31, 488 N.W.2d 133, 140 (Ct. App. 1992). Marsha contends that her inability to obtain an apartment was the result of her failure to be able to pass a credit check required by the agency to whom she was referred for assistance by the Brown County Human Services Department.

The evidence is uncontested that the County offered financial assistance by offering a security deposit, the first month's rent and referring her to an agency to assist her in locating suitable housing. The record does not disclose that Marsha made any applications for housing and was denied

because of her credit or that she identified this impediment to her obtaining housing so that the County could assist her in addressing this issue. In the absence of any attempt to obtain assistance in regard to this issue, her persistent failure to obtain housing over a twenty-month period, the County's offer of a security deposit as well as the first month's rent and referring Marsha to an agency to assist her housing needs, the record adequately demonstrates the human services department's diligent efforts to assist Marsha in meeting this condition and the jury's determination that Marsha failed to meet this condition of the CHIPS order.

While the County contends there is sufficient evidence that Marsha failed to meet the remaining conditions of the CHIPS order, this issue need not be addressed on the court's conclusion that there is sufficient evidence to support the jury's determination that Marsha failed to meet the first two conditions of the CHIPS order. The failure to meet any single condition is sufficient to justify the termination of her parental rights. Section 48.415(2)(c), STATS.

Marsha next contends that the trial court erroneously exercised its discretion by ordering termination because the court relied on the jury's findings in exercising its discretion in regard to termination. Because there is sufficient evidence to support the jury's determination in regard to these issues, the contention that the court erroneously exercised its discretion is without merit. Under the circumstances of this case, including Marsha's continued abuse of alcohol and her failure to obtain suitable housing, this court concludes that the trial court's determination that the termination of parental rights would be in the children's best interests is adequately supported by the record. This court therefore concludes that the orders terminating the parental rights to Damaris and Verlynn must be affirmed.

By the Court. – Orders affirmed.

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