

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 30, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 98-0906**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE TERMINATION OF PARENTAL RIGHTS OF  
SHAQUIELLA W.B., A CHILD UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**SERENA M.T.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DANIEL L. KONKOL, Judge. *Affirmed.*

CURLEY, J. Serena M.T. appeals from a circuit court order terminating her parental rights to her daughter, Shaquiella W.B. Serena claims that the circuit court erroneously exercised its discretion when it admitted a videotape into evidence at Serena's jury trial because the videotape was unfairly

prejudicial and cumulative to other evidence. This court disagrees with Serena and, therefore, affirms.

### **I. BACKGROUND.**

Shaquiella was born on April 13, 1993. On May 19, 1994, she was physically abused by Serena's boyfriend, Christopher H. Upon admission to the hospital, Shaquiella was diagnosed with traumatic brain injury with evidence of multiple skull fractures. As a result of the abuse, Shaquiella is totally unable to care for herself, and has a significant number of special medical needs. She has no brain activity and her vision and hearing are severely impaired. She has hand and foot splints which need to be put on and taken off throughout the day. She is given a number of medications four times a day, and must be fed through a gastronomy tube. She utilizes oxygen at night, must be given sedatives every two hours in order to sleep, and must be turned and moved in bed to prevent bedsores. She also has a specially designed wheelchair.

On August 29, 1994, Shaquiella was found to be a child in need of protection or services, and was subsequently placed, pursuant to a dispositional order, in a foster home. On August 28, 1996, the State filed a petition to terminate Serena's parental rights with respect to Shaquiella. Prior to trial, the circuit court heard motions in limine filed by the parties with regard to the admissibility at trial of a twenty-minute "day-in-the-life" videotape of Shaquiella. One of Serena's conditions of return contained in the dispositional order required Serena to demonstrate an understanding of, and be adequately trained to care for, Shaquiella's special needs. The State argued that admission of the "day-in-the-life" videotape was necessary to show the extent of Shaquiella's special needs.

After consideration, the circuit court ruled that the videotape could be admitted at trial.

At trial, after being shown the videotape and hearing other testimony, including testimony from Shaquiella's foster mother, the jury found that there were grounds to terminate Serena's parental rights. After a dispositional hearing on November 21, 1997, the circuit court entered an order terminating Serena's parental rights. Serena now appeals from that order.

## II. ANALYSIS.

Serena claims that the circuit court erroneously exercised its discretion in admitting the videotape because, under § 904.03, STATS., its probative value was substantially outweighed by the danger of unfair prejudice and by considerations of the presentation of cumulative evidence. This court is not persuaded.

The admission of evidence lies within the sound discretion of the circuit court. *See State v. Peppin*, 110 Wis.2d 431, 435, 328 N.W.2d 898, 900 (Ct. App. 1982). When this court reviews a discretionary decision, it examines the record to determine whether the circuit court logically interpreted the facts, applied the proper legal standard, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *See State v. Rogers*, 196 Wis.2d 817, 829, 539 N.W.2d 897, 902 (Ct. App. 1995). Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Section 904.03, STATS. Evidence is unfairly prejudicial if it tends to influence the outcome by improper means, or if it appeals to the jury's

sympathies, arouses its sense of horror, promotes its desire to punish or otherwise causes the jury to base its decision on extraneous considerations. *See State v. Galrud*, 140 Wis.2d 721, 736, 412 N.W.2d 139, 145 (Ct. App. 1987).

One of the conditions of return specified in the dispositional order was that Serena demonstrate an understanding of, and an ability to care for, Shaquiella's significant special medical needs. The "day-in-the-life" videotape helped the jury to understand the nature and extent of those special needs by providing the jury with a visual description of those needs. Therefore, the videotape was relevant. *See* § 904.01, STATS. ("Relevant evidence" means any evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). Nevertheless, Serena argues that the prejudicial effect of the videotape "absolutely overwhelms" its probative value. Serena claims that seeing Shaquiella on the videotape would evoke an extremely emotional and sympathetic response and portray Shaquiella's foster mother as her savior. Serena argues that this response, coupled with the jury's knowledge that Shaquiella's injuries were caused by a felonious assault by Serena's boyfriend, would unfairly prejudice the jury against her.

In personal injury cases, "day-in-the-life" videotapes are routinely held to be admissible. *See* Jane A. Kalinski, *Jurors at the Movies: Day-in-the-Life Videos as Effective Evidentiary Tool or Unfairly Prejudicial Device?*, 27 SUFFOLK U. L. REV. 789, 790 n.10 (1993) (collecting cases). In this case, although the videotape may have evoked feelings of sympathy in the jury, it did not pose a likely danger of unfair prejudice. Even if the videotape had posed a danger of unfair prejudice, however, it would not have been admissible. According to § 904.03, STATS., evidence may only be excluded if "its probative

value is *substantially outweighed* by the danger of unfair prejudice.” Section 904.03 (emphasis added). The “day-in-the-life” videotape was highly relevant evidence in this case. The full extent of Shaquiella’s numerous special medical needs would have been difficult for the jury to completely understand without the visual depiction which the videotape provided. Therefore, under the strict standard of § 904.03, even if the videotape had posed a danger of unfair prejudice, that danger would not have substantially outweighed the videotape’s significant probative value.

Serena also argues that the videotape should have been excluded because it was cumulative to the testimony of Shaquiella’s foster mother. Shaquiella’s foster mother testified concerning the physical, social and medical care which she provided to Shaquiella on a daily basis. The videotape, however, provided something that Shaquiella’s foster mother’s testimony could not—a visual depiction of how that care is provided. The videotape allowed the jurors to *see* rather than *hear* about Shaquiella’s special needs. Therefore, the videotape was not merely cumulative to Shaquiella’s foster mother’s testimony.

In sum, this court concludes that the circuit court properly exercised its discretion in admitting the “day-in-the-life” videotape of Shaquiella. Therefore, we affirm the circuit court’s order.

*By the Court.*—Order affirmed.

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

