

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 07, 2005**

Cornelia G. Clark  
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. 2005AP385**

**Cir. Ct. No. 2003TP269**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**EMANUEL G.,**

**RESPONDENT-APPELLANT.**

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**APPEAL** from an order of the circuit court for Milwaukee County:  
**JOSEPH R. WALL, Judge. *Affirmed.***

¶1 KESSLER, J.<sup>1</sup> Emanuel G. appeals from an order terminating his parental rights to Kedar K. He does not challenge the jury's finding that there were grounds to terminate his parental rights, or the trial court's decision to terminate his parental rights. Rather, Emanuel argues that the termination should be reversed because his constitutional rights were violated when he and the child's mother were treated differently during the Children in Need of Protection and Services (CHIPS) and Termination of Parental Rights (TPR) proceedings. This court rejects his argument based on the facts of this case and affirms the order.

### BACKGROUND

¶2 Kedar K., who was born on July 10, 1996, is the non-marital child of Emanuel and Mary K. Emanuel was adjudicated Kedar's father in November 1997, but has never lived with Kedar.

¶3 Emanuel was on parole when Kedar was born. In September 1998, when Kedar was approximately twenty-six months old, Emanuel's parole was revoked. He remained incarcerated until August 1999.

¶4 Kedar was the subject of an abuse and neglect referral in October 1998. The Bureau of Milwaukee Child Welfare ("Bureau") began providing services to Mary and her children under a CHIPS order.<sup>2</sup> Kedar was removed from Mary's care in June 1999 due to Mary's chronic homelessness, non-

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

<sup>2</sup> Mary has other children that are not Emanuel's. Those children are not involved in this appeal and, therefore, will not be discussed.

cooperation with shelter and social services, and inability to care for her children. At the time of removal, Emanuel was incarcerated.

¶5 In the fall of 1999, Emanuel was released on parole and participated in at least one<sup>3</sup> supervised visit arranged through Kedar's case manager. In April 2000, Emanuel failed to cooperate with the terms of his parole. An absconder warrant was issued. Interaction with Kedar's case manager ceased.

¶6 Emanuel was again incarcerated from January 2001 through September 2001.<sup>4</sup> In November 2001, another absconder warrant was issued. Emanuel was not arrested until November 2003. Emanuel did not have any contact with Kedar from January 2001 through February 2003, when Emanuel again worked with Kedar's case manager to arrange a visit.

¶7 From 1999 through April 2003, Kedar remained placed outside Mary's home pursuant to a series of CHIPS orders that were continuously extended on a yearly basis. These orders outlined conditions that Mary needed to satisfy before Kedar could be returned to her care. Similarly, Emanuel, who attended the first CHIPS hearing and several subsequent hearings, was also given conditions to satisfy before the trial court would consider allowing Kedar to be placed in Emanuel's care.

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<sup>3</sup> It is not apparent from the record how many supervised visits Emanuel may have had with Kedar in 1999.

<sup>4</sup> There is a suggestion in the record that Emanuel was actually released on March 28, 2001, and then re-incarcerated from June 15 through September 25, 2001. Resolution of this factual dispute is not required for this court's analysis.

¶8 A TPR petition was filed in April 2003. With respect to Mary, it alleged as grounds for termination that Kedar remained a child in need of protection and services and that Mary had failed to meet the conditions established for Kedar's return to the home. *See* WIS. STAT. § 48.415(2). With respect to Emanuel, the State alleged that he had abandoned the child, *see* § 48.415(1)(a)3., and failed to assume parental responsibility, *see* § 48.415(6).

¶9 Prior to trial, Emanuel filed a series of motions to dismiss the petition, alleging that his constitutional rights to due process and equal protection had been violated because he did not always have notice of hearings and he was not provided the same social services as Mary. The trial court ultimately rejected Emanuel's arguments and denied the motions. The jury found grounds to terminate Emanuel's parental rights, based on failure to assume parental responsibility and abandonment.<sup>5</sup>

¶10 The trial court then considered whether to terminate Emanuel's parental rights. When Emanuel did not appear for the second day of the dispositional hearing, the trial court proceeded in his absence. Following the dispositional hearing, the trial court found that termination of Emanuel's parental rights would be in Kedar's best interest. This appeal followed.

## DISCUSSION

¶11 Emanuel raises a single issue on appeal: whether the trial court improperly denied his motion to dismiss the petition on constitutional grounds.

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<sup>5</sup> The jury also found grounds to terminate Mary's parental rights, and the trial court ultimately terminated her rights. Mary's rights are not at issue in this appeal and will not be addressed further.

Emanuel argued at the trial court that he had been denied procedural due process, substantive due process and equal protection. He renews this claim on appeal, generally asserting a denial of constitutional rights. However, Emanuel does not challenge the jury's finding that he never established a significant or parental relationship with Kedar. Nor does Emanuel deny that his own status as an absconder made it difficult for the State to provide any services to him when he voluntarily made himself unavailable. Emanuel does not claim that he requested services which were denied.

¶12 “Constitutional issues present questions of law that are reviewed de novo.” *Door County DHFS v. Scott S.*, 230 Wis. 2d 460, 465, 602 N.W.2d 167 (Ct. App. 1999). A TPR adjudication is among the most consequential of judicial acts, involving “the awesome authority of the State to destroy permanently all legal recognition of the parental relationship.” *Steven V. v. Kelley H.*, 2004 WI 47, ¶21, 271 Wis. 2d 1, 678 N.W.2d 856 (citation omitted). Termination of parental rights permanently extinguishes “all rights, powers, privileges, immunities, duties and obligations” that exist between parent and child. WISCONSIN STAT. § 48.40(2).

¶13 A parent's interest in the parent-child relationship and in the care, custody and management of his or her child is a fundamental liberty interest protected by the Fourteenth Amendment. *Steven V.*, 271 Wis. 2d 1, ¶22. The United States Supreme Court and the Wisconsin Supreme Court have both recognized that due process in a TPR proceeding requires that parents be provided with fundamentally fair procedures. See *id.*, ¶¶22-23, citing *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982). Specifically, parents are entitled to a hearing and proof of parental unfitness by clear and convincing evidence. *Steven V.*, 271

Wis. 2d 1, ¶23. Due process requires notice and an opportunity to be heard. *Schultz v. Sykes*, 2001 WI App 255, ¶25, 248 Wis. 2d 746, 638 N.W.2d 604.

¶14 Equal protection of the law is guaranteed by the Fourteenth Amendment to the United States Constitution and by Article I, section 1 of the Wisconsin Constitution. *State v. Allen M.*, 214 Wis. 2d 302, 317, 571 N.W.2d 872 (Ct. App. 1997). “Because courts have long recognized the right to parent one’s children as fundamental, a statutory classification that significantly interferes with this right must be examined under strict judicial scrutiny.” *Id.* at 318 (citations omitted). “Under a strict scrutiny analysis, a statutory classification which significantly interferes with the exercise of a fundamental right ‘cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.’” *Id.* (citation omitted).

¶15 Emanuel does not allege that the TPR statutes are unconstitutional on their face. Rather, he argues that the proceedings to which he was subjected violated his constitutional rights. Specifically, Emanuel argues that there was gender discrimination against him. He explains:

There appeared to be a two tiered system in dealing with the mother and father of the children involved in this case. Mary K. was given conditions to work on throughout the pendency of the CHIPS proceedings as well as the TPR proceedings. Emanuel G. did not receive the same protection. He was not given conditions to work on throughout the process. All things that were asked of him he did complete. He completed the AODA assessment and the psychological evaluation that was requested of him.

¶16 This court concludes that Emanuel has failed to prove that he was denied his constitutional rights.<sup>6</sup> His two primary complaints – that he was not given adequate notice of hearings and that Mary was unfairly offered more social services than he was – do not, under the facts of this case, rise to the level of a constitutional violation, and are inconsistent with the facts found by the trial court.<sup>7</sup>

¶17 At the trial court, Emanuel asserted that he was given inadequate notice of the CHIPS and TPR proceedings. In response, the State provided the trial court with ninety-one pages of documents detailing each attempted contact with Emanuel. The State indicated that it had difficulty finding Emanuel at times (as did Emanuel’s parole officer), and that it generally sent notices to Emanuel’s mother’s home. Emanuel acknowledged at trial that he received all mail sent to his mother’s address.

¶18 On at least two occasions the trial court found that the TPR process had been implemented in a fair manner, and that there had been “nothing about these proceedings that in any way [has] been irregular or out of the ordinary or,

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<sup>6</sup> Because this court concludes that there was no due process or equal protection violation in the way the proceedings were conducted, it does not consider the guardian ad litem’s argument based on *Lehr v. Robertson*, 463 U.S. 248 (1983), that Emanuel is not entitled to constitutional protection because he did not develop a substantial relationship with Kedar.

<sup>7</sup> These two issues appear to relate primarily to the procedural due process and equal protection arguments. Emanuel offers no independent argument on substantive due process; indeed, the phrase appears in Emanuel’s brief only once, referring to the trial court’s determination. Because any potential argument on substantive due process has not been developed, this court declines to specifically address it. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (We need not consider arguments which are undeveloped or unsupported by references to relevant legal authority.).

again, procedurally [has] harmed the father here.” At trial, the trial court explained:

[B]ased on all these facts and the standards as enunciated in the cases I have given ... I find that there has been no violation of procedural due process at all regarding [Emanuel].

The situation is not perfect as to him. That’s for sure. But there certainly has been no intentional State action to prevent him from having contact with his child Kedar. We live in an imperfect world, and when we are dealing with individuals who are not married, are transient, live with girlfriends, live with parents, go to jail, are on probation, come back into the community, go back to prison, live with another girlfriend, problems with notice and getting information to a parent are going to occur. It happens all the time.

....

[W]hen he was incarcerated and [the State] knew that, they brought him here, they got him an attorney. He was represented. He was given the warnings in court. He knew without any question that a TPR was a possibility in this case, and the grounds were laid out in front of him. And two of those grounds that were laid out in front of him were the ones pled in this case.

So ... I find based on this that there is no procedural due process violation.

Emanuel does not challenge the trial court’s factual findings on appeal, except to baldly assert that “[t]he CHIPS orders were annually extended without notice to Emanuel G.” This court concludes that the trial court’s findings are not clearly erroneous. Based on those findings, this court concludes, like the trial court, that Emanuel was not denied his constitutional right to procedural due process.

¶19 Emanuel’s second concern is that Mary was provided more social services than he was, such that he was denied equal protection, because of his gender. Emanuel’s argument fails for several reasons. First, Emanuel fails to



recognize that the alleged grounds for termination of his parental rights did not include failure to meet the conditions of a CHIPS order. The State did not need to prove it made reasonable efforts to assist Emanuel, *see* WIS. STAT. §§ 48.415(1)(a)3. and 48.415(6), as it would have needed to prove had it alleged that Emanuel had not met the conditions in the CHIPS order, *see* § 48.415(2)(a)2. In contrast, Mary's termination was based on her failure to meet conditions established in the CHIPS order, so the State was required to make "reasonable efforts" to provide Mary with a variety of social services designed to help her meet those conditions. *See* § 48.415(2)(a)2.

¶20 Moreover, Emanuel does not identify the social services he wished he had received, or provide proof that he asked for services. He simply states that he would have liked to have been given "conditions to work on." The record belies his suggestion that he was given no guidance. In March 2000, the trial court established conditions for Emanuel to meet before the trial court would consider placing Kedar with him. These conditions included securing a suitable residence, maintaining contact with the social worker, attending family counseling and other conditions. Emanuel does not explain what the Bureau should have done to assist him in meeting these conditions and becoming a responsible parent.

¶21 The State alleged, and the jury found, that Emanuel had not established a parental relationship with his child, and that he abandoned the child. The evidence supported this verdict; Emanuel himself testified that from January 2001 until March 2003 he did not have any visits or contact with Kedar, and that he did not contact the Bureau or the trial court to learn how Kedar was doing. Emanuel admitted at trial that in Kedar's entire life, he has never been in a room alone with him, or spent a night with him. Emanuel does not identify how the denial of additional services or "conditions to work on" prevented him from

contacting and establishing a relationship with his child, whether directly or through the Bureau.

¶22 Like the trial court, this court is unconvinced that Emanuel was treated differently because of his gender. To the extent Mary was offered more social services, it was due to the fact that she was trying to comply with the CHIPS order and was cooperating with the State. To the extent Emanuel may have been offered fewer social services, his absconding and repeated parole violations made such services problematic at best. There was no equal protection violation.

### CONCLUSION

¶23 This court concludes that Emanuel was not denied due process or equal protection during the court proceedings. Emanuel has challenged neither the jury's finding that there were grounds to terminate his parental rights nor the trial court's discretionary decision to terminate his parental rights. Accordingly, this court affirms the order.

*By the Court.*—Order affirmed.

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

