COURT OF APPEALS
DECISION
DATED AND FILED

June 21, 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 Nos. 2005AP0952
2005AP0953
2005AP0954

Cir. Ct. Nos. 2004TP000015
2004TP000016
2003TP000696

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

NO. 2005AP0952
IN RE THE TERMINATION OF PARENTAL RIGHTS TO ALEXIA S., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

BOBBIE K.,

RESPONDENT-APPELLANT.

NO. 2005AP0953
IN RE THE TERMINATION OF PARENTAL RIGHTS TO AARON S., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

BOBBIE K.,

RESPONDENT-APPELLANT.

NO. 2005AP0954
IN RE THE TERMINATION OF PARENTAL RIGHTS TO ALEX K., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

BOBBIE K.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed and cause remanded with directions*.

¶1 FINE, J. Bobbie K. appeals orders terminating her parental rights to Alex K., Alexia S., and Aaron S. She challenges both the jury's finding that it was not substantially likely that she would within twelve months of the trial satisfy court-ordered conditions for the safe return of the children to her, and, also, the trial court's conclusion that termination was in the best interests of the children. We affirm.

I.

¶2 Alex K., Alexia S., and Aaron S. were born in November of 1997, August of 2001, and August of 2002 respectively. Alex K. suffers from a genetic disease that interferes with his growth and development. He was removed from Bobbie K.'s home in January of 2000 for seven months because of his failure to thrive, and again three months after his return to her when social workers discovered that the boy and Bobbie K. were living in filth. He stayed in foster

care until the trial. Alexia S. and Aaron S. were also in foster care when the trial started. The parties agreed in a pre-trial stipulation that was read to the jury that all of the children had "been adjudged to be in need of protection or services and placed outside Ms. K[.]'s home for a cumulative period of six months or longer pursuant to" court orders.

¶3 The jury found that Bobbie K. had not failed to assume her parental responsibilities for the children, but that the State had proven that she had both "failed to meet the conditions established for the safe return" of the children to her and, also, that "there is a substantial likelihood that [she] will not meet these conditions within the twelve-month period following" the trial.[1] The jury also found that the social-service agency responsible for trying to help Bobbie K. had "made reasonable efforts to provide the services ordered by the Court." Bobbie K. does not dispute this latter finding. As noted, the trial court concluded that termination was in the children's best interests.

¶4 According to a clinical psychologist who testified for the State, Bobbie K. "tested out in the mild mental retardation range," noting that she was "at the first percentile" of intellectual ability, "which means that 99 percent of the country - - of adults at her age that would be taking that [test] instrument would be scoring higher." He also testified that Bobbie K.'s skills in reading and

[1] For some reason, the orders entered by the trial court terminating Bobbie K.'s parental rights to the children have the "failure to assume parental responsibility" boxes checked with respect to each child. Given the jury's findings to the contrary, this is error, and, although we affirm the orders terminating Bobbie K.'s parental rights, the trial court is directed to enter amended orders that correctly reflect the jury's verdicts.

mathematics were "hardly adequate for basic survival purposes," without "someone to help and guide" her. Bobbie K. does not dispute this assessment.

¶5 The record is replete with evidence that Bobbie K. resisted efforts to help her cope with the needs of her children. A social-service worker who was the "ongoing case manager" for Bobbie K. and the children for approximately one year testified that Bobbie K. told her that "she did not want to participate in the parenting or the home management" services the agency made available to her, and this was confirmed by the head of the contracting agency that would have provided those services, who told the jury that Bobbie K. did not cooperate with them. The ongoing case manager at the time of trial testified that Bobbie K. "has resisted me almost throughout the entire case." Indeed, the psychologist told the jury that Bobbie K. essentially denied that she had any problems in meeting her children's needs: "She gets very rigid in her defenses and basically shuts down awareness of what is going on. She doesn't have the intellectual skills to be able to look at the big picture, so that she certainly may be underestimating problem areas, but this seems to be part of her style, denying problems."

¶6 The confluence of Bobbie K.'s limited cognitive and parental focus was brought home to the jury by the social worker who had been her case manager. The social worker testified that she had met at a doctor's office Bobbie K., the children, and the foster mother who was caring for the children, and that Bobbie K. did not recognize the children:

> I believe she had asked me where the children were, and I had informed her that they were right behind her, and she stated to me that she did not recognize them, well, they're in different clothes or someone else's clothes or something, right. They happened to be right next to her while we were talking to the foster mother and she did not recognize her own children.

¶7 Bobbie K.'s brief on appeal does not dispute any of the evidence adverse to her ability to care for her children, other than point to her testimony that she believed she had complied with the court orders and that she was able to properly care for the children. Her main brief also argues that the jury's finding that she did not fail to assume parental responsibility for the children "does not mesh" with the jury's concurrent finding that there was a "substantial likelihood" that she would not meet the court-ordered conditions for their safe return to her within twelve months of the trial.

¶8 In concluding that termination of Bobbie K.'s parental rights to the children was in their best interests, the trial court noted that the children were thriving outside Bobbie K.'s home and had "developed meaningful relationships with their real caregivers," despite the children's periodic visits with Bobbie K.: "And comparing the possibility of stability and the birth family versus possibility of stability and healthy family setting in the prospective adoptive families favors strongly as I can imagine the stability of the prospective adoptive placements." Although expressing sympathy for Bobbie K., the trial court correctly noted that "we are not dealing with sympathy; we are dealing with kids' needs," and opined that "I just don't see how it could possibly be in the interest of these children not to terminate." Bobbie K. argues that the trial court should not have terminated her parental rights to the children but, rather, should have given her more time to comply with the court orders.

II.

¶9 WISCONSIN STAT. § 48.415(2)(a) provides, as material here, that it is a ground to terminate a person's parental rights to his or her child if:

> 1. … the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders …
>
> ….
>
> 3. … the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and … the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

As we have seen, the parties stipulated that Alex K., Alexia S., and Aaron S. had "been adjudged to be in need of protection or services and placed outside Ms. K[.]'s home for a cumulative period of six months or longer pursuant to" court orders. As we have also seen, the jury found in connection with each of the children that "there is a substantial likelihood that [Bobbie K.] will not meet [the court-ordered] conditions [for the safe return of each of the children] within the twelve-month period following the conclusion of this hearing."

¶10 We give significant deference to jury verdicts on appeal, and may not overturn them "if there is any credible evidence" that supports what the jury has found, giving to the jury's finding every reasonable supporting inference. ***State v. Quinsanna D.***, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 449, 655 N.W.2d 752, 761. Other than argue things that *might* have supported a jury finding to the contrary, Bobbie K. has not established that the jury's verdict is not supported by the evidence. The jury's concurrent finding that she did not fail to assume her parental responsibility does not change things. Under WIS. STAT. § 48.415(6), a jury may not find that a parent has failed to assume his or her parental responsibility unless the jury can conclude that the parent "*never* had a

substantial parental relationship with the child."[2] (Emphasis added.) Thus, the core finding inherent in the jury's answers to the "parental responsibility" questions does not conflict with its finding that there is a substantial likelihood that Bobbie K. would not, within twelve months of the trial, be able to comply with the court orders requisite to safely returning the children to her. Bobbie K.'s challenge to the jury's verdict is without merit.

¶11 Once a jury has found that there are grounds to terminate a person's parental rights to his or her children, the trial court must decide whether termination is in the children's best interests. WIS. STAT. §§ 48.424(1) & (4); 48.426(2). As the trial court recognized, a parent whose action or inaction results in a finding that there are grounds to terminate his or her parental rights has no special claim to the children in the best-interests phase. ***Richard D. v. Rebecca G.***, 228 Wis. 2d 658, 672–673, 599 N.W.2d 90, 97 (Ct. App. 1999).

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[2] WISCONSIN STAT. § 48.415(6) reads in full:

> (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child.
>
> (b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ever expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

¶12 Whether circumstances warrant termination of parental rights is within the trial 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). We will not reverse a trial court's discretionary decision if the trial court 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. We review *de novo* whether the trial court has applied the correct legal standard. *See* ***Kerkvliet v. Kerkvliet***, 166 Wis. 2d 930, 939, 480 N.W.2d 823, 826 (Ct. App. 1992).

¶13 Bobbie K. does not dispute that the trial court considered the appropriate factors under WIS. STAT. § 48.426(3).[3] That she might have preferred

[3] WISCONSIN STAT. § 48.426(3) provides:

> In considering the best interests of the child under this section the court shall consider but not be limited to the following:
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> (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 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.

a different result does not mean that the trial court erroneously exercised its discretion. It is apparent from the trial court's sensitive comments during its oral decision on termination that the evidence in support of termination was overwhelming. As the joint brief by the State and the children's guardian *ad litem* points out: "Bobbie K.'s argument that the court should have allowed the [child in need of protection or services] orders to continue as she was making improvements simply does not overcome the children's rights to have permanency, and their need for stable and capable parents now, rather than some unknown time in the future." Indeed, that is the legislative mandate:

> The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships are contrary to the welfare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their safe return to the family.

WIS. STAT. § 48.01(1)(a). We affirm.

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

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