

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 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. 2005AP1309
2005AP1310
2005AP1311**

**Cir. Ct. Nos. 2003TP137
2003TP138
2003TP139**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

No. 2005AP1309

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MARISOL A.,

RESPONDENT-APPELLANT.

No. 2005AP1310

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARISOL A.,

RESPONDENT-APPELLANT.

No. 2005AP1311

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARISOL A.,

RESPONDENT-APPELLANT.

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

¶1 WEDEMEYER, P.J.¹ Marisol A. appeals from orders terminating her parental rights to her children, Jesus V., Jennifer A., and Xiomara A. Marisol claims the trial court erred in admitting evidence of three incidents of irrational behavior leading to her arrest on three separate occasions. Because the trial court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

did not erroneously exercise its discretion in admitting the three incidents, this court affirms.

BACKGROUND

¶2 Jesus was born on August 21, 2000. On May 1, 2001, Marisol told a neighbor, Laura Pagan, that she was going to make a phone call and had left her baby, Jesus, sleeping in the apartment. When Pagan entered the apartment, she found Jesus, lying naked and dirty on the floor with his eyes closed. The apartment was very dirty and smelled of vomit, urine and feces. The police were called.

¶3 Officer Edward Joncas noticed a contusion on Jesus's head. Jesus was removed from the home as a child in need of protection or services. Twins Jennifer and Xiomara were born on September 19, 2001, and detained at birth. Dispositional orders with required conditions for return were entered for the children on December 18, 2001, and extended annually.

¶4 On March 2003, the State filed a petition seeking to terminate Marisol's parental rights. The grounds alleged in the petition were that Marisol failed to assume parental responsibility and the children continued to be in need of protection or services.

¶5 The grounds phase of the termination proceedings was conducted from May 3 through May 13, 2004. During the trial, the State introduced evidence pertaining to three additional incidents, which led to Marisol's arrest. The first occurred on July 20, 2001, while Marisol was residing at the acute psychiatry unit at Mercy Behavioral Health Center. Marisol had demanded she be given popcorn and when she was told she could not have any due to the fact that she broke the

popcorn machine, she created a very loud disturbance, which lasted ninety minutes. During the disturbance, Marisol turned over furniture, ripped down room signs, threw things around her room, destroyed others' property, jumped on other patients' beds, swore, and spread feces on her walls. The police were called for assistance.

¶6 The second incident occurred on June 8, 2002, while Marisol was residing at the Jeremy House shelter in Waukesha. Marisol told employee Heather Smith that she had made a cake decorated with a troll doll, eggs with black writing on them, rice, Precious Moment figurines, a "utensil with a white handle," and a knife. Marisol also told Smith that she wanted to kill Jesus because he was not a girl, and that she hoped Jesus grew up to be a drug dealer. She then asked Smith what she would do if Marisol pulled Smith's hair and threw a chair at her. Smith responded that she would call the police if Marisol hurt herself or others. In the early morning on June 9, 2002, Marisol became loud and agitated. Police were called. Marisol began making obscene statements about the president and the government to the police officer. Marisol told the officer that he "could kill her, she could kill the officer for free, but if he would kill her, she would have to kill him afterwards."

¶7 The third event occurred on July 29-30, 2003. Marisol's neighbor, Theresa Wisniewski, indicated that Marisol threatened to shoot Wisniewski and "bust" all of her windows. The police were called on July 30 when Wisniewski observed Marisol throwing feces on a neighbor's car.

¶8 The jury found that grounds existed to terminate Marisol's parental rights. At the dispositional hearing, the trial court ruled that it was in the best

interests of the children to terminate Marisol's parental rights. Marisol now appeals.

DISCUSSION

¶9 The issue in this case involves an evidentiary matter, which this court reviews under the erroneous exercise of discretion standard. *State v. Quinsanna D.*, 2002 WI App 318, ¶19, 259 Wis. 2d 429, 443, 655 N.W.2d 752 (Ct. App. 2002). This court will uphold the trial court's decisions as to the admissibility of evidence as long as the trial court considered the pertinent facts, applied the proper law, and reached a reasonable determination. *Id.*

¶10 Marisol contends that the evidence was improperly admitted because it was cumulative and unfairly prejudicial. She argues that it was cumulative to the testimony of the State's clinical psychologist, who testified about Marisol's mental disorders. She claims the evidence was unfairly prejudicial because it appealed to "the jurors natural antipathy for crazy people." This court rejects both contentions.

¶11 First, the three incidents admitted were not "cumulative" to the clinical psychologist's testimony. This evidence was relevant to show an ongoing pattern or inappropriate behavior on Marisol's part and failure to comply with her CHIPS conditions. Each event was separate and distinct as to time, place and circumstances. Accordingly, this court cannot conclude that the trial court should have excluded this evidence as cumulative.

¶12 Second, the trial court properly analyzed the admissibility of this evidence using the pertinent facts and applicable law. It reached a reasonable determination based on its analysis that any prejudice arising from this evidence

did not substantially outweigh the probative value of the evidence. The trial court set forth its complete analysis in over fifteen pages of transcript. This court adopts the trial court's decision in the transcript as its own. *See* WIS. CT. APP. IOP IV(5)(a) (Oct. 14, 2003).

By the Court.—Orders affirmed.

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

