COURT OF APPEALS
DECISION
DATED AND FILED

June 1, 2000

Cornelia G. Clark
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* WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0664
00-0665
00-0666

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

00-0664

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

ROCK COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

YOLANDA M.,

RESPONDENT-APPELLANT.

00-0665

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

ROCK COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

YOLANDA M.,

RESPONDENT-APPELLANT.

00-0666

IN RE THE TERMINATION OF PARENTAL RIGHTS TO SHANTA M. A/K/A C., A PERSON UNDER THE AGE OF 18:

ROCK COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

YOLANDA M.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Rock County: JOHN H. LUSSOW, Judge. *Affirmed.*

¶1 EICH, J.[1] Yolanda M. appeals from an order terminating her parental rights to her three children. She argues: (1) that it was "intrinsically unfair" for the County to include abandonment as a ground for termination; (2) it was also "intrinsically unfair" to send the case to the jury because the petitions were defective in that they failed to contain a "warning" that it (the petition) "was

[1] This case is decided by a single judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98).

not an order" and did not prohibit contacts with the children; and (3) that the proceedings "may be fatally defective" because the petitions stated that her children were not subject to the Federal Indian Child Welfare Act. We reject the arguments and affirm the order.

¶2 After Yolanda's third child tested positive for cocaine at birth, and Yolanda herself also tested positive for cocaine and marijuana, her three children were placed in foster care and, on December 14, 1998, were found to be in need of protection and services. The CHIPS orders set five conditions that Yolanda would have to meet in order for the children to be returned to her, including a condition that she remain drug- and alcohol-free. The orders included a "WARNING FOR PARENTS" stating that if the return conditions were not satisfied, the department "may request the court to terminate your parental rights…." It concluded by stating:

> Also, if you fail to visit or communicate with the child for a period of three months or more, such a failure to visit or communicate could be considered abandonment, which is another ground for termination of your parental rights to the child.

¶3 On June 28, 1999, the County filed petitions to terminate Yolanda's parental rights to her children. The petitions alleged that she had failed to meet the return conditions of the CHIPS order, and included allegations of her continued drug use.

¶4 Eventually, the petitions were amended to include abandonment as a ground for termination—based on the allegation that Yolanda had not communicated or visited with her children between June 28 and September 28,

1999. Yolanda made her initial appearance on the amended petitions with an attorney and a trial date was set.

¶5 Yolanda failed to appear at the fact-finding jury trial. She says that she had several outstanding warrants related to a pending criminal proceeding and was fearful of being arrested if she were to appear. The undisputed testimony at trial was that the department had continued to schedule visits between Yolanda and her three children between June 29 and September 28, 1999, informing her in writing of the dates, and that Yolanda failed to attend any of the visits or to communicate in any other way with her children during that time.

¶6 The jury found that Yolanda had failed to visit or communicate with the children for a period of three months, and that no good cause had been shown for that failure, and the court set the matter for a dispositional hearing. Yolanda failed to appear at that hearing as well, and the court entered orders terminating her parental rights to all three children.

¶7 Yolanda's first argument—that we should reverse because of the "intrinsic unfairness" of the termination proceedings—is based on several unsupported (and questionably relevant) assertions and suppositions, including: (1) that, by alleging abandonment, the County "manipulated a situation which would be likely to discourage Yolanda from seeing her children [and] this would increase the chances that [the county] would be successful in their attempt to terminate Yolanda's parental rights; (2) Yolanda "may not understand or trust the general society [and] probably fears it"; and (3) "[t]he statement that [Yolanda] had allowed over three months to pass without having any visitation or contact with the children … belies the reality as it was to Yolanda [who] is petrified of the authorities … [and] does not trust any of the people that [sic] were trying to work

with her." We don't consider such unsupported musings as argument and do not consider them further.

¶8 Yolanda then offers three factual assertions in support of her "unfairness" claim. She says first that she was incarcerated in the Rock County Jail "in May and June of 1999." That assertion is not borne out by the record, and, as we have on many occasions, we will ignore unsupported factual assertions. ***Dieck v. Antigo Sch. Dist.***, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990). Yolanda, who lives in Beloit, also states that the department acted unfairly in scheduling her visits with the children in Janesville, claiming—again without any reference to the record—that she "did not have a vehicle or a ride to Janesville." Again, in the absence of any record citation, we ignore the assertion. *See* ***id.*** Yolanda acknowledges that the department had provided her with free bus passes to Janesville, but she says that "buses are rare and it is hard to travel by bus from Beloit to Janesville." Yolanda does cite to the record for the quoted statement. The reference is false, however, for no such testimony appears on the cited pages. Finally Yolanda states in her brief that she had never been informed "that not seeing her children would toll against her…." That assertion, of course, is belied by the WARNING TO PARENTS which we have quoted above, and which appeared on each of the three CHIPS orders.[2]

[2] Yolanda appears to argue that we should reverse because the TPR petitions did not contain "written information stating that the petition is not an order, and that the parent should continue to see their [sic] children pursuant to the social service approved schedule until a court order forbids further contact." She offers no legal authority in support of such a position, however, and we do not consider the argument further. *See* ***Lechner v. Scharrer***, 145 Wis. 2d 667, 676, 429 N.W.2d 491 (Ct. App. 1988) (court of appeals does not consider arguments unsupported by citations to authority).

¶9 Yolanda next argues that it was "intrinsically unfair" for the trial court to "allow[] the abandonment issue to go to the jury." She says first that the mere allegation itself "raises the ire and emotions of the jury against the parent, especially when the parent is not at the trial." She also asserts that it was "unfair" for the County to use the three-month period immediately following the filing of the TPR petitions as the "abandonment" period. Her position seems to be this: where, as here, a CHIPS-grounded TPR petition is later amended to add a claim of abandonment, that amendment (and any adjudication of abandonment) should not be permitted unless the initial petition contained a "warning" that, even after its filing, the parent should continue to visit and communicate with his or her children.[3]

¶10 Yolanda offers no legal authority for the argument other than general references to the importance of the parent-child relationship and the general "fairness" requirements of due process.

¶11 The statutory bases for terminating a parent's rights in his or her children have been the subject of close judicial scrutiny for many years. The procedure is, as the County points out, a "rigorous [one] designed to protect parents against the possibility of loss of parental rights and to put them on notice as to what types of behavior on their part may result in termination." The supreme

[3] Specifically, she says:

> The petition for TPR should have written information stating that the petition is not an order, and that the parent should continue to see their children pursuant to the social service approved schedule until a court order forbids further contact. Such a notice, in large letters and plain language, would permit a parent who has a hard time understanding legal language and who has an intrinsic distrust of the legal system to understand that they still have the right and obligation to continue seeing their children until the court orders them not to.

court agrees. In ***Marinette County v. Tammy C.***, 219 Wis. 2d 206, 220, 579 N.W.2d 635 (1998), the court said that, in adopting these procedures, the legislature "has chosen … to surround the CHIPS grounds for involuntary termination with procedural safeguards which will assure that a parent will be fully informed of the grounds for termination of parental rights which may be applicable." The required procedure was followed in this case. Yolanda was warned of possible TPR abandonment grounds in the CHIPS orders, and we decline her unsupported invitation to engraft further requirements onto the applicable statutes. She made the decision not to appear at trial, or at the dispositional hearing, despite being represented by counsel and despite being on notice as to the basis, purpose and effect of those hearings. We agree with the County that, on this record, her claims should be rejected.

¶12 Finally, Yolanda says we should reverse the orders and remand to the trial court to determine the application and effect of the Federal Indian Child Welfare Act. She points to a statement in the orders that the children are not subject to the Act, and to the fact that the court never considered the Act in its decision, and asks us to remand for that purpose. The claim is based entirely on her after-the-fact, unsupported statement that she thinks one of her great-grandparents "may have been a full-blooded American Indian," and she says that "if this information is correct," she and her children "may have a right to tribal membership … under federal statutes."

¶13 We agree with the County that this "argument" is wholly without merit and borders on the frivolous. First, as with many of her earlier claims, it finds no support in the record. Second, it is wholly speculative: an ancestor "may" have been an Indian and "if" the information is correct, she and her children

"may" have some right to tribal membership. Even beyond that—as also pointed out by the County—in order to be subject to the Act, the person must be a member of an Indian tribe, 25 U.S.C. § 1903(3), and Yolanda makes no such claim in her brief. The argument is not only unsupported by any facts of record (and thus should be disregarded on that basis alone), it is no more than bare supposition—her great-grandmother "may" have been an Indian, and "if" she was, then she and her children "may" have various "rights." Beyond that, as the County points out, in order for the Indian Welfare Act to apply, she must be "a member of an Indian tribe." 25 U.S.C. 1903(3). She has not asserted that she holds membership in any tribe, and there is nothing in the record to show that she does.

By the Court.—Orders affirmed.

This opinion will not be published. WIS. STAT. RULE 809.21(1)(b)4 (1997-98).