

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 11, 2006

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. 2005AP2385
2005AP2386
2005AP2387
2005AP2388**

**Cir. Ct. Nos. 2003TP871
2003TP872
2003TP873
2003TP874**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**No. 2005AP2385
CIR. CT. NO. 2003TP871**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ANTHONY J.,

RESPONDENT-APPELLANT.

**No. 2005AP2386
CIR. CT. NO. 2003TP872**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ANTHONY J.,

RESPONDENT-APPELLANT.

NO. 2005AP2387

CIR. CT. NO. 2003TP873

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ANTHONY J.,

RESPONDENT-APPELLANT.

NO. 2005AP2388

CIR. CT. NO. 2003TP874

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ANTHONY J.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
TIMOTHY M. WITKOWIAK, Judge. *Affirmed.*

¶1 FINE, J. Anthony J. appeals orders terminating his parental rights to Latika J., Kesha J., Shakella J., and Joseph J., who were born in 1993, 1994, 1996, and 1997, respectively. The orders were entered after a jury found that Anthony J. had abandoned the children for six months or more. *See* WIS. STAT. § 48.415(1)(a)3. Originally appealed under the no-merit procedure, *see Brown County v. Edward C.T.*, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (*per curiam*), this court rejected the no-merit report. The only issue presented by this appeal is whether alleged defects in the procedures relating to children alleged to be in need of protection and services affecting the four children, *see* WIS. STAT. § 48.13, made void subsequent procedures to terminate Anthony J.’s parental rights to those children. We conclude that because the termination-of-parental-rights jury findings were not based on the earlier § 48.13-authorized procedures, and because Anthony J. does not assert that the termination-of-parental-rights procedures were otherwise flawed, and also does not challenge the trial court’s conclusion that termination would be in the children’s best interests, we affirm. In light of our conclusion, we do not discuss whether the procedures authorized by § 48.13 were, in fact, flawed or, if so, whether Anthony J. waived the defects. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

¶2 As noted, the jury in this case determined in connection with each of the children that Anthony J. had abandoned them, as that concept is reified by WIS. STAT. § 48.415(1)(a)3. As material, § 48.415 provides:

At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:

....

3. The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.

Subsection 3 is thus different than subsection 2, which specifically predicates its applicability on underlying and earlier child-in-need-of-protection-or-services procedures. Subsection 2 provides, as material and in context:

(1) ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:

....

2. That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) ... and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

WISCONSIN STAT. § 48.356 provides:

Duty of court to warn. (1) Whenever the court orders a child to be placed outside his or her home, orders an expectant mother of an unborn child to be placed outside of her home or denies a parent visitation because the child or unborn child has been adjudged to be in need of protection or services under s. 48.345, 48.347, 48.357, 48.363 or 48.365, the court shall orally inform the parent or parents who appear in court or the expectant mother who appears in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the

conditions necessary for the child or expectant mother to be returned to the home or for the parent to be granted visitation.

(2) In addition to the notice required under sub. (1), any written order which places a child or an expectant mother outside the home or denies visitation under sub. (1) shall notify the parent or parents or expectant mother of the information specified under sub. (1).

As material to our discussion, § 48.356 has the following components:

- The trial court assigned jurisdiction under WIS. STAT. ch. 48 “orders a child to be placed outside his or her [parental] home”;
- The court must then “orally inform the parent or parents who appear in court ... of any grounds for termination of parental rights under s. 48.415 which may be applicable”; and, critically,
- The court must also then “orally inform the parent or parents who appear in court ... of the conditions necessary for the child ... to be returned to the [parental] home.”
- The oral notice required by § 48.356(1) must also be given to the parent in writing when a child is removed from the parent’s home by “written order.”

Thus, at its core, § 48.356 requires that as a predicate to termination of a person’s rights to a child who has been removed from the parental home by court order that the parent be told what he or she must do to get the child back. But as we have seen, the termination of Anthony J.’s parental rights to the children was not predicated on § 48.415(1)(a)2, but on § 48.415(1)(a)3, which is triggered by a six-month abandonment unrelated to what the State or any court might have done or not done. There is nothing in the statutes that requires that a parent be told that he or she can lose parental rights to a child by abandoning that child. As both the State and the guardian *ad litem* cogently argue, this is dispositive. As the guardian *ad litem* points out in her brief:

Even if there never had been any [WIS. STAT. § 48.13-based] orders and if Anthony J. had never received any warnings under Wis. Stat. § 48.356, the court would still have the authority to enter orders terminating Anthony J.'s parental rights if the jury found that, absent good cause, he failed to visit or communicate with the children for a period of 6 months or longer, and at that time he could have discovered their whereabouts. This is precisely what the jury found in this case.

We agree and affirm.

¶3 We also wish to commend all counsel in this appeal, Paul G. Bonneson, Esq., who represents Anthony J., Gilbert F. Urfer, Esq., who represents the State, and Danuta E. Kurczewski, Esq., the children's guardian *ad litem*, for their uniformly superb briefs.

By the Court.—Orders affirmed.

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

