

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 18, 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 No. 2006AP121**

**Cir. Ct. No. 2005TP66**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**TAMMY M.,**

**RESPONDENT-APPELLANT.**

---

APPEAL from an order of the circuit court for Milwaukee County:  
THOMAS P. DONEGAN, Judge. *Reversed.*

¶1 FINE, J. Tammy M. appeals from an amended order terminating her parental rights to Terriana M. She contends that there was insufficient

evidence to support the jury's finding that she "failed to assume parental responsibility for" Terriana. We reverse.

## I.

¶2 Tammy M. was born in December of 1989, and was fourteen when she gave birth to Terriana, who was born in January of 2004. Tammy M. was in foster care when Terriana was born. There is no doubt but that Tammy M. had difficulty dealing with Terriana and the responsibilities of parenthood, and, following largely unsuccessful efforts by social workers to help Tammy M. in her parenting, in February of 2005, the circuit court found Terriana to be a child in need of protection or services. *See* WIS. STAT. § 48.13. The petition seeking to terminate Tammy M.'s parental rights to Terriana was filed nine days later.

¶3 Termination of parental rights is a two-step process. If a jury (or a judge, if a jury trial is waived) finds that there are grounds to terminate a person's parental rights to his or her children, the circuit court must decide whether termination is in the children's best interests. WIS. STAT. §§ 48.424(1) and (4); 48.426(2). Here, the State ultimately alleged two grounds to terminate Tammy M.'s parental rights to Terriana.

¶4 First, that:

- Terriana had been adjudicated as a child in need of protection or services;
- Terriana had, at the time the amended termination-of-parental-rights petition was filed against Tammy M., been out of Tammy M.'s home for, as phrased by the applicable statute, "a cumulative total period of 6 months or longer"; and
- again as phrased by the statute, Tammy M. had "failed to meet the conditions established for the safe return of the child to the home

and there is a substantial likelihood that [she would] not meet these conditions within the 12-month period following the” trial, even though “the agency responsible for the care of the child and the family ... has made a reasonable effort to provide the services ordered by the court.”

*See* WIS. STAT. § 48.415(2).

¶5 Second, that Tammy M. failed to assume her parental responsibilities for Terriana. *See* WIS. STAT. § 48.415(6).

¶6 The jury found that grounds to terminate Tammy M.’s parental rights to Terriana under WIS. STAT. § 48.415(2) were not proven because, as reflected by their verdict, the responsible agency did not “make a reasonable effort to provide the services ordered by the court.” *See* § 48.415(2)(a)2.b. The jury did find, however, that Tammy M. “failed to assume parental responsibility for” Terriana. As noted, Tammy M. challenges the sufficiency of the evidence to support that finding.

## II.

¶7 We may not overturn a jury’s finding that there are grounds to terminate a person’s parental rights to his or her child 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. WISCONSIN STAT. § 48.415(6) provides that the circuit court may terminate a person’s parental rights to his or her child if the State proves that there was by the parent a “[f]ailure 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.” Sec. 48.415(6)(a). “Substantial parental relationship” is defined by the statute as meaning:

[T]he 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.

Sec. 48.415(6)(b).

¶8 As Tammy M. argues, WIS. STAT. § 48.415(6), requires that the parent “*never* had a substantial parental relationship with the child.” (Emphasis added.) Absent a constitutional infirmity or a lack of clarity, we take and apply statutes as they are written. *See State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 662, 681 N.W.2d 110, 123–124. Thus, “never” means never. It cannot be said on this Record that the State has adduced any evidence from which a reasonable jury could find that Tammy M. never assumed her parental responsibility for Terriana, as measured by the fairly lenient minimal criteria in § 48.415(6)(b). Thus, for example, one of the social workers trying to help Tammy M. in her rearing of Terriana testified that she saw Tammy M. properly feed Terriana, play with Terriana, and properly discipline her. Further, the social worker also testified when questioned by Tammy M.’s trial lawyer:

Q And you also reported that Tammy had checked Terriana’s diaper; is that correct?

A Correct.

Q And that she had checked to see if she was hungry, tried to feed her?

A Correct.

Q Appropriate food? A bottle?

A As far as I can remember, yes.

One of the foster parents for Tammy M. and Terriana recounted her experience:

Q Okay. It is your testimony that while Tammy was living with you that she did her chores?

A Yes, it is.

Q She washed Terriana's clothes?

A Yes.

Q And that -- that you would allow her to go to her friend's house but she take the baby with her?

A Yes.

Q And that while she was at home she would be with the baby, with Terriana?

A Yeah.

Q And did you ever see her feed Terriana?

A Yes.

Q Did you see her feed her formula?

A Yes.

Q Did you see her change diapers?

A Yes.

Q Did you witness her bathe Terriana?

A Yes.

Q Play with Terriana?

A Yes.

The first foster parent with whom both Tammy M. and Terriana lived also testified, as phrased by the question posed by Tammy M.'s trial lawyer, that "initially [Tammy M.] was doing some things for" Terriana:

Q Taking care of some of the needs of the baby?

A Yes. She did a lot.

¶9 Sadly, however, that changed, and, as the State recounts in its appellate brief, and as the Record reveals, Tammy M. has led far from a productive, drug-free life. And, it is also true, as the State argues, that there were many things in the Record from which the jury could find that Tammy M. frequently abdicated her parental responsibilities in connection with Terriana. But, as we have seen, the statute does not permit termination of parental rights on the failure-to-assume ground if the State proves that on balance, or even if most of the time, the parent has been a terrible caregiver. Rather, the statute requires that the parent "never" did the things that it is not disputed that Tammy M. did for Terriana. Thus, the jury's finding that there were grounds to terminate Tammy M.'s parental rights to Terriana under WIS. STAT. § 48.415(6) cannot stand. Indeed, the circuit court in the best-interests phase of the proceeding opined that "Terriana has known her mother all her life. *Her mother raised her initially.* She has seen her through the visitation process." (Emphasis added.) Accordingly, we must reverse the order terminating Tammy M.'s parental rights to Terriana.

*By the Court.*—Order reversed.

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

