COURT OF APPEALS
DECISION
DATED AND FILED

JULY 5, 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.

Nos. 00-1023
00-1024

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

NO. 00-1023

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TERESSA S.,

RESPONDENT-APPELLANT.

NO. 00-1024

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TERESSA S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: THOMAS R. COOPER, Judge. *Affirmed.*

¶1 SCHUDSON, J.[1] Teressa S. appeals from the trial court order terminating her parental rights to Yvonne S. and Leacky T. She argues: (1) the trial court erred in determining that the district attorney had authority to file a termination petition; (2) the trial court erred in denying her motion for severance; and (3) the evidence did not support the jury's finding that she did not show good cause for failing to visit her children. This court affirms.

¶2 The State petitioned for termination of Teressa's parental rights to her children, Yvonne and Leacky, on November 18, 1997, and filed an amended petition on March 23, 1998. Teressa contested the petition and a jury trial was held on July 27-30, 1998. The jury found that Teressa abandoned her children, under WIS. STAT. § 48.415(1)(a)2. On December 9, 1999, Teressa failed to appear for the dispositional hearing, and the trial court terminated her parental rights.

¶3 One of the "[g]rounds for termination of parental rights," *see* WIS. STAT. § 48.415, shall be "abandonment," *see* WIS. STAT. § 48.415(1), which may be established by proving that "[t]he child has been placed, or continued in a placement, outside the parent's home by a court order" that contains the statutorily-required notice informing the parent of any grounds for termination of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e), (3) (1997-98). All references to the Wisconsin Statutes are to the 1995-96 version unless otherwise noted.

parental rights, and of the conditions necessary for the child's return to the parental home or for the parent to be granted visitation, and "the parent has failed to visit or communicate with the child for a period of 3 months or longer," *see* WIS. STAT. §§ 48.415(1)(a)2, 48.356(2).

¶4 According to the undisputed trial testimony of Yvonne and Leacky's foster mother, Teressa failed to visit Yvonne and Leacky from August 9, 1996, through November 18, 1997, the date on which the initial termination petition was filed. Teressa, in her trial testimony, conceded that she had not visited with either child in 1997 from January through November. Teressa maintained, however, that she did not visit because she did not want the children to see facial injuries she said she had sustained as a result of domestic violence, and because, in the spring of 1997, the foster mother had informed her that her parental rights already had been terminated.

¶5 Teressa first argues that the district attorney had no authority to file a petition to terminate her parental rights. She limits her argument, however, to a reiteration of the argument made by her trial counsel:

> I would say that it makes sense for the district attorney's office not to be the petitioner in this matter. Whether they represent a petitioner maybe I think is allowable, but for them to be the petitioner themselves I think is wrong because you're allowed to do a discovery in these types of matters, and how do you subject the—in a civil case, which this is, you can do discovery on the parties, and if the DA's office is the party, then they can't also be the attorneys for the party, or they can be subject to depositions."

(Record reference omitted.) Based on this argument, Teressa "would contend that the Trial Court erred in concluding that the district attorney had the authority to file a TPR petition under [WIS. STAT. § 48.42]."

¶6 Trial counsel's argument made no sense. Teressa, on appeal, relies on that argument but offers nothing to clarify it or expand upon trial counsel's virtually incoherent comments. It is not the job of this court to supply argument and legal research to an appellant who raises unsupported claims. *See* ***Boles v. Milwaukee County,*** 150 Wis. 2d 801, 818, 443 N.W.2d 679 (Ct. App. 1989) ("[T]his court is not required to consider an argument unsupported by authorities."); WIS. STAT. § 809.19(1)(e) (1997-98) (appellant's brief to this court must contain "argument on each issue" with citations to relevant authorities).

¶7 Whether a trial court has utilized the proper legal standard governing termination of parental rights presents a question of law subject to *de novo* review. *See* ***State v. Patricia A.P.***, 195 Wis. 2d 855, 862-63, 537 N.W.2d 47 (Ct. App. 1995). Teressa has offered nothing to counter the trial court's conclusion that the district attorney has authority to petition for termination of parental rights. *See* WIS. STAT. §§ 48.42(1) ("A proceeding for the termination of parental rights shall be initiated by petition which may be filed by … a person authorized to file a petition under s. 48.25 …."); 48.25(1) ("The district attorney … may initiate proceedings under s. 48.14 …."); 48.14(1) (court has "exclusive jurisdiction" over "termination of parental rights").

¶8 Teressa next argues that the trial court erred in denying her motion to sever her trial from that of Roderick M., the father of Yvonne, whose termination also was being sought, albeit on the distinct statutory grounds of failure to assume parental responsibility, under WIS. STAT. § 48.415(6). Once again, appellate counsel presents a virtually incomprehensible assertion: "Appellant would contend that ordering her to have denial of her Motion for severance or separate trials cause her undue prejudice." [sic] Additionally, however, counsel more coherently contends:

> The only time frame relevant to the Appellant on the issue of abandonment was from August 1996 to November of 1997. As to the father, the district attorney could present evidence beside those time frames in an attempt to prove it's [sic] failure to assume parental responsibility case. Having the jury hear all of this extraneous testimony would tend to prejudice the Appellant by having them hear evidence regarding the father's failure to establish a substantial parental relationship with his daughter, having failed to request visitation, and to financially support his daughter. Although the jury ultimately found that the father had not failed to assume parental responsibility, there is no way of telling whether the jury considered the other extraneous evidence in conjunction with the evidence presented against the Appellant, despite having been told in the instructions from the Trial Court not to consider such evidence.
>
> Appellant would contend that the inconsistent jury verdicts reached in this case could clearly support an inference that the Appellant was prejudiced by having a combined trial in this matter. The jury may well have concluded that the evidence while not supporting a failure to assume ground on the father, when taken into consideration with the evidence on abandonment to Appellant, could have influenced their verdict.

¶9 Teressa's argument, in theory, is plausible. After all, one certainly could conceive of termination cases in which the conduct of two parents is very different, the bases for termination are distinct, and the evidence is very strong regarding one parent but very weak regarding the other. Under such circumstances, severance might well be appropriate to guard against the possibility that the jury would fail to carefully separate the evidence as to each parent. In the instant case, however, Teressa offers nothing to establish that the trial court erred in denying severance.

¶10 Here, as the guardian ad litem points out, Teressa asked for a separate trial out of concern that a joint trial could be "highly prejudicial" to her because Roderick's case could "open the door" to introduce evidence of the circumstances that led to the removal of the children from her home in 1994. The

trial court rulings, however, responded to Teressa's concern and restricted the State's and guardian ad litem's abilities to introduce such evidence. Teressa fails to explain why she believes the jury was prejudiced against her or on what basis she considers the verdicts inconsistent. The fact that the jury reached different verdicts as to Roderick and her suggests that the jury did indeed sort out the evidence applicable to each parent. After all, as Teressa concedes, the trial court properly instructed the jury to distinguish the evidence regarding each parent. *See* ***State v. Johnston***, 184 Wis. 2d 794, 822, 518 N.W.2d 759 (1994) ("Juries are presumed to follow the instructions given them ….").[2]

¶11 Whether to grant severance is an issue submitted to the trial court's discretion. *See* ***Holmes v. State***, 63 Wis. 2d 389, 399, 217 N.W.2d 657 (1974). This court will not reverse a trial court's denial of severance absent an erroneous exercise of discretion. *See* ***State v. Hall***, 103 Wis. 2d 125, 140, 307 N.W.2d 289 (1981). Teressa has provided nothing to support her purely speculative argument that having her termination trial joined with that of Roderick prejudiced her in any way.[3] She has failed to establish that the trial court erroneously exercised discretion in denying severance.

[2] The guardian ad litem has presented accurate and fair arguments to counter Teressa's claim. That is fortunate for the State, which failed to do so. Other than summarizing the procedural history, the State argues, inaccurately, only that "[t]he trial court did not err when it did not grant Yvonne S.'s [sic] request for severance." That is no argument at all. This court admonishes counsel for the State to consider the consequences of failing to respond to an appellant's argument. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed admitted).

[3] "Possible prejudice is presumptively erased from the jury's collective mind when instructions are properly given by the court." **S.D.S. v. Rock County Dep't of Soc. Servs.**, 152 Wis. 2d 345, 362, 448 N.W.2d 282 (Ct. App. 1989).

¶12 Finally, Teressa argues that the evidence did not support the jury's finding that she failed to show good cause for not visiting her children. Once again, however, her argument is brief and insubstantial:

> The Appellant testified that she missed Court in the spring of 1997 and was told by Rita Brown, the foster parent, that the Court had terminated her parental rights. This testimony was supported by the testimony of Fredlyn Viel, a social worker, who testified that the Appellant had told him [sic] that she thought that her parental rights had been terminated. The Petitioner failed to present any evidence that would rebut these statements and conclusions in any manner. The Appellant had further testified that she had been involved in an abusive relationship and that she did not want her kids to see her beaten.
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> Appellant would contend that the jury's finding that Appellant did not establish good cause for failing to visit her children clearly flew in the face of the established testimony both from the Appellant and Fredlyn Viel. Therefore, the jury's verdict was not supported by a sufficiency of the evidence.

(Record references omitted.)

¶13 "Grounds for termination must be proven by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). "A jury's verdict must be affirmed if there is any credible evidence to support it." ***Kinship Inspection Serv., Inc. v. Newcomer***, 231 Wis. 2d 559, 570, 605 N.W.2d 579 (Ct. App. 1999).

¶14 WISCONSIN STAT. § 48.415(1)(c) states, in relevant part:

> Abandonment is not established under [WIS. STAT. § 48.415(1)(a)2] if the parent proves all of the following by a preponderance of the evidence:
>
> 1. That the parent had good cause for having failed to visit with the child [for a period of 3 months or longer].
>
> 2. That the parent had good cause for having failed to communicate with the child [for a period of 3 months or longer].

> 3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:
>
> a. The parent communicated about the child with the person or persons who had physical custody of the child during the [period of 3 months or longer in which the parent failed to communicate with the child] or … with the agency responsible for the care of the child during [that period of 3 months or longer].
>
> b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the [period of 3 months or longer in which the parent failed to communicate with the child].

In this case, Teressa maintained that her concern about facial injuries and her impression that her parental rights had been terminated established "good cause." As the guardian ad litem responds, however, "[t]he jury heard ample evidence to reject her defense." The guardian ad litem explains:

> Teressa's own admission that she failed to attend a court hearing regarding continued out-of-home custody of her children gave the jury ample evidence upon which to reject her good cause defense. She complained that the foster mother told her in spring of 1997 that her parental rights were terminated. However, this information supposedly came in a phone conversation that occurred *because* Teressa S. missed a court hearing. The jury could infer from this that had Teressa attended the court hearing, she would have known her rights were still intact.
>
> Furthermore, caseworker Fredlyn Viel testified that Teressa had never even asked her about visitation with the children. In the absence of any evidence that Teressa was ever prevented from visiting the children, the jury could easily conclude that this "good cause" defense was merely an excuse.
>
> Teressa's claims that domestic violence prevented her from seeing her children was simply not credible. When asked about the connection between the abuse she suffered and the failure to visit, she identified only one incident in all of 1997. Moreover, Teressa's failure to raise the domestic violence issue with her caseworker during the entire period of abandonment certainly dampened her credibility with the jury.

> … [T]estimony [of Sandra Buzzell, the woman with whom Teressa resided from October 1996 through March 1997,] did not support the domestic violence defense. Her testimony suggested that her home was a safe haven for Teressa. She also testified that on a few occasions she transported Teressa S. to the foster home to visit. This evidence gave the jury a basis for concluding that it is unlikely that domestic violence prevented Teressa from any visitation for the entire first eleven months of 1997.

(Record references omitted.)

¶15 Although Teressa would have had the jury view the evidence differently, she offers nothing to counter the guardian ad litem's interpretation. Teressa offers nothing to establish that the jury was required to accept her excuses as "good cause" for her failure to visit or communicate with Yvonne and Leacky for at least three months during 1997. Accordingly, this court concludes that sufficient evidence supports the jury's verdict.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4 (1997-98).