

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 31, 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. 2006AP625

Cir. Ct. No. 2004TP495

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JAMES W.,

RESPONDENT-APPELLANT.

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

¶1 FINE, J. James W. appeals from an order terminating his parental rights to Trevor W. He claims that there was insufficient evidence to establish the grounds for termination. We affirm.¹

I.

¶2 In October of 2004, the State sought to terminate James W.’s parental rights to Trevor on two grounds:

(1) failure by James W. to assume parental responsibility for Trevor, *see* WIS. STAT. § 48.415(6); and

(2) that Trevor continued to be a child in need of protection and services, had been placed outside the parental home “for a cumulative total period of 6 months or longer pursuant” to court order, and that James W. “failed to meet the conditions established for the safe return of [Trevor] to [James W.’s] home” and, despite “reasonable effort” by the social-service agency “responsible for the care of the child and the family” to “provide the services ordered by the court,” “there is a substantial likelihood that [James W.] will not meet these conditions within the 12-month period following the fact-finding hearing,” *see* § 48.415(2)(a).

James W. waived his right to a jury trial. The trial court dismissed the failure-to-assume-parental-responsibility count, but found that the State had proven all of the elements of the continuing-need-for-protection-and-services count.

¶3 Trevor was born in January of 2003, and was found to be a child in need of protection or services, first in Marinette County, where he was born, and then in Milwaukee County. In connection with Marinette County, Trevor was taken by the county at birth because of ongoing difficulties the social-service workers were having with Trevor’s mother in connection with another child.

¹ The birth-mother’s parental rights to Trevor were also terminated and this is not an issue on this appeal.

Trevor was kept in foster care until September of 2003, when he was returned to his birthparents. As of July 2003, Trevor’s medical assessment revealed him to be a thriving and normally developing child. When he was sixteen months old, however, after he had been with his birthparents for some eight months, he was developmentally delayed, which, according to the assessment by a physician who testified for the State, was caused by parental neglect and insufficient stimulation.

¶4 In May of 2004, Trevor was again taken from his mother’s home. James W. was not then living there. A July 2004 Milwaukee County circuit court order found that Trevor was a child in need of protection and services, and set specified conditions that each of the parents would have to meet before Trevor could be returned to that parent. Unfortunately, although one of the conditions was that the parent—and for the purposes of this appeal, this means James W.—“have regular and successful visits with the child(ren),” James W. did not fulfill this condition. (Uppercasing omitted; parenthetical in original.) He only showed up for the supervised visits about half the time they were scheduled, and his interaction with Trevor ranged from disregard to overt aggression—threatening Trevor orally, putting his fist in Trevor’s face, and, when the birth mother had a splint on her leg, telling Trevor to stomp on it. The social worker involved with James W. at this point reflected that he made “very little progress between each visit.” Indeed, James W. was making no progress in meeting the condition most connected with the successful fulfillment of his parental obligations to Trevor: “Show that you can care for and supervise your child(ren) properly and that you understand their special needs.” (Uppercasing omitted; parenthetical in original.)

¶5 James W. did, however, in 2001, complete an anger-management and an alcohol-and-other-drug assessment, but did not demonstrate a commitment to improve his parenting skills, other than, essentially, going through the motions

when he was pressured to do so, and, often, not even then. The social worker to whom James W.'s case was assigned in October of 2004, when the State filed the petition to terminate his parental rights to Trevor, testified that James W. had not at that point satisfied the conditions that were established by the July 2004 order as necessary before James W. could be trusted to give Trevor proper parental care, and opined that it was highly unlikely that he would satisfy those conditions within twelve months of the trial. The social worker in charge of James W.'s and Trevor's case at the time of trial also testified that in her view, James W. would not be able to satisfy the conditions within twelve months of the trial. As evidence of James W.'s lack of concern for Trevor, she told the trial court that he never once asked about Trevor's well-being, even though at that point, the social worker was his only link with Trevor.

¶6 The trial court also received the assessment of James W. by a clinical psychologist who, if anything, had an even more gloomy prognosis of James W.'s ability to assume parental responsibility for Trevor than did the social workers. The psychologist indicated that his tests revealed that James W. had "mild mental retardation" and, more significantly, was functioning as would a seven- or eight-year-old child. He told the trial court that in his opinion "[i]t is unlikely that [James W.] would gain the ability to raise a child on [a] multi-dimensional level in his remaining lifetime."

II.

¶7 As noted, the trial court found that the State had proven that there were grounds to terminate James W.'s parental rights to Trevor under WIS. STAT. § 48.415(2)(a) (continuing status as a child in need of protection or services). It held that the social-service agency had done all that it reasonably could have to

help and that neither parent would be able to satisfy the conditions of return within the twelve-month period from the date of trial. As we have also seen, James W. contends that there is not sufficient evidence to support the trial court's findings.

¶8 We have a two-part standard of review. We do not disturb a trial court's findings of fact unless they are "clearly erroneous." See WIS. STAT. RULE 805.17(2); *State v. Raymond C.*, 187 Wis. 2d 10, 16, 522 N.W.2d 243, 246 (Ct. App. 1994) (applying "clearly erroneous" standard in a termination-of-parental-rights case). We review *de novo* whether the trial court has applied the correct legal standard. See *Kerkvliet v. Kerkvliet*, 166 Wis. 2d 930, 939, 480 N.W.2d 823, 826 (Ct. App. 1992). James W. does not argue on appeal that the trial court applied the wrong law, so we pass to whether its findings that: (1) the social-service agency "made a reasonable effort to provide the services ordered by the court," see WIS. STAT. § 48.415(2)(a)2.b; and (2) "there is a substantial likelihood that the parent will not meet those conditions with the 12-month period following the fact-finding hearing," see § 48.415(2)(a)3, have support in the Record.

A. Reasonable Effort.

¶9 Although James W. faults the responsible social-service agency for not making further referrals for him for new anger-management training, new alcohol-and-other-drug-assessment programs, and new parental-responsibility training, during the five months preceding the trial, the trial court found that the agency had done all it reasonably could under the circumstances because the parents (and, for the purposes of this appeal, James W.) did not cooperate:

We have two parents who have never ever reached the point of being willing to cooperate with the [social-service agency]. Every indication, every evaluation is they feel

picked on, blamed. There is no reason that the [agency] should be in their lives and they should have the right to raise their children.

So they have never, from what I can tell from all the evidence, expressed a commitment to cooperate.

....

Now, there is the argument made with this new worker that there's been no referrals within the last four or five months. The point is [the social workers] scheduled the [meeting held to determine what services the parents need]. The parents didn't show up. That was the only obligation they had based upon the history of noncooperation or reluctant cooperation with the parents.

We agree.

¶10 “Reasonable effort,” as used in WIS. STAT. § 48.415(2)(a)2.b, is defined as:

In this subdivision, “reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, *the level of cooperation of the parent* or expectant mother and other relevant circumstances of the case.

Sec. 48.415(2)(a)2.a (emphasis added). At some point, the parents have to try to help the social-service agency help them. The trial court's finding that in light of the agency's substantial efforts to help with training programs and supervised visits, the lack of referrals toward the end when it was clear that James W. was, at best, just going through the motions, and not energetically at that, did not negate the fact that the agency had fulfilled its responsibilities under § 48.415(2)(a)2.b. The trial court's finding that the agency made the requisite “reasonable effort” is not clearly erroneous.

B. *Compliance with Conditions.*

¶11 Although, as we have seen, James W. complied with some of the conditions set by the court for the return of Trevor to him, his progress in the critical area of parenting was woefully inadequate. Further, the trial court relied, as it was entitled to do, on the psychologist's report and testimony that James W. would be unable to fulfill his parental responsibilities no matter how much time or how much effort was expended. It is not that the grounds under WIS. STAT. § 48.415(2) were found *because* James W. has low cognitive ability; many parents with low cognitive ability do very well in caring for their children. Rather, James W.'s low cognitive ability significantly limited his ability to correct his parenting shortcomings and thus properly fulfill his parental responsibilities to Trevor. *See B.L.J. v. Polk County Dep't of Soc. Servs.*, 163 Wis. 2d 90, 112, 470 N.W.2d 914, 924 (1991) (“[T]he mother’s parental rights were not terminated because she is an alcoholic but because of the effect her particular alcohol problem has on her ability to function as a parent.”).

¶12 Given the opinions of the social workers who tried to work with James W., the psychologist's assessment of James W.'s ability to focus and follow through, as well as the trial court's careful analysis of the evidence, we cannot say that the trial court's finding that there is “a substantial likelihood” that James W. “will not be able to meet the conditions” set for the return of Trevor to him, “within the 12-month period” following the trial is clearly erroneous.

By the Court.—Order affirmed.²

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

² James W. does not challenge the trial court's conclusion that termination of his parental rights to Trevor would be in Trevor's best interests.

