

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 13, 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. 2006AP721

Cir. Ct. No. 2005TP14

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO SAHVANNAH L. B.,
A PERSON UNDER THE AGE OF 18:**

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

NICOLE C. M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
JOHN D. McKAY, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Nicole C.M. appeals a dispositional order terminating her parental rights to Savannah L.B. Nicole contends the circuit court erred by not permitting her to present evidence about events occurring after the filing of the petition. She also contends there was insufficient evidence to establish that she received termination of parental rights (TPR) warnings. This court rejects Nicole's arguments and affirms the order.

¶2 Two days after Savannah's birth, the Department filed a petition alleging that Savannah was a child in continuing need of protection or services (CHIPS), and Savannah was placed into protective custody. Since that time, Nicole has had only limited contact with Savannah, consisting of two visits within the first two weeks after her birth. A TPR petition was later filed, alleging four grounds for termination: Savannah was in continuing need of protection or services; the prior termination of Nicole's parental rights to another child; abandonment; and Nicole's failure to assume parental responsibility. The only grounds actually submitted to the jury were abandonment and failure to assume parental responsibility. After a jury found the existence of both of these grounds, a dispositional hearing was held, and the court terminated Nicole's parental rights to Savannah.

¶3 Nicole raises two claims on appeal—one for each ground for termination. Regarding her failure to assume parental responsibility, Nicole claims the court erred by sustaining an objection to testimony about an incident where Nicole allegedly inquired about alcohol and other drug abuse (AODA)

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

counseling, which was a condition in the CHIPS order. The court concluded that the testimony was irrelevant to whether Nicole assumed parental responsibility, mainly because the alleged inquiry occurred after the TPR petition was filed.

¶4 Nicole relies on certain language in WIS. STAT. § 48.415(6), which specifies failure to assume parental responsibility as a ground for termination:

(a) Failure 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.

(b) In this subsection, “substantial parental relationship” means the 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* (Emphasis added.)

Nicole relies on the emphasized portion of paragraph (b), contending her inquiry into AODA counseling was relevant to whether she expressed concern for, or an interest in, Savannah’s support, care, or well-being. She also argues that there is no statutory limitation preventing her from presenting evidence of her attempts to assume parental responsibility after the petition was filed.

¶5 Evidentiary rulings are subject to the erroneous exercise of discretion standard and will be upheld if the court considered the relevant facts, correctly applied the law, and used a rational process to reach a reasonable conclusion. *La Crosse County Dep’t of Human Servs. v. Tara P.*, 2002 WI App 84, ¶6, 252 Wis. 2d 179, 643 N.W.2d 194. Evidence is relevant if it has any tendency to make the existence of a fact consequential to the resolution of the case more or less probable than it would be without the evidence. WIS. STAT. § 904.01.

If the court erred by ruling that Nicole's proffered evidence was irrelevant, the error is only reversible if it was prejudicial, such that Nicole was deprived of her due process right to present admissible evidence central to her defense. *See Brown County v. Shannon R.*, 2005 WI 160, ¶53, 286 Wis. 2d 278, 706 N.W.2d 269.

¶6 Without deciding whether the testimony Nicole sought to elicit was relevant, this court concludes the decision to exclude it was in no way prejudicial. The Department's case was basically the same for both termination grounds, mainly that Nicole had no contact with Savannah for at least three months following the two visits shortly after her birth. The Department was unable to reach Nicole during that time, and Nicole made no contact with social workers until after the TPR petition was filed on March 10, 2005. Evidence supporting Nicole's arguments included that Nicole had written several letters to Savannah and obtained job training after the TPR petition was filed. Nicole also testified that she had obtained housing. Despite this evidence, the jury found Nicole failed to assume parental responsibility. Overall, this court concludes that the relatively modest act of asking for an AODA referral after the TPR petition was filed could not have affected the outcome of this trial. The significance of this gesture is overwhelmed by Nicole's virtual failure to attempt contact with Savannah. Thus, even if excluding the testimony was error, any such error was harmless.

¶7 Nicole's second claim is that there was insufficient evidence to support one of the elements of the abandonment ground for termination. A jury's verdict will be upheld if supported by any credible evidence. *State v. Quinsanna D.*, 2002 WI App 318, ¶57, 259 Wis. 2d 429, 655 N.W.2d 752. Specifically, Nicole contends the Department failed to prove that TPR warnings were attached to the CHIPS order, as required by WIS. STAT. § 48.415(1)(a)2.

Nicole relies on the fact that there was not a copy of the TPR warnings attached to the copy of the CHIPS order in the record. The Department and guardian ad litem argue there was credible evidence sufficient to support a finding that the TPR warnings were attached. They rely on two pieces of evidence: first, the face of the CHIPS order stated that TPR warnings were attached; and second, an affidavit of services swore that a copy of the CHIPS order and attached TPR warnings were served on Nicole. We agree that this constituted “any credible evidence” sufficient to support a finding that the TPR warnings were attached to the CHIPS order served on Nicole.

By the Court.—Order affirmed.

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

