COURT OF APPEALS
DECISION
DATED AND FILED

July 18, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP884 **Cir. Ct. No. 2005TP50**

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO SAPATIS K. H., A PERSON UNDER THE AGE OF 18:

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

JOHN A. S.,

RESPONDENT-APPELLANT,

SHERRY L. P.,

RESPONDENT.

APPEAL from an order of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Affirmed*.

¶1 CANE, C.J.[1] John A.S. appeals an order terminating his parental rights to his son, Sapatis. He contends there was insufficient evidence to support a finding that continued custody of Sapatis by John would likely result in serious emotional or physical damage to Sapatis, as required by the Indian Child Welfare Act. This court affirms the order.

¶2 A jury's factual findings will be upheld if supported by any credible evidence. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. The dangerousness element at issue here is found in 25 U.S.C. § 1912(e) (2001), the relevant portion of which states:

> No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

¶3 John's argument is that the dangers suggested by the department were merely hypothetical. He also argues that the department otherwise relied upon John's nonconforming behavior, including his alcoholism, which the Bureau of Indian Affairs guidelines state cannot be the sole basis for placing a child outside a parent's home. John's arguments fail.

¶4 The hypothetical danger to which John refers relates to John permitting strangers to live in his home. John, himself, has been afraid to stay in his home when some of these people lived there. John argues that there is no evidence that he would permit such people to live in his home if he were ordered

[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.

not to and if Sapatis lived there with him. However, as the department notes, John was ordered not to permit others to reside with him as part of the CHIPS order, and he was nevertheless unable to refrain from doing so.[2] John admitted that he did not have the willpower to tell people to leave. A jury could reasonably infer that John's inability to refrain from permitting strangers to reside in his home would continue, creating a substantial likelihood of physical or emotional harm to Sapatis.[3]

¶5 John's next argument attempts to categorize all of the evidence against John as nonconforming behavior, which the Bureau of Indian Affairs guidelines state cannot be the sole basis for separating a parent from a child. John quotes the following language from those guidelines:

> Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse, or nonconforming behavior does not constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.

¶6 The problem with John's argument is that the evidence did not *only show the existence* of one of the above conditions. For example, the department did not only show the existence of John's alcoholism, but also presented testimony that his alcohol problems have resulted in "violent episodes,"[4] for which John has

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[2] John suffers from mental deficiencies that his social worker testified make him vulnerable.

[3] It takes little imagination to see why John's weakness in this regard screams opportunity to any child predator who becomes aware of it.

[4] The portions of the record cited by the parties do not reveal the nature of these "violent episodes." It appears that the trial court did not permit testimony about the crimes for which John was imprisoned. John's reply brief alludes to "occasional violence against women," but does not provide a record cite for that proposition.

periodically been incarcerated. John has also failed to complete treatment for his alcoholism. While John argues that there was no evidence that he was ever violent in the presence of Sapatis, he fails to address another aspect of the department's argument, which is that these violent episodes result in John's incarceration. Sapatis was emotionally distraught by his separation from John. John was aware of this when, in December 2004, he committed another crime, resulting in nine months of incarceration. This constituted additional evidence for a finding that placement with John would result in serious emotional harm to Sapatis. The record not being devoid of any credible evidence, the jury's verdict and subsequent termination order must be affirmed. *See* ***Quinsanna D.***, 259 Wis. 2d 429, ¶30.

By the Court.—Order affirmed.

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