

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 21, 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. 2006AP2120

Cir. Ct. No. 2004TP354

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
RODNEY H., JR., A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

RODNEY H., SR.,

RESPONDENT-APPELLANT.

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

¶1 CURLEY, J.¹ Rodney H. Sr. appeals the order terminating his parental rights to his son Rodney H. Jr. Rodney Sr. contends that: WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2003-04).

§ 48.415(2) (2003-04),² violated his right to substantive due process, as applied to him, because the finding of unfitness as grounds for termination of parental rights was based on an impossible condition; there was insufficient evidence to conclude that he was an unfit parent; and the trial court erred in determining that it was in Rodney Jr.'s best interest to terminate his parental rights. This court concludes that: § 48.415(2) is not unconstitutional as applied to Rodney Sr.; there was sufficient evidence to conclude that Rodney Sr. was an unfit parent; and the trial court did not err in concluding that termination of Rodney Sr.'s parental rights was in Rodney Jr.'s best interest. Therefore, the order terminating Rodney Sr.'s parental rights is affirmed.

I. BACKGROUND.

¶2 Rodney Jr. was born on June 27, 1991, and is the marital child of Rodney Sr. and Veronica P.H. Rodney Jr. and his brother Dewayne, who was born on April 19, 1993, resided with their parents until their parents separated in 1994, after which the two boys resided with Rodney Sr. In 2000, Rodney Jr. was referred to Deborah Lau Schingen, a psychotherapist, due to behavior problems, such as being physically abusive to his teachers. At the time, Rodney Jr. was taking medication for seizures and attention deficit hyperactivity disorder (ADHD). Rodney Jr. told Lau that his father tied him up with ropes, put plastic bags over his head, and beat him, that he had seen his father engage in sexual acts with multiple men and women, and that he watched his father's pornographic materials.

² All references to the Wisconsin statutes are to the 2003-04 version unless otherwise noted.

¶3 On March 25, 2002, Rodney Jr. and Dewayne were removed from Rodney Sr.'s care, due to allegations that Rodney Sr. physically and sexually abused his sons. Rodney Sr. was arrested for sexual abuse, but was released and never charged. Rodney Sr. has been on SSI for cognitive delays since grade school, has a learning disability, and has a payee who tends to his finances.

¶4 On October 16, 2002, Rodney Jr. was found to be in need of protection or services. A dispositional order was entered, placing both Rodney Jr. and his brother outside Rodney Sr.'s home. Conditions were placed on Rodney Sr. for Rodney Jr.'s return, including completing parenting classes, completing therapy and family counseling, having successful extended visits, showing an ability to care for and understand the needs of the child, and a mutual desire by the parent and the child for the return of the child to the home. The order was subsequently extended.

¶5 After removal from his father's home, Rodney Jr. was diagnosed with post-traumatic stress disorder (PTSD) from abuse, ADHD, explosive personality disorder, and bipolar disorder. Margaret Wolski was Rodney Jr.'s case manager. Rodney Jr. told her that he had been sexually abused by his father's friends Michael and Nigel, that he had seen his father engage in sexual activities with numerous people, that he watched pornography with his father and that his father beat him and placed plastic bags over his head. He also told her that he wanted to be adopted because he was afraid and did not think his father could keep him safe.

¶6 Psychological evaluations were performed on Rodney Jr. and Rodney Sr., and therapy was recommended. Rodney Jr. continued therapy with Lau. Rodney Sr. started therapy with Dr. Paul Szedziewski. According to

Dr. Szedziewski, Rodney Sr. had problems differentiating between appropriate and inappropriate contact and exposure for his sons, and refused to acknowledge that somebody else might have abused Rodney Jr., insisted that he had not done anything, and evoked the name of God. Due to lack of progress, Rodney Sr. was referred to a new therapist, Dr. Emma Williams.³ The therapy ended in March 2004 because Rodney Sr. stopped appearing for his appointments. Rodney Sr. has since been offered therapy, but has indicated that he does not need it because he has God and his church in his life. He did complete a parenting class.

¶7 After Rodney Jr. was removed from his father's home, he did not want contact with his father, but ultimately agreed to a supervised visit. In January 2003, Rodney Jr. and Rodney Sr. began family therapy with Lau, but it was terminated in March of 2004 due to lack of progress. Visitation was continued until September 2004, but Rodney Sr. never had unsupervised visits and the visits were never longer than two hours.

¶8 On July 19, 2004, the State filed a petition for the termination of Rodney Sr.'s parental rights to Rodney Jr.,⁴ alleging as grounds for termination failure to assume parental responsibility, WIS. STAT. § 48.415(6), and that Rodney Jr. was in continuing need of protection or services, WIS. STAT. § 48.415(2). On August 6, 2004, an initial appearance was commenced, and Rodney Sr. contested the petition. In September 2004, Rodney Jr. was arrested for burglary and

³ Dr. Williams did not testify.

⁴ The petition sought to terminate the parental rights of both Rodney Sr. and Veronica to both Rodney Jr. and Dewayne. Veronica was later dismissed from the petition. Only the termination of Rodney Sr.'s parental rights to Rodney Jr. are at issue in this appeal and proceedings involving Veronica and Dewayne will therefore not be addressed.

sexually assaulting an elderly woman. The initial appearance was adjourned twice due to the State's need to reconsider the petition in light of Rodney Jr.'s arrest. On February 18, 2005, the initial appearance was completed.

¶9 After residing in foster care and different treatment centers, in August 2005, Rodney Jr. was transferred to Homme Home, a residential facility that specializes in sex offender treatment. Upon his arrival, Rodney Jr. was diagnosed with ADHD, mild mental retardation, conduct disorder, parasomnia, seizure disorder by history, and marijuana abuse. He also wets himself during the day and at night, throws things, lies, steals, and engages in "grooming behavior"; that is, tries to set people up for sexual assault. He attends special education classes, and functions at a third or fourth grade level. In therapy with Tory Suehs, Rodney Jr. reported sexual and physical abuse by his father, and is afraid to take showers and locks his door at night because he has nightmares that his father will find him. His progress has been slow. Since his arrival, Rodney Jr. has had no contact with Rodney Sr., and Rodney Sr. has made no attempts to contact the Homme Home.

¶10 On September 14, 2005, Rodney Sr. waived his right to a jury trial. A fact finding hearing (trial) to determine whether grounds existed to terminate Rodney Sr.'s parental rights was commenced on October 5, 2005. The State chose to proceed based on only the allegation that Rodney Jr. was in continuing need of protection or services. WIS. STAT. § 48.415(2).

¶11 At trial, Lau testified that Rodney Jr. told her about physical abuse by his father, viewing his father's pornographic materials, observing his father engage in sexual activities, and being afraid of Michael and Nigel. She stated that he vacillated between telling his father that he wanted to see him, and telling her

that he wanted to be adopted. She also stated that Rodney Jr. had a tendency to lie.

¶12 Wolski likewise testified that Rodney Jr. was scared of the things that happened at his father's home, specifically, being sexually assaulted, seeing his father engage in sexual activities, watching pornography with his father, and being tied up and having a plastic bag put over his head. She testified that in individual sessions Rodney Jr. told her that he wanted to be adopted, but in group sessions in front of his father, he did not. She further testified that therapy was unsuccessful for Rodney Sr. because he had not worked through his own sexual identity, and the allegations that Rodney Jr. had made, when he stopped going in 2004. She stated that Rodney Sr. once admitted tying up Rodney Jr., and on another occasion, "was upset because of his break up with Michael," but later he insisted that he was just friends with Michael. Wolski emphasized that the heart of the problem is that Rodney Sr. believes Rodney Jr. is a liar, and has failed to come to an understanding that, for Rodney Jr., the sexual abuse allegations are real and affect his life on a daily basis. She also stated that Rodney Sr. does not understand Rodney Jr.'s special needs, and that before Rodney Jr. could be returned to him, he would need extensive training and therapy to work on the effects of sexual abuse on children. She stressed that Rodney Jr. was scared of going home because he did not feel his father could keep him safe, and told her that "the only way he would ever want to go home is if he could be a hundred percent sure his father could keep him safe and he did not think his father could do that."

¶13 Suehs testified that the reason for Rodney Jr.'s slow progress was his anxiety resulting from his fear of his father, his inability to trust people, low self-

esteem, and his cognitive delays. According to Suehs, contact with his father would be “fairly upsetting,” and stated that:

I didn't feel that that was in his best interest at this point because a lot of his fear right now seems to be centered around his father. [A]t the time he is worried that his father might come and find him and abuse him. He has stated that ... when it is time to shower, he is afraid to get in the shower because he said that his father had abused him in the bathroom, so he is worried about getting in there. And there just seems to be a lot of fear on his part, so that it was best to be able to deal with some of that fear before seeing his father.

She also indicated that a parent who is going to care for Rodney Jr. would have to be able to deal with his many special needs, including using discipline in an appropriate manner, properly handling his parasomnia, properly responding to him wetting himself, and his mental retardation. Based on conversations with Rodney Jr. and his fears regarding his father, she stated that she did not think his father would be able to parent him.

¶14 Rodney Sr. also testified. He denied abusing Rodney Jr., denied having any knowledge of Michael or Nigel ever abusing Rodney Jr., and denied that his relationships with Michael and Nigel were anything other than friendships. He indicated that he wants Rodney Jr. to live with him, that he loves him and will try to care for his needs. When asked about why he failed to complete the counseling and therapy requirements that were conditions for Rodney Jr.'s return, he indicated that he had been told that he did not have to. When asked about Rodney Jr.'s special needs, he was aware of only seizures and hyperactivity. He did not know whether Rodney Jr. wanted to be returned to live with him.

¶15 The trial was adjourned until March 28, 2006, when the trial court concluded that there were sufficient grounds to terminate Rodney Sr.'s parental

rights based on Rodney Jr. continuing to be a child in need of protection or services, pursuant to WIS. STAT. § 48.415(2), and made a finding that Rodney Sr. was an unfit parent. Having found grounds to terminate Rodney Sr.'s parental rights, the court had to decide whether termination was in the child's best interest. On April 17, 2006, the trial court concluded that termination of Rodney Sr.'s parental rights was in Rodney Jr.'s best interest. A written order terminating Rodney Sr.'s parental rights was filed on April 28, 2006. This appeal follows.

II. ANALYSIS.

A. *Constitutionality of WIS. STAT. § 48.415 as applied to Rodney Sr.*

¶16 Rodney Sr. contends that WIS. STAT. § 48.415(2) violates his right to substantive due process because it is unconstitutional as applied to him.

¶17 A substantive due process analysis considers whether state action is arbitrary to the extent that it “shocks the conscience” or “interferes with rights implicit in the concept of ordered liberty.” *State v. Schulpius*, 2006 WI 1, ¶33, 287 Wis. 2d 44, 707 N.W.2d 495, *cert. denied*, 126 S. Ct. 2042 (2006) (citation omitted). Where there is a fundamental liberty interest at stake, substantive due process requires a statute to be narrowly tailored to achieve a compelling state interest. *See Monroe County DHS v. Kelli B.*, 2004 WI 48, ¶19, 271 Wis. 2d 51, 678 N.W.2d 831. Because the termination of parental rights implicates a fundamental liberty interest, strict scrutiny is required. *Id.*, ¶17. In termination of parental rights cases, the compelling state interest is to protect children from unfit parents, and the statutory scheme in question must therefore be narrowly tailored to advance the State's interest in protecting children from unfit parents. *Dane County D.H.S. v. P.P.*, 2005 WI 32, ¶20, 279 Wis. 2d 169, 694 N.W.2d 344.

¶18 Statutes enjoy a presumption of constitutionality and we review them so as to preserve their constitutionality. *State v. Bertrand*, 162 Wis. 2d 411, 415, 469 N.W.2d 873 (Ct. App. 1991). A party challenging the constitutionality of a statute must demonstrate that it is unconstitutional beyond a reasonable doubt. *State v. Pittman*, 174 Wis. 2d 255, 276, 496 N.W.2d 74 (1993). Thus, a party making an as-applied challenge to a statute must “prove, beyond a reasonable doubt, that as applied to him the statute is unconstitutional.” *State v. Joseph E.G.*, 2001 WI App 29, ¶5, 240 Wis. 2d 481, 623 N.W.2d 137. Whether a statute, as applied, violates the constitutional right to substantive due process, presents a question of law subject to independent appellate review. See *Kelli B.*, 271 Wis. 2d 51, ¶16.

¶19 Rodney Sr. contends that WIS. STAT. § 48.415(2) is unconstitutional as applied to him because the finding of unfitness that was the basis for the termination of his parental rights was based on an impossible condition of return.⁵ In so contending, Rodney Sr. relies heavily on the supreme court’s recent decision in *Kenosha County v. Jodie W.*, 2006 WI 93, __Wis. 2d __, 716 N.W.2d 845, which held that § 48.415(2) was unconstitutional as applied to a child’s mother who had been found to be an unfit parent because she failed to meet conditions of return that were impossible for her to meet as a result of being incarcerated. *Jodie W.*, 716 N.W.2d 845, ¶56.

⁵ The State also contends that because Rodney Sr. failed to raise this argument at the trial court he has waived it. In his reply brief Rodney Sr. explains that the argument was not raised at the trial court level because *Kenosha County v. Jodie W.*, 2006 WI 93, __Wis. 2d __, 716 N.W.2d 845 had not yet been decided and asks that *Jodie W.* be applied retroactively to this case. *Jodie W.* will be addressed briefly to explain that its holding is inapplicable to this case, and therefore the question of retroactive application is not relevant.

¶20 Rodney Sr. contends that, like *Jodie W.*, where the incarceration created a “physical impossibility,” here “due to Rodney Sr.’s cognitive impairment, it is psychologically and intellectually impossible for him to comply with the court ordered condition of return.” He submits that due to his cognitive delay, he was unable to grasp the “therapeutic nuances” “to admit that Rodney [Jr.] *believed* that he had been sexually assaulted and *therapeutically* needed his father to validate those feelings” (bolding and italics in brief). His reply brief calls the situation a “condition that is physically impossible for Rodney Jr. to meet.”

¶21 Rodney Sr.’s attempt to analogize his situation to that of the parent in *Jodie W.* is not convincing. *Jodie W.* was narrowly tailored to a situation in which the court concluded that incarceration is not, in and of itself, a sufficient basis to conclude that a person is an unfit parent. *Id.*, ¶47, 49. The court specifically held that where the only ground for termination is that the child continues to be in need of protection or services solely because of the parent is incarcerated, WIS. STAT. § 48.415(2) requires that the conditions of return are tailored to the particular needs to the parent and child. *Jodie W.*, 716 N.W.2d 845, ¶51.

¶22 The supreme court did not, however, hold that WIS. STAT. § 48.415(2) is unconstitutional, when applied to persons with other “impossibilities,” thereby necessitating that the conditions be tailored to that particular person, as Rodney Sr. contends. Rather, the court specifically emphasized the need for individualized determinations of unfitness based on the parent’s actual parenting skills and stressed that the problem in *Jodie W.* was that the determination of unfitness had been made without regard for the mother’s actual parenting activities and was based solely on her incarceration. *Id.*, 716 N.W.2d 845, ¶¶49, 52. The court stressed that during the time the mother cared

for her son, she had a substantial relationship with her son, had no problems maintaining a home, and exhibited no parental deficiencies. *Id.*, ¶¶4, 52, 53. This is not the case here.

¶23 Here, the conditions for return and later the determination of unfitness were made based on an individualized assessment of Rodney Sr.'s parenting abilities, which pointed to the fact that Rodney Sr. had serious parental deficiencies. As noted by the State, the conditions that Rodney Sr. calls "impossible" may appear impossible to him, but were in place because they were necessary for Rodney Jr.'s protection. To tailor conditions for a child's return to the intellectual abilities of a parent, as Rodney Sr. appears to suggest, would lead to an absurd result that favors the least cognitively able. It is thus clear that the narrow holding in *Jodie W.* is inapplicable to this case. Accordingly, Rodney Sr. has failed to show that WIS. STAT. § 48.415(2) is unconstitutional as applied to him.

B. Sufficiency of evidence to conclude that Rodney Sr. was an unfit parent

¶24 Second, Rodney Sr. contends that there was insufficient evidence to conclude that he was an unfit parent.

¶25 We accord great deference to the trier of fact and must examine the record to find facts that uphold the trial court's conclusion. *State v. Hayes*, 2004 WI 80, ¶57, 273 Wis. 2d 1, 681 N.W.2d 203. We do not disturb a trial court's findings of fact unless they are "clearly erroneous." See WIS. STAT. RULE 805.17(2).

¶26 Whether sufficient evidence existed to conclude that Rodney Jr. is in a continuing need of protection or services, and hence, that Rodney Sr. is an unfit parent, is determined by applying the factors contained in WIS. STAT. § 48.415(2):

(a) 1. That the child has been adjudged to be a child ... in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders ...

2. b. That 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.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders ...; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 9-month period following the fact-finding hearing....

¶27 Rodney Sr. makes no reference to the WIS. STAT. § 48.415(2) factors. Rather, in support of his contention that there was insufficient evidence to conclude that he was an unfit parent, Rodney Sr. maintains that the trial court “based it’s [sic] finding of unfitness on the allegation of sexual misconduct and its erroneous perception that Rodney Sr. was lying or incapable of acknowledging Rodney [Jr.]’s concerns and fears.” He also asserts that the trial court erred because “[i]t is equally probable that Rodney [Jr.] was lying, delusional, or hallucinating when accusing his father and/or his father’s friends of sexual abuse and assault.” This court disagrees.

¶28 In finding Rodney Sr. unfit, the trial court stated:

I don’t believe there is any dispute that Rodney was adjudged a CHIPS child placed outside the home and that he has been outside of the home for more than the six months referred to in the statute. He has been outside of the home for a substantial period of time and he has been in

a variety of treatment localities and has been in a very serious treatment program in Homme Home right now.

That having, I think, been established without dispute, has the bureau made reasonable efforts to help this father reunite with his children? Help his children deal with all their therapeutic needs? And if possible, reunify the family?

I think the fact situation presented is very difficult for the professionals. We have a stream of professionals here who I think were frustrated that they couldn't reach [Rodney. Sr.]. And to me it's understandable. It's hard to reach a man who operates at his low level of functioning. He functions as a seven-year-old, according to Dr. Sherry. He has to have a payee for his SSI because ... he is adjudged not able to manage his life. And so it's hard to know just what therapist or what school of therapy could reach into him to make him understand the severe conditions and the complex conditions that affect Rodney [Jr.]. And basically what they said is he can't, or he doesn't, or he is too rigid, or he blocks it.

I don't know that I condemn him so much as that I feel really sorry that he is as limited as he is. But given that fact, what more could the bureau do? I don't find fault with the approach of the therapist. ... I was very impressed by the understanding of the difficulty and the serious needs presented by Rodney, Jr. and the serious blocks to health presented by Rodney, Sr. I mean he said he loves his children. He said he will do what he can for them. He said he will learn their needs. Says he didn't meet conditions and work on his conditions because he didn't understand he still could. And all those go to the fact that he was not a very easily workable player.

He's just not a fully functioning person and we could have [a] full-time therapist working with him. And I don't see just how he could reach the level of grasping or admitting to what has happened to his son, and it's [sic] very likely has happened to his son through contact through friends of the father's.

It's clear something has happened to these kids to make them so afraid. Rodney is afraid to sleep at night. He imagines his father outside the window. Wants the door locked so no one will get him. Those aren't hallucinatory as much as fears, visual expressions of the fear he lives with. And that his father can't grasp that, it's just a fact. It's just a fact. It's not a failure by the professionals. It's a

very difficult case. I think they've made reasonable efforts ... to pierce through the problems that [Rodney Sr.] has was just beyond that.

As to has he met conditions? He hasn't met conditions. I don't think that's in dispute. He doesn't have a place for them now. He hasn't established a visiting relationship with them. He hasn't completed his therapy. And twelve months is not going to change his ability level. I don't know if it would change his motivation level. What more motivation could he need after four years of being away from a son and hearing the son doesn't want to see him and still fails to grasp how important it is for him to work on his conditions? What could possibly change in the next twelve months that will provide the motivation [that] these past four years have not provided. So it's terribly sad.

[H]e is a cute kid living with demons, and his father has something to do with those demons, and I don't believe that will change in twelve months. So I am finding that [the] state has met its burden and find that there are grounds for terminating [Rodney Sr.]'s rights. I'm also finding him unfit.

¶29 As is evident from the trial court's decision, the court explained in great detail its application of the WIS. STAT. § 48.415(2) factors to the facts of the case. It is also clear from the decision that Rodney Sr.'s claim that the allegation of sexual misconduct was a reason for the court's finding of unfitness is unsupported. Although the court acknowledged that something must have happened, the court did not base its decision on any alleged sexual abuse, little less abuse by Rodney Sr., as Rodney Sr.'s argument appears to insinuate, but mentioned only "friends of the father's." The court also in no way implied that Rodney Sr. was lying, but instead stated that the court felt sorry for Rodney Sr. for being so limited.

¶30 Cognizant of the fact that this court affords great deference to the trial court's decision and that Rodney Sr. thus faced a heavy burden, this court

concludes that Rodney Sr. has not shown that the trial court's conclusion was clearly erroneous. *See* WIS. STAT. RULE 805.17(2); *Hayes*, 273 Wis. 2d 1, ¶57.

C. Best Interest of Rodney Jr.

¶31 Finally, Rodney Sr. asserts that the trial court erred in determining that it was in Rodney Jr.'s best interest to terminate Rodney Sr.'s parental rights.

¶32 Whether the circumstances warrant termination of parental rights is within the trial court's discretion. *Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94, 107 (1993). This court will not reverse a trial court's discretionary decision if the trial court applied the relevant facts to the correct legal standard in a reasonable way. *Id.*

¶33 WISCONSIN STAT. § 48.426(3) sets forth the factors that the court considers in deciding whether termination of parental rights is in a child's best interest:

(a) The likelihood of the child's adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

¶34 In contending that termination of his parental rights was not in Rodney Jr.'s best interest, Rodney Sr. does not reference or apply the WIS. STAT. § 48.426 factors. He instead contends that "the court severed Rodney Sr.'s parental rights based on Rodney Sr.'s inability to recognize or acknowledge his son's fears and concern." He insists that it is "very probable that Rodney [Jr.]'s mental illness caused his delusions and fears," and calls it "preposterous" that the basis for the termination is the assertion of a child who is diagnosed with bipolar disorder, ADHD, PTSD, mild retardation, and has a history of lying. He also emphasizes that the State failed to present physical evidence of sexual assault and claims that "[t]he judge however was convinced that something must have happened to Rodney [Jr.] and that formed that basis for his decision to terminate Rodney Sr.'s parental rights." Finally, he adds that there are other less drastic means that promote the best interests of Rodney Jr. without resorting to the destruction of the parent-child relationship. This court again disagrees.

¶35 In concluding that the termination of Rodney Sr.'s parental rights was in Rodney Jr.'s best interest, the trial court explained:

The first [factor] is whether it is likely that this young man will be adopted, and I think it is acknowledged by parties that it is at least unlikely he is going to be adopted. He is fourteen years old. He has significant mental health difficulties. He is in a placement that is directed for children with serious needs, and his progress has not been swift, so that doesn't make him a very likely candidate for adoption.

It should be noted, though, that in 48.427(4), sustaining care is one of the allowed dispositions for a child who has had the rights of one or both parents terminated. So sustaining care or return to mother are both possible under the facts scenario we've been presented, and I think I have to consider that along with the low likelihood of adoption.

Issues of age and health of the child have been laid out pretty well by all parties. He is a child who is suffering from mental and emotional difficulties, and there is not much progress. He is certainly being treated by professionals and I think receiving the treatment that's appropriate, but his progress has been [s]low.

Looking to the issue of whether any substantial relationships would be damaged here, clearly there is a substantial relationship with his father.... He is almost consumed by his relationship with his father. He is focused on his relationship with his father, and that has been ... traumatic for him. The cause is unclear for the trauma. I don't think there is any doubt that this kid has nightmares and fears and they are hooked up with his father somehow.

What his father did or didn't do, what life was like in that home with his father, I don't know. ... But what is undeniable is that child is traumatized when [he] is asked questions or allowed to talk about what he feels for his father. So it is a substantial relationship.

I think the expert testimony is clear that severing that substantial relationship would not be harmful to this child but rather might be freeing. If he is finally less afraid, he could be more likely to gain some self-confidence in the sense of freedom.

If I were to act as I am asked by the State, no relationship with his mother or brother would be ruined, so the only relationship to be really deeply concerned about is the father's. In my reading of all this testimony and evidence, it would not be harmful to Rodney [Jr.] to sever that relationship.

Wishes of the child. There is no evidence in the record that says he wishes to go back with his dad. The only evidence is he is afraid and it causes him fear. He wants to be safe. He wants to feel good about himself. He wants to not be afraid in his room and in the bathroom and wherever he now feels threatened. There is nothing that argues against if we look at his wishes.

He has been apart from his father for a significant period time. The father argues that's because the State has failed to act properly. They have been going on a false presumption that there was sexual assault by the respondent, because of that false presumption they have denied the father the chance to be with his son. I have not interpreted the testimony that way.

[The therapist] focused not on solely that [Rodney Sr.] is denying sexual assault.... But that his rigidity prevented further help. His perception was that it is difficult for a child to validate his own concerns if the parent doesn't acknowledge those concerns, and that's been the key block throughout.

That's also buttressed by the ... psychological [evaluation which] essentially said, on the issue of whether there should be family therapy, whether he can do well in family therapy, whether he should see his kids, that until he begins to understand his kids' needs, it is not best either to return them to his care or to have him work in family therapy with these kids.

[A] re-evaluation ... came to a conclusion similar to Dr. Sherry's. And even in answers to my own questions on the bench, when I tried to see whether [Rodney Sr.] could possibly at least state my son has these needs and here is how I would like to help him, he was unable to answer that question.

The rigidity that he showed was consistent with all the expert testimony, that he is rigidly concerned with denying that he has done anything wrong and unable to address what are my son's needs and how could my presence in his life be helpful to him. He is, unfortunately, unable to reach the level of an adult, mature parent who could see beyond his own needs and see to the needs of a fourteen-year-old who is on a serious medication regimen and in a serious treatment facility.

That's the cause for the duration of the separation of this poor, sad man and his child. He can not possibly understand or grasp or open himself to the fact that this kid's fears and emotional trauma is a serious need that he as a father, if he is going to be a father, has to focus on. He can't focus on it. He can only focus on denying that he's done anything wrong.

And that leads into "F," whether this child would be able to enter into a stable and permanent family relationship with his father. It is frightening to even think of that. He couldn't. Current placement is designed to address kids with problems like this, and they are having problems. If there is any likelihood of a future placement with mom or a sustaining care agreement, it will only be if we allow the treatment professionals to continue to work with him and to let him know that he is free to work on his issues.

A partial means of his being free to work on these issues is to let him know he has no fear, that unless he wants to see his father at some future time, his father cannot be in his life.

So it is a very unusual life. It is a very sad case. I mean all the parties in this family are sad. Low development, never had employment, never been successful, never been able to fully grasp what is going on in the world, and the trauma that runs through these family relationships is going to take one heck of a lot of work if there is any hope to salvage somewhat this kid.

¶36 The trial court's decision is extremely thorough and discusses every WIS. STAT. § 48.426 factor in great detail. Rodney Sr.'s argument for why termination was not in Rodney Jr.'s best interest, however, fails to challenge the trial court's application of the factors or even acknowledge the existence of § 48.426.

¶37 In claiming that the trial court improperly based its decision on Rodney Jr.'s version of the events, which he questions as implausible based on Rodney Jr.'s mental problems and his history of lying, Rodney Sr. seems, as the State notes, "to suggest that because Rodney [Jr.] is a very troubled young, boy, his very real fears should be ignored or addressed in less 'irrevocable' ways than through termination of parental rights." What Rodney Sr. apparently fails to accept, what the trial court recognized and what the experts agreed on, is that Rodney Jr.'s problems are tied to his father. As the trial court noted, Rodney Jr. is "almost consumed" by his father and his fears that severely interfere with his life and prevent him from functioning as a normal teenager, originate from his father. On that basis, the trial court concluded that termination was in Rodney Jr.'s best interest because it would be freeing.

¶38 The trial court's extensive analysis of the proper considerations and the conclusion that termination was in Rodney Jr.'s best interest was entirely

reasonable, and Rodney Sr. has fallen far short of showing that the trial court failed to apply the relevant facts to the correct legal standard. *Brandon S.S.*, 179 Wis. 2d at 150. This court discerns no error.

¶39 Therefore, the order terminating Rodney Sr.'s parental rights is affirmed.

By the Court.—Order affirmed.

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

