

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 6, 2007

A. John Voelker
Acting 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 Nos. 2006AP2475
2006AP2476
2006AP2477**

**Cir. Ct. Nos. 2005TP41
2005TP42
2005TP43**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 2006AP2475

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO ERIN C. J., A PERSON UNDER
THE AGE OF 18:**

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

JEFFREY J. S.,

RESPONDENT,

TAMMY L. J.,

RESPONDENT-APPELLANT.

No. 2006AP2476

IN RE THE TERMINATION OF PARENTAL RIGHTS TO RAYMOND L. V., JR., A

PERSON UNDER THE AGE OF 18:

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

JEFFREY J. S.,

RESPONDENT,

TAMMY L. J.,

RESPONDENT-APPELLANT.

NO. 2006AP2477

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO ALANNA M. J., A PERSON
UNDER THE AGE OF 18:**

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

JEFFREY J. S.,

RESPONDENT,

TAMMY L. J.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Brown County:
KENDALL M. KELLEY, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Tammy L.J. appeals orders terminating her parental rights. Tammy argues there was insufficient evidence to support the jury's verdict finding that (1) she abandoned her children, (2) she would be unable to meet the conditions of return within twelve months, and (3) the County made reasonable efforts to provide services. Tammy also argues the trial court erroneously exercised its discretion by terminating her parental rights where there was no evidence presented at the dispositional hearing concerning an adoptive resource or other permanent placement. We disagree and therefore affirm.

BACKGROUND

¶2 When Tammy was arrested on March 28, 2003, the Brown County Department of Human Services placed Tammy's children, Erin C.J., Raymond L.V., and Alanna M.J. in protective care. The children were five, two, and one at the time. On June 27, the children were formally placed out of the home pursuant to dispositional orders. One year later the orders were extended. On August 3, 2005, the department filed a petition to terminate Tammy's parental rights. The case proceeded to trial on January 17, 2006.

¶3 On January 20, 2006, after a four-day trial, the jury returned a verdict finding grounds to terminate Tammy's parental rights. The court held a disposition hearing on May 26, 2006, and found that it was in the best interests of the children to have Tammy's parental rights terminated.

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). Tammy's attorney brought a motion to consolidate. The motion was granted by this court October 19, 2006. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

DISCUSSION

¶4 In a challenge to sufficiency of the evidence, we view the evidence in the light most favorable to the jury's verdict. *Morden v. Continental AG*, 2000 WI 51, ¶¶38-39, 235 Wis. 2d 325, 611 N.W.2d 659. “[I]f there is any credible evidence, under any reasonable view, that leads to an inference supporting the jury's finding,” we will not overturn the finding. *Id.*, ¶38. The jury, and not the appellate court, is the ultimate arbiter of the weight and credibility to be given to witnesses' testimony. *Id.*, ¶39.

¶5 Tammy first argues there was insufficient evidence that she abandoned her children. WISCONSIN STAT. § 48.415(1)(a) defines abandonment as:

The child has been placed, or continued in a placement outside the parent's home by a court order containing the notice required by s. 48.356(2) or 938.356(2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

Tammy argues the evidence was insufficient because the County only presented evidence that Tammy had no contact with the social worker, “which permits the inference that Tammy had no contact with the children (since Tammy's visits were supervised.)” Tammy argues the inference the County relies on does not rule out the possibility that she might have communicated with the children. This argument, however, ignores the standard of review. We will not overturn the jury verdict if there is any credible evidence which supports it. *Id.*, ¶38. In this case, the County presented evidence that Tammy did not attend any supervised visits with her children for a three-month period. Tammy had no contact with her children from April 18, 2005 to July 22, 2005. The County also presented evidence that there was no telephone communication with the children. When

answering questions about her attempts to call the children at their foster homes, Tammy admitted that she left messages but never received any calls back. Based upon the foregoing, a reasonable jury could conclude Tammy did not visit or communicate with her children and therefore abandoned them.

¶6 Tammy next argues there was insufficient evidence to support the jury's verdict that she would be unable to meet the conditions of return within twelve months. The conditions of return included requirements that Tammy cooperate with Brown County Department of Human Services, successfully complete a parenting program, cooperate with a visitation schedule, participate in individual counseling to deal with issues of co-dependency, and participate in budget counseling. The jury heard evidence that Tammy attended some parenting classes, but eventually missed so many appointments she had to be discharged from the classes. Tammy's caseworker, Kay Reynolds, testified that she referred Tammy to a therapist, Judith Hodel. However, Tammy only visited the therapist twice. Tammy also declined Reynolds' support group referral, because she said she knew of a different group she could attend. However, Tammy never attended the other group. Tammy did not attend budget counseling. Further, Tammy missed numerous appointments with Reynolds. Tammy did not contact Reynolds for two months, then cancelled an appointment on April 4, 2005, did not show for an appointment on April 15, and left a message cancelling her April 18 appointment. From this testimony, the jury could reasonably conclude Tammy would not meet her conditions of return within twelve months.

¶7 Tammy also argues there was insufficient evidence to support the jury's conclusion that the County made reasonable efforts to provide court-ordered services. However, the County presented substantial evidence regarding the

efforts made on Tammy's behalf. At trial, Reynolds testified the department set up regular monthly appointments to meet with Tammy. Reynolds also stated the department gave Tammy addressed, stamped envelopes to make it easier for Tammy to stay in touch. The department referred Tammy to parenting classes and set up a visitation schedule for Tammy and the children at the Ruth Helf Center. The department referred Tammy to a wrap-around worker who provided Tammy with transportation to visits with Erin. Reynolds referred Tammy to a therapist. Reynolds offered job services to Tammy, directing her to the WEA Job Center and driving Tammy to five different places to pick up job applications. Reynolds also made referrals to specific jobs for placement and spoke with Tammy about how to successfully apply for and obtain employment. Two days after Reynolds drove Tammy to pick up applications, Tammy left a message to Reynolds stating she was moving to a shelter out of the area. From this evidence, the jury could reasonably conclude the County made reasonable efforts to provide the court-ordered services.

¶8 Tammy also argues the trial court erroneously exercised its discretion by terminating her parental rights. A trial court "erroneously exercises its discretion if it makes an error of law or neglects to base its decision upon facts in the record." *King v. King*, 224 Wis. 2d 235, 248, 590 N.W.2d 480 (1999). In determining whether to terminate parental rights, the trial court must consider the following factors: (1) the likelihood of the child's adoption after termination; (2) the child's age and health at the time of removal and disposition; (3) the child's relationship with the parent and the harm to be caused by severing the relationship; (4) the child's wishes; (5) the length of the parent's separation from the child; and (6) whether the child will be able to enter a more stable family relationship after termination. WIS. STAT. § 48.426(3).

¶9 Tammy argues the trial court did not properly consider the adoption factor, stating “there was simply no real evidence presented about what would happen to the children if the court terminated Tammy’s parental rights.” This assertion ignores the record. The department submitted reports regarding the likelihood of adoption. In addition, the GAL testified:

I am in agreement with the subject in the court report which does speak to the adoptability of these children. At this point they have been in homes with families who do want to adopt them and have been doing very well in these homes.

¶10 After reviewing the reports and listening to the testimony, the court noted:

The children by all accounts are pleasant children, are likeable children. ... There have been no reports that the children themselves are somehow children that would not be a delight to any adoptive parent.

....

I am satisfied that based upon their current placement which appears to be successful in each of the three cases that there’s a likelihood of either placement in the same home or in a similar healthy and nurturing home.

The trial court properly considered the likelihood of adoption and made a decision based on the facts in the record. *See King*, 224 Wis. 2d at 248. Therefore, the court did not erroneously exercise its discretion.

By the Court.—Orders affirmed.

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

