**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**March 26, 2002**

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 Nos. 01-3304**
**01-3305**
**01-3306**
**01-3307**
**01-3308**

**Cir. Ct. Nos. 00 TP 304**
**00 TP 305**
**00 TP 306**
**00 TP 307**
**00 TP 125**

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

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**NO. 01-3304**
CIR. CT. NO. 00 TP 304

**IN RE THE TERMINATION OF**
**PARENTAL RIGHTS TO BONNIEBEL[1] B.,**
**A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**DEBORAH E.,**

**RESPONDENT-APPELLANT,**

**MICHAEL B.,**

**RESPONDENT-CO-APPELLANT.**

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[1] According to the birth certificate, the child's name is "Bonnibel."

**NO. 01-3305**
**CIR. CT. NO. 00 TP 305**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**DEBORAH E.,**

**RESPONDENT-APPELLANT,**

**MICHAEL B.,**

**RESPONDENT-CO-APPELLANT.**

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**NO. 01-3306**
**CIR. CT. NO. 00 TP 306**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO LITTLE DEBRA[2] B., A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**DEBORAH E.,**

**RESPONDENT-APPELLANT,**

[2] According to the birth certificate, the child's name is "Little Deborah."

**MICHAEL B.,**

**RESPONDENT-CO-APPELLANT.**

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**NO. 01-3307**
**CIR. CT. NO. 00 TP 307**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**DEBORAH E.,**

**RESPONDENT-APPELLANT,**

**MICHAEL B.,**

**RESPONDENT-CO-APPELLANT.**

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**NO. 01-3308**
**CIR. CT. NO. 00 TP 125**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**DEBORAH E.,**

**RESPONDENT-APPELLANT.**

APPEALS from an order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed*.

¶1 SCHUDSON, J.[3] In these consolidated cases, Deborah E. and Michael B. appeal from the juvenile court order terminating their parental rights. The order terminated: Deborah's parental rights to Bonnibel B., Dale B., Little Deborah B., Montell E., and Davion N.; Michael's parental rights to all these children except Davion, who was not Michael's child; and Davion's father's rights to Davion.

¶2 Deborah does not challenge the court's findings, following her no-contest plea, that her abandonment of Bonnibel, Dale, Little Deborah, and Montell, and her failure to assume parental responsibility for Davion, established the grounds for termination of her parental rights.[4] She argues only that the court erroneously exercised discretion in terminating her parental rights. She maintains that "there was no showing that future contact between her and the children would be harmful to their safety or welfare."

¶3 Michael challenges both the court's finding of his abandonment of the children and its termination of his parental rights. He argues that because the

[3] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e), (3) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[4] In addition to these grounds for termination of Deborah's parental rights, listed in the order filed August 13, 2001, the grounds pronounced by the juvenile court in its findings on May 3, 2001 included *both* Deborah's abandonment of and failure to assume parental responsibility for Bonnibel, Dale, Little Deborah, and Montell.

juvenile court, in its oral pronouncement of its findings, did not specify the burden of proof it applied, the court reached its findings "[w]ithout applying the proper legal standard" and, therefore, "the discretionary determination cannot be upheld." Michael also argues that the evidence of his unfitness "was not so egregious as to warrant termination."

¶4 This court concludes: (1) Deborah has failed to establish that the juvenile court erroneously exercised discretion in terminating her parental rights; (2) Michael has failed to acknowledge that the full record confirms the juvenile court's application of the proper legal standards, including the burden of proof; and (3) Michael has failed to establish that the juvenile court erroneously exercised discretion in concluding that his conduct was sufficiently egregious to warrant termination of his parental rights. Accordingly, this court affirms.

## I. BACKGROUND

¶5 The essential factual background is undisputed. Bonnibel and Dale, twins born on May 3, 1993, and Little Deborah, born on March 27, 1994, were removed from Deborah's care in May 1994. All three were developmentally delayed as a result of their prenatal exposure to cocaine and their neglect following birth.

¶6 On September 6, 1994, Bonnibel, Dale, and Little Deborah were placed with Michael, who had not yet been adjudicated as their father, as a temporary foster parent. After approximately one month, however, the children were removed from Michael's care because he was failing to protect them from

the dangers presented by Deborah's continuing visits and, due to his criminal record, he could not be licensed as a foster parent.[5]

¶7 Montell, born on December 9, 1995, was removed from Deborah's care in July 1996 after he was found living with her in a van following her eviction. Davion, born on November 13, 1999, was removed from Deborah's care at birth.

¶8 All five children were found to be in need of protection or services (CHIPS). The children have spent most or all of their lives in foster care.

¶9 On April 10, 2000, the State petitioned for termination of Deborah's parental rights to Davion. On October 9, 2000, the State petitioned for termination of Deborah's and Michael's parental rights to Bonnibel, Dale, Little Deborah, and Montell. Following her no-contest plea, the juvenile court found that, under WIS. STAT. § 48.415(1)(a)2, Deborah had abandoned Bonnibel, Dale, Little Deborah, and Montell and, under § 48.415(6), Deborah had failed to assume parental responsibility for Davion.[6] Following a bench trial, the juvenile court also found, under § 48.415(1)(a)2, that Michael had abandoned Bonnibel, Dale, Little Deborah, and Montell. Following a dispositional hearing, the court terminated Deborah's and Michael's parental rights.

[5] Michael, according to certain testimony he disputed, had claimed that he had no record; in fact, he had numerous convictions including those for second-degree sexual assault, theft, false representation to secure public assistance, and two counts of possession of a firearm by a felon.

[6] *See* n.4, above.

## II. DISCUSSION

### A. Legal Standards

¶10 One of the "[g]rounds for termination of parental rights," WIS. STAT. § 48.415, shall be "abandonment," WIS. STAT. § 48.415(1), which may be established by proving that "[t]he child has been placed, or continued in a placement, outside the parent's home by a court order" that contains the statutorily-required notice informing the parent of any grounds for termination of parental rights, and of the conditions necessary for the child's return to the parental home or for the parent to be granted visitation, and "the parent has failed to visit or communicate with the child for a period of 3 months or longer," WIS. STAT. §§ 48.415(1)(a)2, 48.356.

¶11 WISCONSIN STAT. § 48.415(1)(c) states, in relevant part:

> Abandonment is not established under [WIS. STAT. § 48.415(1)(a)2] if the parent proves all of the following by a preponderance of the evidence:
>
> 1. That the parent had good cause for having failed to visit with the child [for a period of 3 months or longer].
>
> 2. That the parent had good cause for having failed to communicate with the child [for a period of 3 months or longer].
>
> 3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:
>
> a. The parent communicated about the child with the person or persons who had physical custody of the child during the [period of 3 months or longer in which the parent failed to communicate with the child] or … with the agency responsible for the care of the child during [that period of 3 months or longer].
>
> b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the [period

> of 3 months or longer in which the parent failed to communicate with the child].

¶12 "Grounds for termination must be proven by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). Whether a trial court has utilized the proper legal standard governing termination of parental rights presents a question of law subject to *de novo* review. *See* ***State v. Patricia A.P.***, 195 Wis. 2d 855, 862-63, 537 N.W.2d 47 (Ct. App. 1995).

¶13 Notwithstanding a finding of statutory grounds for termination of parental rights, a juvenile court still must exercise discretion to determine whether parental rights should be terminated. *See* ***Rock County DSS v. C.D.K.***, 162 Wis. 2d 431, 441, 469 N.W.2d 881 (Ct. App. 1991). "The exercise of discretion requires a rational thought process based on examination of the facts and application of the relevant law." ***David S. v. Laura S.,*** 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993). This court will not overturn a juvenile court's decision to terminate parental rights absent an erroneous exercise of discretion. ***Jerry M. v. Dennis L.M.***, 198 Wis. 2d 10, 21, 542 N.W.2d 162 (Ct. App. 1995).

B. Deborah

¶14 Deborah does not challenge the juvenile court's findings that she abandoned Bonnibel, Dale, Little Deborah, and Montell,[7] and that she failed to assume parental responsibility for Davion. In a conspicuously brief brief, she argues only that "there was no showing that future contact between her and the children would be harmful to their safety or welfare." She contends:

[7] Deborah does not dispute that the evidence satisfied the criteria under WIS. STAT. § 48.415(1)(a)2, establishing her abandonment of Bonnibel, Dale, Little Deborah, and Montell. She points to no evidence countering those criteria to show that "[a]bandonment is not established." *See* § 48.415(1)(c).

> [S]he was merely an[] afterthought during these entire termination proceedings. Because she was incarcerated, the Department of Human Services paid … little or no attention to her throughout the entire proceedings. It would appear that the department wanted [her] out of the way so [it] could proceed with adoption.
>
> [She] therefore contends that the decision to terminate her parental rights was clearly erroneous. Her level of unfitness was not such that future contact between her and the children would be detrimental to their well[-]being. There was absolutely no showing made that [she] could not be a mother to the children once released from prison. No services were offered to her … to help her to be a good parent upon her release.

¶15 Deborah offers nothing to substantiate her claims. She cites nothing in the record to establish that she was "merely an[] afterthought," or that the Department "wanted [her] out of the way."[8] *See* WIS. STAT. RULE 809.19(1)(e) & (3)(a) (appellate arguments must be supported by authority and references to the record); *see also* ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct.

[8] Moreover, the record includes evidence countering this assertion. As summarized by the prosecutor in her closing argument:

> One of the early witnesses on the case … was Ms. Zamecnik, who was the first worker providing service. This is 1994 and 1995, and she did attempt to work with [Deborah]. [Deborah], herself, … made statements that she was referred to AODA programs, didn't participate in the programs. She never successfully completed the programs. Her longest period of abstinence was—when she wasn't incarcerated—was 90 days.… Ms. Zamecnik's testimony was married … with the testimony of witnesses both called by [Michael's attorney] and myself.… [T]here was testimony it was [Deborah] and her addiction to crack cocaine who absented herself from these children's lives. It is [Deborah] who, because of her addiction to crack cocaine, was unable to work with the social workers that were originally on the case, and then [Deborah's] whereabouts—either she was incarcerated or her whereabouts were unknown.

Indeed, the juvenile court concluded that Deborah's attorney's "argument that [Deborah] was somehow abandoned by the … child welfare system … is really not borne out by the records." The court also correctly observed: "I don't think that the argument of reasonable efforts [to assist Deborah] is a valid one at the time of disposition. It is her unfitness as a parent and the bests interests of the children."

App. 1980). Moreover, she fails to develop her arguments that the evidence did not establish that her unfitness would be detrimental to the children, and that no services were offered to help her to be a good parent upon release from prison. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995) (appellate court need not consider "amorphous and insufficiently developed" argument).

¶16 Deborah failed even to appear for the final stages of the dispositional hearing. Her attorney was unable to offer any substantial argument against termination and, on appeal, Deborah does no better. As the court observed, Deborah really had no relationship with her children. Ample and uncontested evidence fully supports the juvenile court's termination of Deborah's parental rights.

C. Michael

¶17 Michael first argues that because the juvenile court, in its oral pronouncement of its findings, failed to "state for the record which burden of proof it applied," it necessarily erroneously exercised discretion in finding that he had abandoned his children. Michael, however, "acknowledges that the trial court examined the relevant factors" in making its finding. Moreover, Michael offers no reply to the response, from both the State and the guardian ad litem, that the order terminating his parental rights explicitly clarified that the juvenile court applied the correct burden of proof—clear and convincing evidence.[9] *See* ***Charolais***

[9] Additionally, the State points out: "The order signed by the trial court was submitted to opposing counsel for review prior to being signed by the court. Neither counsel for Michael B. nor counsel for Deborah E. objected to any of the findings contained within the proposed order." (Record reference omitted.)

(continued)

***Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed admitted).

¶18 Michael next argues that evidence of his unfitness was "not so egregious as to warrant termination." He effectively traces substantial testimony from several witnesses who said that he had a good relationship with his children and that their best interests would not be served by termination. He also points to the juvenile court's findings that he loves his children, wants to be a parent to them, and has substantial relationships with them. Indeed, the juvenile court acknowledged that Michael "came forward to assume parental responsibility."

¶19 The best interests of the child shall be the "'prevailing factor' considered by the court" in determining whether to terminate parental rights.[10]

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Michael's appellate brief notes that "[a]lthough the signed court order reflects that the court made the findings by clear and convincing evidence, the transcripts do not indicate the same."

[10] Under WIS. STAT. § 48.426(2), "The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter [relating to termination of parental rights]." Section 48.426(3) provides:

> FACTORS. In considering the best interests of the child under this section the court shall consider but not be limited to the following:
>
> (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.

(continued)

***Jerry M.***, 198 Wis. 2d at 21. Here, although Michael points to evidentiary bases on which the juvenile court could have concluded that termination of his parental rights might not be in the children's best interests, he fails to refute the substantial bases on which the court reasonably reached its conclusion.

¶20 The juvenile court acknowledged that the decision of whether to terminate Michael's parental rights was "very difficult in many ways." The court, carefully tracking the process used by the supreme court in ***B.L.J. v. Polk County Department of Social Services***, 163 Wis. 2d 90, 470 N.W.2d 914 (1991), and thoughtfully filtering that process through subsequently-enacted federal law, asked whether Michael's unfitness was "so egregious that the termination of parental rights was warranted," and whether "the best interests of the child either do or do not warrant the termination by applying factors contained in [WIS. STAT. §] 48.426."

¶21 Ultimately, the juvenile court concluded that termination was appropriate. In its oral decision, the court commented extensively on the evidence and acknowledged many portions that were favorable to Michael. Supporting termination, however, the court cited many factors including: (1) Michael's misrepresentations regarding both his employment and criminal record; (2) the violence Michael experienced in his encounters with Deborah; (3) Michael's skewed perception of reality regarding his compliance with conditions for return of the children to him; (4) his violation of the condition that he have no contact

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> (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.

with Deborah, resulting in her pregnancy; (5) his incredible denial of Deborah's chronic cocaine abuse; (6) the psychological evaluations describing Michael's serious intellectual and psychosocial limitations; (7) Michael's distorted, unrealistic view of the world "centered around his own wishes and his own desires to be in control of his children's lives"; (8) his "lawless view about supporting his children and about complying with social security [disability] rules"; (9) his minimization of his children's significant special needs for treatment of hyperactive and "very aggressive, very demanding" behavior; (10) his limited parenting abilities; (11) his steadfast insistence that he does not need individual therapy; (12) his "serious problems" in engaging the children in both physical and verbal interactions "on a personal basis"; (13) his reluctance to discipline the children; and (14) his decision, at times, not to visit the children "because he was angry, because he felt unfairly treated."

¶22 Thus, the court concluded:

> The reason that I think further contact between Michael … and his children is seriously detrimental is because Michael … has a personality disorder and he has refused to accept treatment for that personality disorder. He needs individual therapy to deal with the things that make him deny his seven-count criminal history, and he has refused to do that despite repeated requests and offers to have him do that, and whenever pressed, he has dug in and refused to cooperate.
>
> Now, he has antagonized people. That's compounded communication problems. Communication has been bad. People have made mistakes. People have dropped the ball. This has made him legitimately angry. Those are not the reasons why his further contact with the children is detrimental. It was because of his world view.
>
> I'll go back to Dr. Emiley's statement about [Michael] in 1995, the time of his first [psychological] evaluation; that is, Michael … and that personality quality, without the willingness or ability to respond to treatment, make his continued involvement with his children detrimental. And I believe the evidence is that he can't

> meet the needs of his children because of his failure to submit to that treatment and I believe that that shows that he is unfit to keep the children safe or to protect their welfare in a very serious and important respect. Those are both the factors of [***B.L.J.***], so I find, not only is he statutorially [sic] unfit, but his ability to parent is sufficiently compromised such that he is unfit to parent.

¶23 The court then went on to evaluate the best interests of the children. The court considered all the statutory criteria. The court compassionately recognized the positive relationships Michael had developed with his children and acknowledged that "there would be a harm to these children in terminating" those relationships. The court, however, weighed that harm against "the ability to reach a more stable and permanent family relationship" and concluded that a failure to terminate would result in a continuation of "this roll of endless dispute about what Michael … would have to do in order to get his kids back" and would leave the children without the more stable and permanent family relationships available to them through adoption.

¶24 In determining whether termination is warranted following a finding of parental unfitness, the juvenile court "evaluates not just the fact that 'grounds' for termination have been found but [also] the quantity, quality, and persuasiveness of the evidence." ***B.L.J.***, 163 Wis. 2d at 104. Here, the juvenile court did so. The court has "broad discretion" in making that determination. ***Id.*** at 105. Reviewing this record, this court cannot conclude that the juvenile court erroneously exercised discretion.

*By the Court.*—Order affirmed.

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