

**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. 02-0132
02-0133**

**Cir. Ct. Nos. 01-TP-88
01-TP-89**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 02-0132

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

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

COLLEEN A.,

RESPONDENT-APPELLANT.

No. 02-0133

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

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

COLLEEN A.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Brown County:
RICHARD J. DIETZ, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Colleen A. appeals orders terminating her parental rights to her children, Miranda L.A. and Marshall J.A. Colleen argues that: (1) the evidence introduced at the fact-finding hearing was insufficient to establish that she would not be able to meet the conditions for return of the children within twelve months; (2) the evidence was insufficient to show that the Brown County Human Services Department made reasonable efforts to provide the services ordered by the trial court; and (3) the trial court erroneously exercised its discretion when it terminated Colleen's parental rights. We disagree and affirm the orders.

BACKGROUND

¶2 On May 24, 2000, Miranda and Marshall were removed from Colleen's home because Colleen had been arrested, along with her boyfriend, Carl N., as the result of a domestic violence incident. Both Colleen and Carl had been drinking alcohol and smoking marijuana.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f).

¶3 On July 24, 2000, CHIPS dispositional orders were entered imposing conditions for the return of the children to Colleen's home. Among other conditions, Colleen was required to participate in and successfully complete an AODA assessment and recommendations of the assessment. She was also required to maintain sobriety from all drugs and alcohol.

¶4 On July 19, 2001, the County filed a petition to terminate Colleen's parental rights on grounds of continuing need of protection or services. *See* WIS. STAT. § 48.415(2). The petition alleged that Colleen had not complied with the CHIPS dispositional orders and that there was a substantial likelihood that she would not meet those conditions within twelve months.

¶5 A jury trial was held on September 24 and 25, 2001. Merri Autumn-Helgesen, an AODA counselor, testified that she conducted an assessment of Colleen. Her diagnosis was alcohol dependence and cannabis abuse. Autumn-Helgesen recommended that Colleen start intensive outpatient counseling. Colleen began that counseling on August 7, 2000. By September 5, 2000, Colleen was discharged and sent to Woman's Recovery Journey at Family Service Association because "it was a more appropriate program." Autumn-Helgesen testified that Colleen was continuing to abuse alcohol and drugs and continuing to become involved in situations that would cause her to relapse.

¶6 At Woman's Recovery Journey, Colleen worked with Stepheny Holasek, an alcohol and drug counselor. Holasek testified that Colleen admitted she could not stop using marijuana. Colleen was then transferred to an inpatient program at the Jackie Nitschke Alcohol and Drug Treatment Center.

¶7 Colleen was admitted to the Jackie Nitschke Center on February 6, 2001. Shirley Anderson, a drug and alcohol counselor testified that Colleen was discharged one week later because Colleen refused to participate in the family portion of the program.² Anderson testified that she informed Colleen that before she could be readmitted, she would need to get a psychological evaluation.

¶8 After Colleen's discharge, her case was assigned to Mary Miceli-Wink, an AODA counselor. Miceli-Wink testified that she recommended Tellurian House to Colleen. Tellurian House is a more intensive inpatient facility than the Jackie Nitschke Center. Colleen advised Miceli-Wink that she would not participate in that program. Miceli-Wink testified that the County then let Colleen back into outpatient treatment. However, the County warned Colleen that she would be transferred to Tellurian House if she continued to use alcohol and drugs.

¶9 Miceli-Wink testified that Colleen did not complete the outpatient program. Based upon her lack of attendance, Colleen was discharged. However, rather than sending Colleen to Tellurian House, Colleen was given another chance in the outpatient program. Colleen subsequently fired Miceli-Wink after admitting to using marijuana.

¶10 Colleen followed through with the psychological evaluation recommended by the Jackie Nitschke Center. Dr. Denver Johnson conducted the evaluation in May 2001. Johnson testified that his diagnosis was alcohol and cannabis dependence. He concluded that the more restrictive the AODA program, the more likely Colleen would fail.

² Colleen told Anderson that she could not complete the family program because she did not have a family member who could participate.

¶11 Colleen also went to David Sanchez, an alcohol and drug counselor at the United Amerindian Center. He diagnosed alcohol and cannabis dependence. Sanchez testified that he recommended Colleen be admitted to Tellurian House.

¶12 On July 23, 2001, three days after Colleen was served with the petition to terminate parental rights, she went to see a new counselor at the Recovery Works Counseling Services, David Schreiter. Schreiter testified that Colleen told him that she had not used alcohol or drugs from September 2000 through May of 2001. He offered his opinion that Colleen was improving. However, Schreiter stated that he had not received Colleen's records from Miceli-Wink, the Jackie Nitschke Center, or from Johnson.

¶13 The jury found that grounds for termination of parental rights existed under WIS. STAT. § 48.415(2). At the dispositional hearing on October 25, 2001, the trial court terminated Colleen's parental rights.

I. SUFFICIENCY OF THE EVIDENCE

¶14 Colleen argues that the evidence at the fact-finding hearing was insufficient to show that: (1) she would not be able to meet the CHIPS conditions for return of the children within twelve months, pursuant to WIS. STAT. § 48.415(2); and (2) the County made reasonable efforts to provide court-ordered services.

A. CHIPS Conditions

¶15 Colleen argues that the evidence at the fact-finding hearing was insufficient to show that she would not be able to meet the CHIPS conditions for return of the children within twelve months. According to Colleen, the evidence

shows that she had made progress on all of the CHIPS conditions and was very close to completing them because she had found a program that she felt suited her needs and addressed her problems.

¶16 We examine the evidence and reasonable inferences drawn from the evidence in a light most favorable to the verdict. *State v. Pankow*, 144 Wis. 2d 23, 30, 422 N.W.2d 913 (Ct. App. 1988). We will only substitute our judgment for the trier of facts' when the fact finder relied upon evidence that was inherently or patently incredible. *State v. Tarantino*, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990).

¶17 The County contends that the evidence shows that Colleen had a chronic alcohol and drug abuse problem making it likely that she would not meet the CHIPS conditions and that Schreiter, her current counselor, did not have a full understanding of Colleen's history.

¶18 We conclude that there is nothing in the record to suggest that Colleen met the CHIPS requirements, completed the AODA recommendations, and remained sober. Colleen ignores the ample evidence presented at trial that she continued to use alcohol and drugs. Autumn-Helgesen, Holasek and Miceli-Wink all testified that Colleen did not maintain absolute sobriety. Further, Colleen had poor attendance and refused to be transferred to Tellurian House for more intensive inpatient treatment.

¶19 Colleen contends that the evidence shows she was improving and making great strides toward completing the CHIPS conditions. She bases this on Schreiter's testimony that she was improving in her ability to maintain sobriety. However, the existence of conflicting testimony does not call for reversal. *See*

Bennett v. Larsen Co., 118 Wis. 2d 681, 705-06, 348 N.W.2d 540 (1984). To survive a sufficiency of the evidence challenge, there need only be credible evidence to sustain the verdict. *Weiss v. United Fire & Cas. Co.*, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995). The jury decides whom to believe. *Fells v. State*, 65 Wis. 2d 525, 529, 223 N.W.2d 507 (1974). It may draw reasonable inferences from testimony, and it may choose to believe part of one witness's testimony and part of another's, even though the witnesses, as a whole, are inconsistent. *State v. Toy*, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985). Here, there is credible evidence to sustain the verdict despite Schreiter's testimony.

B. Reasonable Efforts

¶20 Colleen argues that the County did not make reasonable efforts to provide court-ordered services for AODA treatment.

¶21 The burden is on the County to establish by clear and convincing evidence that it made a diligent effort to provide the services ordered by the court. *See In re T.M.S.*, 152 Wis. 2d 345, 358 n.11, 448 N.W.2d 282 (Ct. App. 1989). A determination of what constitutes reasonable efforts is a fact sensitive question that must consider the totality of the circumstances as they exist in each case. *State v. Raymond C.*, 187 Wis. 2d 10, 14-15, 522 N.W.2d 243 (Ct. App. 1994).

¶22 Colleen contends that despite the County being made aware of her potential psychological problems, a psychiatric evaluation was not conducted until May 2001, when the County "began to talk about terminating Colleen's parental rights." However, Johnson's psychological evaluation would not have affected what was already being done for Colleen. Johnson diagnosed her as having

alcohol and cannabis dependence and concluded that the more restrictive a program was, the less likely she would succeed. Colleen was offered both lesser and greater restrictive programs. She was unable to comply with any of them.

¶23 Colleen contends that soon after the psychological evaluation was completed she found Schreiter and the Recovery Works Counseling Services. According to her, they were meeting her needs and she was succeeding in sobriety and recovery. However, as noted earlier, Schreiter had not obtained any records from Colleen's prior treatment. It is difficult to conceive how Schreiter could have an understanding of her recovery when he did not know her history.

¶24 Colleen contends that the County's recommendation that she be transferred to Tellurian House did not take into account her needs. Tellurian House was a ninety-day inpatient program. Under the conditions of the CHIPS order, Colleen was ordered to maintain an apartment, have employment, and regularly visit with the children. She claims she would have been unable to meet these conditions if she had been an inpatient at Tellurian House.

¶25 The evidence presented at trial is clear that Colleen needed to have her alcohol and drug issues addressed prior to being able to maintain stability in other areas of her life. Further, the recommendation for Tellurian House occurred before any decision to pursue a termination of parental rights petition. It is speculation that the County would have "set her up" by pursuing a petition for termination for not meeting other conditions after sending her to Tellurian House. Colleen's allegation is not supported in the record.

¶26 Last, Colleen contends that additional services could have been offered to facilitate the reunification process but that the County did not consider

these. She claims that “family therapy between the children and their mother should have been ordered to help deal with those issues and to provide a safe forum in which the mother could talk to the children about that she was trying to do what she could to bring them back home.”

¶27 Colleen appears to be arguing that there should have been an additional condition in the CHIPS order to include family therapy. However, the issue of whether the children were alienated from Colleen or were feeling angry or frustrated has nothing to do with the question of whether the County made reasonable efforts to provide services to Colleen. Therefore, we conclude that the County took reasonable efforts to help provide the services that Colleen needed to complete her court order.

II. DISPOSITIONAL HEARING

¶28 Colleen argues that the trial court erroneously exercised its discretion by terminating her parental rights. Colleen contends that: (1) the children did have a substantial relationship with her and other family members and that there was no evidence in the record to suggest that severing the relationships would not be detrimental to the children; and (2) Colleen’s behavior was not so egregious as to warrant a termination of her parental rights.

¶29 After a jury has found evidence supporting termination of parental rights, the trial court must then determine whether the evidence is sufficiently egregious to support a termination of parental rights. *B.L.J. v. Polk County DSS*, 163 Wis. 2d 90, 103, 470 N.W.2d 914 (1991). Considering what is in the best interests of the child, the court, using its discretion, determines whether the evidence warrants the termination. *Id.* at 103-04; *see* WIS. STAT. § 48.426(2).

¶30 It is well established that the determination of the child's best interests is committed to the trial court's discretion. *In re Brandon S.S.*, 179 Wis.2d 114, 150, 507 N.W.2d 94 (1993). The court properly exercises its discretion when it employs a rational thought process based on an examination of the facts and application of the correct standard of law. *Id.*

¶31 The trial court must apply the standard and factors set forth in WIS. STAT. § 48.426 when determining disposition. The best interests of the child are paramount. WIS. STAT. § 48.426(2). The best interests are determined by examining, among other things, the likelihood of the child's adoption after termination, the child's age and health, whether the child has substantial relationships with the parent or other family members and if it would be harmful to sever those relationships, the wishes of the child, how long the child has been separated from the parent, and whether a new environment will provide a more stable and permanent family relationship. WIS. STAT. § 48.426(3).

¶32 The trial court concluded that Colleen had made some progress in all the CHIPS conditions, but that she had not complied with the primary condition of AODA treatment and sobriety. The court found that the children were adoptable, that any relationship with Colleen or family members had been disrupted, and that there was no evidence in the record to show that severing those relationships would harm the children.

¶33 Further, the trial court noted that this matter was about creating a stable relationship for the children and that if the petition were dismissed, the children would have to “continue to live with the anxiety of whether they might have to go back and live with mom and whether that might fall apart” The court held that all of the factors led to the conclusion that it was in the children’s

best interests to terminate Colleen's parental rights. We conclude that the trial court applied the correct law to the relevant facts, engaged in a process of reasoning, and reached a determination that a reasonable judge could reach. *Burkes v. Hales*, 165 Wis. 2d 585, 590, 478 N.W.2d 37 (Ct. App. 1991).

By the Court.—Orders affirmed.

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

