

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 9, 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. 02-1031 & 02-1032

Cir. Ct. Nos. 00TP265 & 00TP266

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

No. 02-1031

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

NORMAN J.,

RESPONDENT-APPELLANT.

No. 02-1032

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

NORMAN J.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Norman J. appeals the order terminating his parental rights to his children, Timothy J. and Norman J. III. Norman J. argues that the trial court erroneously exercised its discretion in deciding to terminate his parental rights. Because the trial court properly exercised its discretion in terminating Norman J.'s parental rights, this court affirms.

I. BACKGROUND.

¶2 On August 21, 2000, the State petitioned to terminate the parental rights of Norman J. and Gwendolyn J. to their three children: Ladeidra J., born 11/03/94; Norman J. III, born 2/3/96; and Timothy J., born 8/29/97.² After a bench trial, the trial court determined that Norman J. was unfit for failing to assume parental responsibility for both children. Specifically, the trial court found that Norman J. had failed to establish a substantial parental relationship with either child. With regard to Norman J. III, the trial court also found that Norman J. failed to meet the conditions established for the return of this child set at the

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

² Another child of Gwendolyn's was also included in the original petition. However, Norman J. is not the father of that child. Gwendolyn voluntarily terminated her rights to Norman J., III, and Timothy on September 24, 2001.

original CHIPS proceeding pursuant to WIS. STAT. § 48.13(10) (1999-2000) held on April 30, 1996, and extended several times thereafter.³

¶3 At the dispositional hearing, the State and the guardian ad litem recommended that the petition requesting termination of Norman J.'s parental rights be granted. The trial court reviewed the submitted evidence, applied the factors found in WIS. STAT. § 48.426, and granted the State's request to terminate Norman J.'s parental rights to both children.

II. ANALYSIS.

¶4 Norman J. submits that the trial court erroneously exercised its discretion in terminating his parental rights because much of the evidence presented did not support the trial court's conclusion that he had failed to assume parental responsibility for the children, nor did all the evidence support the trial court's conclusion that he had failed to meet the conditions established for the return of Norman J. III. Specifically, Norman J. argues that the trial court's findings are inconsistent because the parental rights of another child, Ladeidra, were not terminated. Norman J. argues the testimony was essentially the same for all three children, and, thus, it "doesn't make sense" that evidence could support the termination of parental rights to two children, but not the third.

¶5 Further, Norman J. submits that several witnesses established that he took care of the children, including buying them food, diapers, clothing and other household items. Norman J. also argues that he did meet the CHIPS conditions

³ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

because the worker told him to concentrate solely on his need for alcohol and drug treatment, which he claims he completed. Finally, he submits the department did not make reasonable efforts to provide him with services, and that the State did not meet its burden of proof because several of the workers involved in the case were unfamiliar with the history of the case. This court is unpersuaded by all of Norman J.'s contentions.

¶6 WISCONSIN STAT. § 48.415 contains the grounds for an involuntary termination of a parent's rights. Two of those grounds, § 48.415(2) and § 48.415(6), were alleged here. WIS. STAT. § 48.415(2) reads:

Grounds for involuntary termination of parental rights.

....

(2) CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services, which shall be established by proving any of the following:

(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 under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2. a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent ... and other relevant circumstances of the case.

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 12-month period following the fact-finding hearing under s. 48.424.

....

2. That the conditions that led to the child's placement outside his or her home under each order specified in subd. 1. were caused by the parent.

WIS. STAT. § 48.415(6) provides:

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY.

(a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ever expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

¶7 We review *de novo* whether the trial court has applied the correct legal standard. *Kerkvliet v. Kerkvliet*, 166 Wis. 2d 930, 938-939, 480 N.W.2d 823 (Ct. App. 1992). The trial court's findings of fact may not be disregarded by us unless those findings are "clearly erroneous." See WIS. STAT. RULE 805.17(2). The decision to terminate a person's parental rights to a child is vested within the trial court's discretion, provided that the statutory grounds for termination are satisfied. See *Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993); *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). We 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. *See Brandon S.S.*, 179 Wis. 2d at 150 (“The exercise of discretion requires a rational thought process based on examination of the facts and application of the relevant law.”).

¶8 The prevailing factor that a trial court must consider in deciding whether to terminate parental rights is whether it is in the “best interests of the child.” WIS. STAT. § 48.426(2); *State v. Margaret H.*, 2000 WI 42, ¶¶ 33- 34, 234 Wis. 2d 606, 610 N.W.2d 475. WISCONSIN STAT. § 48.426(3) provides:

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.

(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.

¶9 Here, the trial court’s findings that Norman J. did not meet the CHIPS conditions for the return of Norman J. III to the home, and that Norman J. had failed to assume parental responsibility for either child, are amply supported

by the record. Moreover, the trial court's decision to terminate Norman J.'s parental rights was the result of a proper exercise of discretion.

¶10 In determining that the State had met its burden of proof in establishing grounds for the termination of Norman J.'s parental rights to Norman J. III and Timothy, the trial court stated that it would not rely on the testimony of Norman J. or Gwendolyn because their testimony was incredible. Much of Norman J.'s arguments are predicated on his and Gwendolyn's testimony, and, thus, should be discounted. The trial court also remarked that the circumstances surrounding the care of Ladeidra were quite different from those touching on the care of her two younger brothers. Those differences led the court to determine that the State did not prove the necessary grounds for termination of the parental rights to Ladeidra. Reviewing the testimony, the trial court observed that the records reflected that Norman J. III was only in the parental home for two months, and Timothy was in the home for only ten days, before being placed in foster care. Thus, Norman J. had little time to exercise his parental rights. As to Norman J. III, the trial court found that Norman J. did not have a substantial relationship with Norman J. III, as that term is defined in the statute. The trial court noted that Norman J. was incarcerated when Norman J. III was removed from the home; that Norman J. had been incarcerated several times after the birth of the children; and that he is currently incarcerated, with a mandatory release date well into 2003. For similar reasons, the trial court found that there was no credible evidence that Norman J. had a substantial parental relationship with Timothy either.

¶11 The trial court also ruled that the State had proved its claim that Norman J. failed to meet the conditions for the return of Norman J. III.⁴ The trial court noted that the current CHIPS order required Norman J. to maintain a suitable residence with sufficient food, clothing, bedding, etc., and that Norman J. was unable to satisfy that requirement. Because Norman J. was incarcerated, the trial court stated that “he is not in a position to feed and clothe these children or to supervise them. He does not have a residence. He is not available to provide daily supervision and protection. He is not in a position to feed and clothe these children or to supervise them.” Further, he will not be able to comply with those conditions within twelve months due to his incarceration. The trial court also noted that while Norman J. had made some half-hearted attempts at addressing his dependency on alcohol and drugs, he failed to provide proof of completion of any programs. The trial court also observed that the records showed Norman J. had attended but failed to complete parenting classes and classes for batterers.

¶12 The trial court also correctly ruled that the department had made attempts to offer Norman J. services. This finding was grounded on the testimony of Joseph Pelland, a human service worker, who said he had made numerous referrals to several programs for domestic violence and alcohol and other drug addiction treatment, as well as parenting classes, and Norman J. failed to complete any of them. Although several of the workers were quite new and unable to provide a great deal of first-hand experience with the family, the records documented Norman J.’s shortcomings in completing recommended programs.

⁴ Norman J. was only the alleged father of Timothy at the time of Timothy’s CHIPS proceeding. He was adjudicated later.

¶13 At the dispositional phase of the proceeding, the trial court found that it was in the best interests of both children to have their father's parental rights terminated. In so finding, the trial court stated that it was likely that Norman J. III, age 5, and Timothy, age 4, would be adopted by their foster families where they have lived most of their lives. The court noted that each child had some health problems that have improved since being placed in foster care. Further, the trial court concluded that neither child would be harmed by severing the relationship with their father or other family members because neither had a substantial relationship with him or his relatives. In fact, there was a question of whether the children recognized Norman J. as their father. The trial court observed that Norman J. had not visited either child for over a year.

¶14 In making its decision to terminate Norman J.'s parental rights, the trial court recounted evidence which reflected that Norman J. has continuously used cocaine, even providing it to Gwendolyn when she was pregnant. Further, as noted by the guardian ad litem: "The trial court was bombarded for days with testimony of drug buys, drug usage, violence, transient living situations, arrests and incarceration. All this before, during and after the births of Norman and Timothy." Evidence also revealed that Norman J. did not support his children in any fashion – financially or emotionally. Given the evidence, it is no wonder the trial court found Norman J.'s failure to assume parental responsibility to be "egregious." Consequently, the trial court properly exercised its discretion in terminating Norman J.'s parental rights. For the reasons stated, the trial court's determination is affirmed.

By the Court.—Orders affirmed.

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

