COURT OF APPEALS
DECISION
DATED AND FILED

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Cornelia G. Clark
Clerk of Court of Appeals

Appeal Nos. 02-1503
02-1504
02-1505

Cir. Ct. Nos. 01 TP 180
01 TP 181
01 TP 182

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

NO. 02-1503

IN RE THE TERMINATION OF PARENTAL RIGHTS TO LUCAS R., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

NORMAN R.,

RESPONDENT-APPELLANT,

DOREEN R.,

RESPONDENT-CO-APPELLANT.

NO. 02-1504

IN RE THE TERMINATION OF PARENTAL RIGHTS TO CHRISTIAN R., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

NORMAN R.,

RESPONDENT-APPELLANT,

DOREEN R.,

RESPONDENT-CO-APPELLANT.

NO. 02-1505

IN RE THE TERMINATION OF PARENTAL RIGHTS TO SEAN R., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

NORMAN R.,

RESPONDENT-APPELLANT,

DOREEN R.,

RESPONDENT-CO-APPELLANT.

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

¶1 FINE, J. Norman and Doreen R. appeal from an order entered following a bench trial terminating their parental rights to Lucas R., Christian R., and Sean R. We affirm.[1]

I.

¶2 Lucas, Christian, and Sean, the three children who are the subject of this appeal, were born to Doreen and Norman R. in February of 1996, April of 1998, and March of 2000 respectively. The trial court determined, as material to this appeal, that Mr. and Mrs. R. "failed to establish a substantial parental relationship with" Lucas, Christian, and Sean, and that therefore there were grounds to terminate their parental rights to those children under WIS. STAT. § 48.415(6). The trial court also determined that there were grounds to terminate the R.es' parental rights to Lucas and Christian under WIS. STAT. § 48.415(2), finding that the children remained "in continuing need of protection or services" as defined by § 48.415(2) because Lucas and Christian "have been outside [the R.es'] home for a total cumulative period of 6 months or longer" and the R.es "have failed to meet the conditions of return" even though assigned social workers "made reasonable efforts to provide appropriate services" to the R.es, who, the trial court found, were "unlikely to meet the conditions of return in the 12 months following the fact-finding hearing," which was held in December of 2001. The R.es challenge these determinations and the trial court's underlying findings of fact. They do not

[1] We thank the children's guardian *ad litem*, Carole Wenerowicz, for the superb brief she submitted on this appeal. Her cogent marshalling of the evidence adduced at the lengthy fact-finding hearing, and her concise analysis were extremely helpful. The State's brief, submitted by Milwaukee County assistant district attorney Thomas Binger, was also very helpful.

challenge the trial court's ultimate conclusion that termination of their parental rights to Lucas, Christian, and Sean were in the children's best interests.

II.

¶3 Parental rights may not be terminated unless a court first determines that the parents have done things or failed to do things that permit an assessment of whether termination would be in the best interests of the children involved. WIS. STAT. §§ 48.40–48.427. The grounds that warrant consideration of whether termination would be in the best interests of the children are set out in WIS. STAT. § 48.415. Here, the requisite fact-finding hearing to see whether there were such grounds, *see* WIS. STAT. § 48.424, was held as a bench trial. Although we review *de novo* whether the trial court has applied the correct legal standard, ***Kerkvliet v. Kerkvliet***, 166 Wis. 2d 930, 939, 480 N.W.2d 823, 826 (Ct. App. 1992), neither Mr. R. nor Mrs. R. argues that it did not. Rather, they mount a sufficiency-of-the-evidence challenge, contending that the trial court erred in finding grounds under WIS. STAT. §§ 48.415(2) and 48.415(6) to move to the best-interests phase. Under our standard of review, the trial court's findings of fact are conclusive unless they are "clearly erroneous." *See* WIS. STAT. RULE 805.17(2).

¶4 As material here, section 48.415 provides:

> **Grounds for involuntary termination of parental rights.** At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:
>
> ....
>
> **(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 or an unborn 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 or expectant mother and other relevant circumstances of the case.

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother 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 not including time spent outside the home as an unborn child; 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.

....

(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.

¶5 As noted, the trial court found that under WIS. STAT. § 48.415(6) it could move to the best-interests phase because the R.es failed to assume their parental responsibility for the children. We examine this aspect of the trial court's findings first, and then move to its additional finding that there were also grounds under WIS. STAT. § 48.415(2) to move to the best-interests phase in connection with Lucas and Christian.

A. *Parental Responsibility in Connection with Lucas, Christian, and Sean.*

¶6 The trial court concluded that the State had proven "to a reasonable certainty by clear, satisfactory, and convincing evidence" that the R.es failed to assume their parental responsibilities in connection with Lucas, Christian, and Sean.

¶7 Sean was born in March of 2000 with a cleft palate and has had a series of corrective operations. At birth, he had significant difficulty eating and needed special feeding arrangements. The social worker assigned to the child by the hospital where he was born did not believe that Mrs. R. could adequately care for Sean's special needs: Mrs. R. was filthy when she arrived at the hospital to give birth to Sean and she did not respond to the baby as a mother. After much effort, the social workers found a foster home where Sean could be fed. The hospital social worker testified that "[i]t took three foster parents before we found one who was willing to spend the amount of time necessary to feed this child." During supervised visits between Mrs. R. and Sean, Mrs. R. was unable to attend to Sean's simplest needs or even hold him when he would cry. Moreover, visits to Mrs. R.'s home after Sean's birth revealed a labyrinth of filth and vermin

infestation, as had home visits before Sean was born. Indeed, even the social worker who had the nicest things to say about Mrs. R. conceded that the R. home was not "safe for and appropriate for a three or four-year-old" and that she "would not allow a kid to crawl round [*sic*] on the floor there." In response to questions posed to her by the trial court, this social worker admitted that the "cleanliness problem" would not be solved even if Mrs. R. had "enough money to buy cleaning supplies." The only time Mr. R. saw Sean was the day he was born. The trial court found that the R.es "do not now nor have they ever had a substantial parental relationship with Sean." The evidence amply supports these findings.

¶8 As noted, Lucas and Christian were born in February of 1996 and April of 1998 respectively. When Lucas was three months old, authorities removed him and five of his older siblings from the R. house because it was filthy and infested with vermin. Mr. and Mrs. R. were convicted of child neglect as a result of the appalling conditions. Lucas spent seventeen months in foster care and returned to the R. house in November of 1997, when he was twenty-one months old.

¶9 When Christian was born, the hospital social worker noted that Mrs. R. was filthy upon her admission to the hospital, there was no record of any prenatal care, and Mrs. R. did not bond with Christian. Mrs. R. told the trial court she did not get prenatal care for either Lucas or Christian because she does not like doctors, which is what she also told the social worker. Mrs. R. tested positive for syphilis, and Christian stayed at the hospital for ten days, during which he was treated with antibiotics as a preventative.

¶10 In September of 1998, a social worker assigned to the R.es visited the home and found it filthy and vermin infested. The R.es got a parent aide in

November of 1998, assigned to help them form parenting skills, but she, too, found the home filthy and the children dirty and with red spots on their bodies. By the end of November of 1998, Christian had been seen by a physician only two times since his birth, and both children had severe eczema. Additionally, Lucas was developmentally delayed. Mrs. R. did not keep medical appointments that had been set up for her by her social workers. Both children were taken from the R. home in January of 1999 because the house was still filthy and, according to the testimony of one of the social workers, the children were being medically neglected. Despite help from the social workers, the R. house remained filthy and during several overnight visits in the R. home Lucas and Christian were not given their medications; after these visits they returned to the foster family dirty and Christian had head lice he contracted while with Mrs. R.

¶11 In October of 1999, the family moved to a place that was clean at first but, according to the testimony of one of the social workers, "it progressively got dirtier, more and more garbage piled up on the floor, more clothes piled and piled in the living room[] and the bedrooms[,] and garbage on the floor of the kitchen."

¶12 The trial court concluded that the time both parents spent with these children was "so insignificant" that it could not "rise to the level of being substantial" parental involvement in their lives, and also found that the "quality of care" the parents provided to the children during the time they *did* spend with them was also "so insubstantial" that the State had proved the grounds under WIS. STAT. § 48.415(6) in connection with Lucas and Christian. The evidence amply supports these findings.

B. *Continuing Need of Protection or Services in Connection with Lucas and Christian.*

¶13 As can be seen from part II.A., there was substantial evidence that the R.es' inability to give their children even minimal care and nurturing made the children need society's protection and services. As can be seen from WIS. STAT. § 48.415(2), reprinted above, a continuing need for protection or services can be a ground that warrants going to the best-interests phase in a termination-of-parental-rights proceeding, provided the other aspects of that subsection are also satisfied. Norman R. challenges only the trial court's finding that he did not adequately meet the needs of Lucas and Christian under the standards set out in § 48.415(2). Mrs. R. makes that argument as well but also contends that the assigned social services workers did not make a "reasonable effort" to help her meet the needs of her children, as is required by WIS. STAT. § 48.415(2)(a)2. Whether the State met its burden of proof on this latter issue is also a question of fact to be decided by the trial court and not overturned by us unless it is clearly erroneous. ***State v. Raymond C.***, 187 Wis. 2d 10, 16, 522 N.W.2d 243, 246 (Ct. App. 1994).

¶14 As can be seen from our brief recitation of the facts adduced during the five-day fact-finding hearing, the evidence amply supported the trial court's findings that Mr. and Mrs. R. neglected their children, putting those children in need of society's protection and services. Additionally, the evidence is replete with repeated attempts by social workers to help the R.es be parents to their children. The issue is not, as Mrs. R. argues, whether the social service workers could "have done more for her and her family in light of her disabilities and the family's poverty" [uppercasing omitted], but whether the trial court's finding of fact that the social service workers made a "reasonable effort" under all of the

circumstances was "clearly erroneous." Here, it suffices to echo the trial court's cogent observation: "We have put an army of service providers into this home and/or an army of service providers at the disposal of the family for a period in excess of five years to assist them in achieving the level of parenting competence which would enable them to provide safe and appropriate care for Lucas and Christian." This finding is not by any stretch of the imagination "clearly erroneous"; it is, rather, right on. The trial court terminated the parental rights of Mr. and Mrs. R. not because of their poverty or low intelligence but because they failed, despite repeated and herculean efforts by the social service workers to help them, to give their children even the most minimal of parental love and care throughout the children's brief lives. All children deserve better; perhaps now Sean, Christian, and Lucas will finally have the home to which every child is entitled.

By the Court.—Order affirmed.

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