

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 16, 2011

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. 2010AP846
2010AP847**

**Cir. Ct. Nos. 2008TP37
2008TP38**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

No. 2010AP846

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

WINNEBAGO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

THOMAS C. W.,

RESPONDENT-APPELLANT.

No. 2010AP847

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

WINNEBAGO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

THOMAS C. W.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Winnebago County:
THOMAS J. GRITTON, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Thomas C. W. appeals from orders terminating his parental rights to his two children. We affirm the trial court.

¶2 On August 11, 2008, Winnebago County Department of Health & Human Services filed petitions to involuntarily terminate Thomas's parental rights to his two children. The petitions alleged three grounds: abandonment, child in continuing need of protection or services, and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(1), (2) & (6).

¶3 A fact-finding hearing was held on January 12 and 13, 2009. At the conclusion of testimony, Thomas's trial counsel made a motion for a directed verdict, which was denied by the court. The jury returned three special verdicts, finding that Thomas had abandoned both children pursuant to WIS. STAT. § 48.415(1), that the children were in continuing need of protection or services pursuant to § 48.415(2), and that Thomas had failed to assume parental

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

responsibility pursuant to § 48.415(6). At the dispositional hearing that followed, the court ordered the termination of Thomas's parental rights to both children.

¶4 Thomas filed a motion alleging ineffective assistance of counsel and a motion hearing followed. On November 5, 2010, the court gave its oral ruling. The court denied most of the postdispositional claims and determined that trial counsel had been effective in every way except when she failed to renew her motion for judgment notwithstanding the verdict in regard to the failure to assume parental responsibility claim.

[Counsel] didn't bring the motion back.... I prompted her, I think she should have. And so I'm finding that part of her performance to be deficient....

So we move to the [prejudice] prong [of ineffective assistance of counsel]....

I'm finding that I would have dismissed it if it would have been brought before me again at the dismissal part at the end or before the disposition so I think anything from here on out regarding assumption of parental responsibility, we don't need to address.

....

But on the other two [grounds—abandonment and children in continuing need of protection or services—] I think ... [counsel] put on a good case. Now, she didn't win but I don't think it had anything to do with her ability or her decision making or her strategy during the course of this case. And, in fact, I think that her strategy, as she outlined it, was she wanted to show how outrageous the Department was being and that came across very strongly in the demeanor she had during the course of this case. And I think that you never get that feeling from the record because they are only words and so I think it is important for me to put that into the record because that has impacted my decision about her ability and her effectiveness during the course of this trial and the impact that that had on those folks sitting over there in the jury box.

¶5 Thus, the court dismissed the jury's finding of fact that Thomas failed to assume parental responsibility based on a lack of evidence. However, the court upheld the jury's other findings and the court's decision that Thomas abandoned his children and that the children were in continuing need of protection or services. Thomas appeals.

¶6 On appeal, Thomas argues that because trial counsel was ineffective in defending the allegation that Thomas failed to assume parental responsibility, there can be no confidence in the jury's verdict on the remaining counts. Thomas argues that his right to a unanimous verdict was violated in regard to the abandonment allegation. He argues that trial counsel's failure to properly investigate and introduce available evidence to disprove abandonment was ineffective assistance. Finally, he argues he deserves a new trial in the interest of justice. None of Thomas's arguments persuade.

¶7 To establish ineffective assistance of counsel, the appellant must show that counsel's performance was deficient and that such performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if the appellant makes an inadequate showing on one. *Id.* at 697. We affirm the trial court's findings of fact unless they are clearly erroneous, but the determination of deficient performance and prejudice are questions of law that we review without deference to the trial court. *State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985).

¶8 In his appellate brief, Thomas makes several arguments regarding the abandonment ground for termination. Yet, inexplicably, he makes no

substantive argument regarding the children-in-continuing-need-of-protection-or-services ground for termination.² This is inexplicable because the finding that the children are in continuing need of protection or services is itself a sufficient ground for the trial court to have ordered termination of parental rights. WIS. STAT. § 48.415(2). As such, it is itself a sufficient ground for this court to affirm. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if resolution of one issue disposes of appeal, we need not address other arguments raised by appellant).

¶9 Thomas also contends that we should grant a new trial in the interest of justice. We disagree. Our discretionary reversal power under WIS. STAT. § 752.35 is formidable and should be exercised sparingly and with great caution. *State v. Williams*, 2006 WI App 212, ¶36, 296 Wis. 2d 834, 723 N.W.2d 719. We are reluctant to grant new trials in the interest of justice and exercise our discretion to do so “only in exceptional cases.” *See State v. Armstrong*, 2005 WI 119, ¶114, 283 Wis. 2d 639, 700 N.W.2d 98. This is not such a case.

¶10 Our extensive review of the lengthy transcripts leads us to concur with the trial court that counsel’s performance was ineffective in the one (earlier-mentioned) regard but was otherwise effective. The record supports the trial

² Though Thomas makes no substantive argument, he makes one passing argument regarding this issue when he contends that because the trial court directed verdict on one of the three grounds for terminating parental rights, “there is no confidence that the jury’s other verdicts are any more sound.” This argument is unsupported by any law and does not in any way substantively appeal the jury’s finding that the children are in continuing need of protection or services. It merits no further attention. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (appellate court may decline to address inadequately briefed issues; arguments not supported by legal authority will not be considered).

court's orders of termination of parental rights and Thomas's appellate arguments do not persuade this court otherwise.

By the Court.—Orders affirmed.

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

