

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 10, 2003

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 No. 03-0827

Cir. Ct. No. 02TP000276

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ROSALINDA S.,

RESPONDENT,

ANTHONY K.,

RESPONDENT-APPELLANT.

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

¶1 WEDEMEYER, P.J.¹ Anthony K. appeals from an order terminating his parental rights to his son, Anthony J.K., born August 5, 1999. Mr. K. claims there was insufficient evidence to show he failed to assume parental responsibility and that his good cause defense was not fully tried. Because the record contains sufficient evidence to support the jury verdict, and because this case was fully tried, this court affirms.

I. BACKGROUND

¶2 Anthony was born August 5, 1999, to Rosalinda S. Mr. K. did not know for sure whether Anthony was his biological child until paternity was adjudicated. During the first four months of Anthony's life, Mr. K. lived with Anthony and Rosalinda. Both Mr. K. and Rosalinda used cocaine. Rosalinda repeatedly left the home, leaving Anthony to be cared for by another relative. Rosalinda also left Anthony alone at a neighboring drug house. On December 5, 1999, Mr. K. was arrested for possession of a controlled substance with intent to deliver and fleeing a police officer. He was convicted and sentenced to five years in prison. During the time he was incarcerated, Mr. K. did not send any cards or pictures to Anthony. Moreover, it took him eight months to respond to a letter sent to him from social worker Nicole Berry regarding Anthony.

¶3 In April 2002, the State filed a petition seeking termination of Mr. K.'s parental rights to Anthony, alleging that he failed to assume parental responsibility under WIS. STAT. § 48.415(6) (2001-02).² Mr. K. contested the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

termination. In August 2002, the State amended the petition, adding abandonment, pursuant to WIS. STAT. § 48.415(1)(a)(3), as an additional ground for termination.

¶4 A jury trial occurred in October 2002, wherein a jury found grounds existed to terminate Mr. K.'s parental rights. In December 2002, a dispositional hearing took place, after which the trial court entered an order terminating Mr. K.'s parental rights to Anthony. Mr. K. now appeals.

II. DISCUSSION

A. *Sufficient Evidence.*

¶5 Mr. K. first contends the evidence was insufficient to demonstrate that he failed to assume parental responsibility. This court is not persuaded. In reviewing a claim alleging insufficient evidence, this court is bound by the following standard:

Appellate courts in Wisconsin will sustain a jury verdict if there is any credible evidence to support it. Moreover, if there is any credible evidence, under any reasonable view, that leads to an inference supporting the jury's finding, [this court] will not overturn that finding.

Morden v. Continental AG, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659 (citations omitted). In applying this standard, this court must reject Mr. K.'s contention that the evidence was insufficient to support the verdict. He argues that because he assisted Rosalinda during the pregnancy, lived with Anthony during the first four months, treated Anthony as his own and provided food and clothing, that a jury could not have reached the verdict it did. Although the record does reflect that these statements are accurate, Mr. K. ignores the substantial evidence supporting the jury's findings.

¶6 First, although Mr. K. took Rosalinda to pre-natal appointments, he did nothing to protect the unborn child from the repeated cocaine use of the mother during the pregnancy, or the dangerous conduct Rosalinda engaged in while pregnant. Second, although he lived with Anthony during his first four months, he used and sold cocaine, allowed the mother to use cocaine, allowed the mother to repeatedly leave the infant with others or at a drug house, and allowed his brother to throw Rosalinda and the infant out of the house when Mr. K. was in jail for twenty days.

¶7 This is not the kind of “responsible” parenting contemplated by the statute. Rather, WIS. STAT. § 48.415(6) provides that:

a “substantial parental relationship” consists of “the acceptance and exercise of significant responsibility” for not only the “daily supervision” of a child, but also “the acceptance and exercise of significant responsibility” for, among other things, the “protection and care of the child.”

State v. Quinsanna D., 2002 WI App 318, ¶32, 259 Wis. 2d 429, 655 N.W.2d 752. Mr. K.’s actions demonstrate his lack of concern to protect and care for his child. It was reasonable for the jury to conclude that Mr. K. did not provide “daily supervision” for his child during the four months they lived together. Rather, the testimony reflects that Mr. K. was frequently using cocaine and passing off the care of Anthony on others, including a seven-year-old child. Likewise, the evidence clearly reflects Mr. K.’s lack of protection of Anthony, starting during Rosalinda’s pregnancy. Accordingly, this court cannot conclude that there was insufficient evidence to support the jury’s finding.

B. Discretionary Reversal.

¶8 Mr. K. next argues that this court should exercise its discretionary authority pursuant to WIS. STAT. § 752.35 because the real controversy was not fully tried. His basis for such assertion is grounded in his claim that the jury answered two questions that it was not required to answer on the abandonment verdict. This court cannot conclude on that basis that the real controversy was not tried and therefore declines to exercise its discretionary authority under § 752.35.

¶9 The jury questions referred to were numbered 6 and 7 on the special verdict. Question number 6 was to be answered only if the jury answered affirmatively to question number 5, which it did not.³ Question number 6 asked: “Did [Mr. K.] communicate about Anthony ... with the foster parent (s) or representatives of the Bureau of Milwaukee Child Welfare who had physical custody of the child during that period?” The jury answered, “No.” Question number 7 asked: “Did [Mr. K.] have good cause for having failed to communicate about Anthony ... with the foster parent (s) or representatives of the Bureau of Milwaukee Child Welfare who had physical custody during that period?” The jury answered, “No.”

¶10 Mr. K. claims the answer to question number 6 was contrary to the evidence because of the letter he wrote dated August 21, 2000. This court is not persuaded by Mr. K.’s argument for several reasons. First, even if this letter is accepted as evidence of contact, the record reflects a nine-month abandonment of

³ Question number 5 asked: “Did [Mr. K.] have good cause for having failed to communicate with Anthony ... during that period?” The jury answered, “No.” In other words, the jury determined that imprisonment was not good cause for having failed to communicate with the child.

the child prior to August 21, 2000, and a sixteen-month abandonment period following the letter. Thus, the six-month abandonment period required by WIS. STAT. § 48.415(1)(a)(3) was satisfied. Second, the August 21, 2000 letter did not inquire about the well-being of Anthony. Rather, it addressed adjudicating paternity. Third, the extra questions answered were not material to the jury's verdict.

¶11 Based on the foregoing, this court concludes that there is no reason to exercise our discretionary authority to reverse the order for termination.

By the Court.—Order affirmed.

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

