

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 24, 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. 03-1175  
STATE OF WISCONSIN**

Cir. Ct. No. 02-TP-000057

**IN COURT OF APPEALS  
DISTRICT IV**

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

**ROCK COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**v.**

**PATTI S.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Rock County:  
RICHARD T. WERNER, Judge. *Affirmed.*

¶1 DYKMAN, J.<sup>1</sup> Patti S. appeals from an order terminating her parental rights to her three-year-old daughter, Casey. Patti argues that the trial

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

court erred in terminating her parental rights because: (1) it should not have directed a verdict on the question of whether the social services department made reasonable efforts to provide the services ordered by the court; and (2) the evidence was insufficient to prove there was a substantial likelihood that she would not meet the return conditions within twelve months of the trial. We are not persuaded by either argument and therefore affirm.

### **BACKGROUND**

¶2 In a CHIPS proceeding in October 2001, the circuit court found Casey to be in need of protection or services and placed her in foster care. During the CHIPS proceeding, the court imposed the following conditions that Patti would have to meet for the return of her daughter:

1. Maintain sobriety;
2. Address her mental health issues so that they do not interfere with her ability to parent;
3. Not be involved with any acts of domestic violence;  
and
4. Be able to meet the child's physical, emotional, and developmental needs.

During this proceeding, the court also ordered the Rock County Department of Human Services (Human Services) to provide the following services to help Patti meet her return conditions:

1. To request Patti to provide a urine screen from time to time;
2. To assist Patti in finding an appropriate domestic violence program, including approving providers chosen by Patti;

3. To assist Patti in finding an appropriate parenting program, including approving providers chosen by Patti;
4. To approve (or not) any change in providers which Patti might from time to time request; and
5. To provide general case management services to Patti.

¶3 One year after the CHIPS proceeding, in October 2002, Human Services petitioned the court for an order terminating Patti's parental rights to Casey. The petition alleged that the ground for termination was the continuing need of protection and services within the meaning of WIS. STAT. § 48.415(2). At trial, three requirements for termination under the statute were in dispute: (1) 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; (2) the parent has failed to meet the conditions established for the safe return of the child to the home; and (3) there is a substantial likelihood that the parent will not meet these return conditions within the twelve-month period following the fact-finding hearing which might be held in this proceeding. *See* § 48.415(2)(a)2.b and 3.

¶4 The trial court directed verdicts on the first two requirements, ruling that Human Services had made a reasonable effort to provide the services ordered by the court and that Patti had failed to meet the return conditions. The court submitted the question of whether there was a substantial likelihood that Patti would not be able to meet the return requirements within the next twelve months to a jury. The jury concluded that she would not be able to do so.

## DISCUSSION

¶5 Patti contends that there was a factual dispute as to whether Human Services made a reasonable effort to provide the services ordered by the court and therefore the question should have been submitted to the jury.

¶6 A court has the power to direct a verdict on an element in a jury trial on a petition to terminate parental rights. *D.B. v. Waukesha County Human Servs. Dept.*, 153 Wis. 2d 761, 765, 451 N.W.2d 799 (Ct. App. 1989). However, “[a] verdict should be directed only ‘if the evidence gives rise to no dispute as to material issues or when the evidence is so clear and convincing as reasonably to permit unbiased and impartial minds to come to but one conclusion.’” *D’Huyvetter v. A.O. Smith Harvestore Prods.*, 164 Wis. 2d 306, 331, 475 N.W.2d 587 (Ct. App. 1991) (quoting *Holloway v. K-Mart Corp.*, 113 Wis. 2d 143, 150, 334 N.W.2d 570, 574 (Ct. App. 1983)). On review, a trial court’s decision in directing a verdict will be upheld only if, considering the evidence in the light most favorable to the party against whom the verdict was rendered, there is no credible evidence to sustain a finding in its favor. *Weiss v. United Fire & Casualty Co.*, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995).

¶7 Patti contends that the trial court’s directed verdict was unjustified because evidence was produced that Human Services did not make reasonable efforts to provide the court-ordered services. However, none of the evidence introduced at trial contradicts the directed verdict. Micaela Broetzmann testified that she had administered four urine tests to Patti over the last year, had helped Patti find an appropriate domestic violence program, referred Patti to a center that offered a parenting course free of charge, that Patti had not asked her for any assistance in changing counselors, and that she had provided general case

management services such as helping Patti set up visits with her daughter, keeping in contact with the service providers Patti used, and making sure that Patti's insurance would cover her counseling. These were the services the CHIPS court ordered Human Services to provide. When Patti was given the opportunity to demonstrate that Human Services did not make a reasonable effort, she testified that Human Services had provided her with all the assistance she had asked for and that she believed it had made a reasonable effort to provide the services ordered by the CHIPS court.

¶8 The “contradictory evidence” Patti relies upon is her testimony that she found a temporary place to live on her own and that Broetzmann had no training in AODA issues.<sup>2</sup> However, the issue at trial was whether the department made a reasonable effort to provide the court-ordered services, not services in general. Helping find alternate housing and having a caseworker with AODA training were not requirements imposed by the CHIPS court. Patti argues that providing assistance in finding alternate housing falls into the general case management services Human Services was ordered to provide. She points out that WIS. STAT. § 48.38(4)(f)(3) requires the agency responsible for the child to file a permanency plan that includes the services it plans to provide to help improve the conditions of the parents' home in order to facilitate a safe return of the child to his or her home or, if appropriate, obtain an alternative permanent placement for the child. However, the statute does not state that the services detailed in the permanency plan are also considered general case management services. If the

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<sup>2</sup> We do not see how Patti was harmed by Broetzmann's alleged failure to help Patti find housing. Patti found housing on her own. And Broetzmann testified that she provided Patti with information about the Y Shelter.

court intended Human Services to provide Patti with assistance in finding alternate housing, it would have included such a service in the CHIPS order. At no point during trial was any evidence introduced to show that Human Services did not make a reasonable effort to provide the five services ordered by the CHIPS court or that housing assistance falls within the meaning of general case management services. Therefore, the trial court correctly directed a verdict on this issue.

¶9 Next we consider whether the evidence was sufficient to sustain the jury verdict that there was a substantial likelihood that Patti would not be able to meet the return conditions in the next twelve months. Although Patti objects to this for the first time on appeal, we elect to consider the issue.<sup>3</sup> “[A] reviewing court may, in exercise of its discretion and in the proper case, consider new issues raised for the first time on appeal.” *Fuerst v. Fuerst*, 93 Wis. 2d 121, 130, 286 N.W.2d 861 (Ct. App. 1979).

¶10 A party seeking to set aside a jury’s verdict on grounds of insufficiency of the evidence faces a heavy burden. Patti must convince us that there is “no credible evidence” to support the jury’s findings. *Weiss*, 197 Wis. 2d at 388. Our duty is to search the record to find such evidence, accepting all reasonable inferences drawn by the jury. *Heideman v. American Family Ins. Group*, 163 Wis. 2d 847, 863-64, 473 N.W.2d 14 (Ct. App. 1991). If we find credible evidence to support the verdict, it must stand, even if the contradictory evidence is stronger and more convincing. *Weiss*, 197 Wis. 2d at 389-90.

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<sup>3</sup> Patti contends that WIS. STAT. § 809.30(2)(h) permits her to argue the sufficiency of the evidence for the first time on appeal. This is incorrect. While that statute applies to the children’s code, § 809.30(2)(a) expressly states that the statute does not apply to termination of parental rights cases.

¶11 At trial, Patti's therapist and case worker both testified that they did not believe Patti would be able to meet all the return conditions ordered by the court within the next twelve months. Patti's therapist testified that Patti seemed to live from crisis to crisis and that she did not believe that Patti would be able to break this trend over the next year. Patti's caseworker testified that Patti admitted to drinking once over the past year and believed that Patti did not maintain sobriety on many other occasions. In addition, Patti's parole officer testified that on a few occasions Patti had not attended sessions in a mandatory AODA program and that he did not believe Patti to be an honest person. Although Patti introduced evidence that she had been making progress recently and would continue to make progress, Patti's therapist and caseworker both testified that in order for Patti to continue to make progress, she would have to live in an extremely structured environment for the entire year and they did not believe that was possible. From this evidence, the jury could have reasonably inferred that the problems Patti had in the past would continue over the next twelve months and that due to those problems, she would be unable to meet at least one of the return conditions.

¶12 In sum, having reviewed the record, we conclude that the evidence presented at trial was sufficient to support the jury's verdict. Further, no evidence was presented showing that Human Services did not make a reasonable effort to provide the court-ordered services. We therefore affirm.

*By the Court.*—Order Affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

