

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 11, 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 Nos. 03-2571
03-2572
STATE OF WISCONSIN**

**Cir. Ct. Nos. 02TP000650
02TP000651**

**IN COURT OF APPEALS
DISTRICT I**

**No. 03-2571
CIR CT. NO. 02TP000650**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LYNN G.,

RESPONDENT-APPELLANT.

**No. 03-2572
CIR. CT. NO. 02TP000651**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LYNN G.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
TIMOTHY M. WITKOWIAK, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Lynn G. appeals from orders terminating her parental rights to her son, Jonathon, and her daughter, Charlotte. She claims: (1) there was insufficient evidence to support the jury's finding that she failed to assume parental responsibility; and (2) the trial court erroneously exercised its discretion in terminating her parental rights. Because there is sufficient evidence to uphold the jury's finding and because the trial court did not erroneously exercise its discretion in terminating Lynn's parental rights, this court affirms.

I. BACKGROUND

¶2 Lynn G. and Adam L. had a child out-of-wedlock, Jonathon, on January 2, 1999. Jonathon was born prematurely and had problems with apnea. On January 13, 1999, he was released from the hospital to the home where Lynn and Adam lived. Lynn had inherited the home from her father. Her brother, Paul, lived in the home as well. Adam's sister, Nanette, her boyfriend, and their infant son also resided therein. In addition, three adult dogs, four cats and an unspecified number of puppies were kept in the home.

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

¶3 A public health nurse, Marlene Abadie, came to visit the home in March 1999. Abadie observed that Jonathon appeared to be clean, fed and in good condition. She was, nonetheless, concerned because the house had a strong pet odor, the litter box was overflowing, and she noticed that Lynn had some cognitive limitations, which she believed might result in Lynn failing to comply with the recited recommendations. In June 1999, Abadie returned to the home to visit, but was denied entrance. Abadie then contacted the Bureau of Milwaukee Child Welfare.

¶4 On June 16, 1999, Alauna Ruble, a social worker, went to the home accompanied by a city of Milwaukee building inspector. Adam initially refused to allow them into the home, but subsequently they did gain entry. The home was in poor condition and smelled strongly of animal feces and urine. The carpet was soaked with animal urine. The kitchen and bathroom were very dirty and the bathroom ceiling was sagging and covered with mildew. There were numerous building code violations, which would render the home uninhabitable unless corrected. The two children had rashes on their faces. Jonathon appeared to be developmentally delayed and was not responding to auditory stimuli. As a result, he was removed from the home and placed in foster care.

¶5 On March 14, 2000, Charlotte was born prematurely. Lynn had not received any prenatal care because she feared the social workers would take the child away if they knew she was pregnant. A few days after Charlotte was born, a social worker went to the home to assess conditions. Adam showed her the home, but would not show her the basement. The home had been cleaned and most of the animals had been removed. The phone was not working and there was minimal food, including formula. She did not see any bedding or diapers for the new baby. The social worker decided to place Charlotte in foster care based on

safety concerns, including the fact that Paul was using drugs in the home, Charlotte had special needs, and there was a lack of baby supplies.

¶6 In October 2000, Lynn and Adam moved out of the home because it was foreclosed upon. They moved into a two-bedroom apartment. The apartment was kept neat and clean.

¶7 In August 2003, the State filed a petition to terminate parental rights. The case was tried on March 17, 18 and 19, 2003. During the trial, the State presented evidence of the substantial physical handicaps and developmental impairments of the children. Charlotte was blind and Jonathon was nearly deaf, necessitating the use of hearing aids. The social workers testified that Lynn and Adam were unable to provide the level of care required of special needs parents.

¶8 The jury returned a verdict finding that both parents failed to assume parental responsibility. At the dispositional hearing on May 29, 2003, the trial court entered orders terminating the parental rights of Lynn and Adam to their two children. Lynn now appeals.

II. DISCUSSION

A. Sufficiency of the Evidence.

¶9 Lynn first argues that there was insufficient evidence to support the jury's finding that she failed to assume parental responsibility. She claims that there was evidence demonstrating that she cared for Jonathon for the first five or six months of his life, that she attended weekly visits and parenting classes in an attempt to learn how to adequately take care of her children. She also argues that her children were removed because of her poverty. Although this court can

certainly sympathize with Lynn and commend her in her efforts at trying to satisfy conditions for return, the standard for reviewing sufficiency claims is limited.

¶10 In reviewing sufficiency claims, this court reviews the record to determine whether there is any credible evidence to support the jury's verdict. *Morden v. Continental AG*, 235 Wis. 2d 325, 351, 611 N.W.2d 659 (2000). “[I]f there is any credible evidence, under any reasonable view, that leads to an inference supporting the jury's finding, [and this court] will not overturn that finding.” *Id.*; *State v. Quinsanna D.*, 259 Wis. 2d 429, 449, 655 N.W.2d 752 (2002).

¶11 In applying that standard, this court must affirm the jury's verdict. There was credible evidence to sustain the jury's finding that Lynn failed to assume parental responsibility. The conditions in the home where Lynn was trying to exercise care for Jonathon were horrendous. Moreover, Lynn failed to take Jonathon to the doctor after March 1999, despite his known breathing problems. The uninhabitable-like conditions in the home support the jury's finding that Lynn failed to exercise “significant responsibility for the daily supervision, education, protection and care” of Jonathon. WIS. STAT. § 48.415(6)(b) (2001-02).² Charlotte never lived in the parental home. During her pregnancy with Charlotte, Lynn failed to seek any medical care. Charlotte was born premature, with significant health problems. The foster parents have scheduled and arranged for all of the therapy and medical assistance that both children need on a regular basis.

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

¶12 Moreover, this court rejects Lynn’s contention that Jonathon was removed simply because of conditions caused by poverty, which runs contrary to the statute. First, Lynn stipulated that poverty was not a factor in her inability to care for her children. Second, allowing a drug-using brother to live in the home is not a result of poverty. Third, cleanliness is a matter of effort, not poverty. Accordingly, this court is not persuaded by the poverty argument.

¶13 Because there is credible evidence to support the jury’s finding that Lynn failed to assume parental responsibility, this court will not overturn the jury’s verdict.

B. Trial Court’s Decision to Terminate.

¶14 Lynn next contends that the trial court erroneously exercised its discretion when it ordered her parental rights terminated. This court rejects her contention. The trial court’s decision to terminate parental rights is discretionary and will not be overturned if the trial court considered the pertinent facts, applied the correct law, and reached a reasonable conclusion. *Jerry M. v. Dennis L.M.*, 198 Wis. 2d 10, 21, 542 N.W.2d 162 (Ct. App. 1995).

¶15 The record demonstrates that the trial court considered the correct law, the pertinent facts, and reached a reasonable conclusion. The trial court considered the factors set forth in WIS. STAT. § 48.426 in determining what would be in the best interests of these children. *Sheboygan County H.H.S. v. Julie A.B.*, 255 Wis. 2d 170, 176, 648 N.W.2d 402 (2002). The trial court noted that it was “very likely” that the children would be adopted. It addressed the age and health of the children at the time each was removed from the parents and at the time of disposition. Jonathon was five months old when he was removed and Charlotte was a newborn. At the time of disposition, Jonathon was four years old and

Charlotte was three years old. Both children have significant health/developmental problems. However, the health concerns would not be barriers to adoption.

¶16 Next, the trial court addressed whether the children had substantial relationships with the parents and whether it would be harmful to sever these relationships. Undoubtedly, this was a difficult factor for the trial court. On the one hand, it observed children who have been out of the parental home for most, if not all, of their lives. The children refer to their foster parents as mom and dad. On the other hand, the biological parents were undisputedly making great efforts to correct the problems which led to the initial removal. They were now living in a clean and well-kept apartment. They were visiting the children regularly. They were trying to learn how to care for the children. The court, however, found that the parents' efforts did not overcome the other factors supporting termination.

¶17 The trial court noted that the children were too young to express their own wishes, but did appear to be doing very well in their foster homes. In addressing the next factor—duration of time out of the home—the trial court observed that both children had spent a substantial period of time outside the parental home. Jonathon had been out of the home for three and one-half years and Charlotte had been out of the home for her entire three years.

¶18 Finally, the trial court addressed the stability factor. It concluded that termination now would allow the children to enter a more stable and permanent family relationship and adoption was likely. Based on the foregoing considerations, the trial court concluded that it was in the best interests of the children to terminate the parental rights. This court cannot conclude that the trial

court erroneously exercised its discretion in reaching its decision. The trial court reached a reasonable determination. This court affirms.

By the Court.—Orders affirmed.

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

