COURT OF APPEALS
DECISION
DATED AND FILED

April 27, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal Nos. 04-0050
04-0051

Cir. Ct. Nos. 02TP000014
02TP000015

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

NO. 04-0050

IN RE THE TERMINATION OF PARENTAL RIGHTS TO ERIN F.C., A PERSON UNDER THE AGE OF 18:

BARRON COUNTY,

PETITIONER-RESPONDENT,

V.

HANS C.,

RESPONDENT-APPELLANT.

NO. 04-0051

IN RE THE TERMINATION OF PARENTAL RIGHTS TO DAMIAN J.C., A PERSON UNDER THE AGE OF 18:

BARRON COUNTY,
PETITIONER-RESPONDENT,

V.

HANS C.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Barron County: EUGENE D. HARRINGTON, Judge. *Affirmed.*

¶1 CANE, C.J.[1] Hans C. appeals orders terminating his parental rights to Erin C. and Damian C. Hans argues the orders should be reversed because the trial court did not make an explicit finding of unfitness after the jury found grounds to terminate his parental rights. Hans also argues the petitions to terminate his parental rights should be dismissed because delays in scheduling hearings caused the court to lose competence. We affirm the orders.

BACKGROUND

¶2 On September 16, 2002, the County filed petitions to terminate Hans' parental rights to his two children, Erin and Damian. On December 17, the court granted Hans' request for paternity tests and continued the matter for cause. On February 28, 2003, the County received the results indicating Hans was the father and sent a letter to the trial court asking for a hearing. However, the next hearing was not held until April 1, at which time all parties agreed a new judge

[1] These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

would be appointed to the case. A jury later found grounds existed to terminate Hans' parental rights, and the trial court subsequently ordered Hans' parental rights terminated.

DISCUSSION

¶3 Hans first argues the orders terminating his parental rights should be dismissed because the trial court did not make an explicit finding of unfitness after the jury found grounds to terminate Hans' parental rights. Under WIS. STAT. § 48.424(4), Hans notes "the court shall find the parent unfit" when "grounds for the termination of parental rights are found by the court or jury." Hans argues a specific finding is critical because "'Unfitness' is an absolute requirement before parental rights may be terminated." *See* ***B.L.J. v. Polk County DSS***, 163 Wis. 2d 90, 470 N.W.2d 914 (1991); *see also* ***Sheboygan County DHHS v. Julie A.B.***, 2002 WI 95, ¶27, 255 Wis. 2d 170, 648 N.W.2d 402 ("Notwithstanding a jury verdict, the court may dismiss a petition if it finds that the evidence 'does not sustain any one of the jury's individual findings.'" (Citations omitted.)) Because the power to terminate parental rights is an awesome one, Hans reasons that the trial court must strictly adhere to the clear statutory requirements. *See* ***Odd S.-G. v. Carolyn S.-G.***, 194 Wis. 2d 365, 378, 533 N.W.2d 794 (1995).

¶4 While WIS. STAT. § 48.424(4) states a court "shall find the parent unfit" if the court or jury finds grounds for terminating parental rights, the supreme court in ***B.L.J.*** concluded "'unmistakable but implicit findings' of parental unfitness" by a circuit court suffices. ***B.L.J.***, 163 Wis. 2d at 109 (citations omitted). The court noted, "There would be no point in sending this case back to the circuit court for a specific, declaration to that effect," because to

do so would be "both superfluous and a waste of judicial resources." ***Id.*** (citation omitted).

¶5 At the fact-finding hearing, the court found the jury determined there was a basis to terminate Hans' parental rights. Additionally, at the dispositional hearing the court stated:

> The jury determined that there was a factual basis to terminate[] Hans['] rights.
>
> And, you know, those are tough decisions for jurors. They knew what they were doing when they went back in the room. They were properly instructed. They had the facts. They deliberated, and they came back with a determination that Hans … had not exercised the appropriate parenting that was required. They determined that the facts supported the allegations that Hans … had essentially abandoned his children.
>
> It's, it's odd. It's disingenuous, I guess is the right word to characterize this, that [Hans] would tell us today that he has been denied his opportunity to visit the children and that he wants to exercise that visitation now. …
>
> His present companion testifies that he's a good father and exercises good parenting skills to her three children. And I wonder why … didn't he exercise, those parenting skills … years ago?
>
> ….
>
> … The only legal remedy available for these children presently and for long-term care that's consistent, that's predictable, is for the Department to do precisely what it did; and that's to petition for the termination of parental rights.
>
> And there are certainly facts to support that.

Although the court never used the word "unfit," we agree with the County that by the court's statements it unmistakably, implicitly found Hans to be unfit. Therefore, we reject Hans' argument that the subsequent termination of parental rights orders must be reversed.

¶6 Hans also argues the termination of parental rights petitions should be dismissed because the lengthy delay between hearings was not "only for so long as is necessary," thereby rendering the court incompetent to proceed. *See* WIS. STAT. § 48.315(2); *see also* ***Green County DHS v. H.N.***, 162 Wis. 2d 635, 656-57, 469 N.W.2d 845 (1991). The initial hearing on the petitions to terminate Hans' parental rights occurred on October 11, 2002. Hans secured counsel and, on November 19, contested the petitions' allegations. The court scheduled the fact-finding hearing on December 17, well within the forty-five-day time parameters of WIS. STAT. § 48.422(2), but on that date the court granted Hans' request for a paternity test and continued the matter. On January 6, 2003, the court signed the order for genetic testing. Hans agrees this was good cause for a continuance, but objects to the fact that the next hearing did not occur until April 1.

¶7 Whether the circuit court complied with the continuance statute, WIS. STAT. § 48.315(2), presents questions of law we review independently. *See* ***State v. April O.***, 2000 WI App 70, ¶6, 233 Wis. 2d 663, 607 N.W.2d 927. We conclude the delay was not excessive.

¶8 On January 24, 2003, the circuit court judge who initially handled the matter, the Honorable James C. Eaton, retired. Just over four weeks later, on February 28, the County received the results indicating Hans was the father of Erin and Damian and requested a hearing on the petitions. However, that court's branch remained vacant until March 27, when the district attorney who initiated the TPR petitions, James C. Babler, was appointed to the bench. On April 1, the parties met before a reserve judge, and all agreed a new judge would need to be appointed because of Judge Babler's conflict of being the initiating prosecutor.

¶9 We are sympathetic to Hans' complaint that the scope of the continuance was for paternity testing and that after the paternity results were received, a hearing was not scheduled for over a month. However, in light of the circumstances regarding the change in court personnel, the delay cannot be considered excessive. Therefore, the circuit court did not lose competence.

By the Court.—Orders affirmed.

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