

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 21, 2004

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. 04-2683
04-2684
STATE OF WISCONSIN**

**Cir. Ct. Nos. 04TP000002
04TP000003**

**IN COURT OF APPEALS
DISTRICT III**

No. 04-2683

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
CHRIS L.Z., A PERSON UNDER THE AGE OF 18:**

TAYLOR COUNTY,

PETITIONER-RESPONDENT,

V.

MARY Z.,

RESPONDENT-APPELLANT.

No. 04-2684

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
JENNIFER L.Z., A PERSON UNDER THE AGE OF 18:**

TAYLOR COUNTY,

PETITIONER-RESPONDENT,

V.

MARY Z.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Taylor County:
DOUGLAS T. FOX, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Mary Z. appeals orders terminating her parental rights to her children, Chris and Jennifer. She argues there was not sufficient evidence that her behavior was a substantial threat to Chris's and Jennifer's health. We affirm the orders.

BACKGROUND

¶2 Mary and her husband have a history of domestic violence, between themselves and toward their children, exacerbated by alcohol abuse. Their first contact with the County's department of human services was in 1984 regarding injuries and bruising suffered by their oldest daughter, Antonia. From 1992 through 2000, their children were removed from the home on approximately twenty-five occasions due to abuse, suspected abuse, and neglect.

¶3 Taylor County filed petitions to terminate Mary's parental rights to Chris and Jennifer on January 19, 2004.² The County alleged child abuse as grounds for termination under WIS. STAT. § 48.415(5)(b). A jury found all the

¹ This appeal is 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.

² The County also sought to terminate the father's parental rights.

elements of child abuse, including that Mary posed a substantial threat to Chris's and Jennifer's health. The trial court subsequently terminated her rights.

DISCUSSION

¶4 Mary does not dispute that there was evidence showing she exhibited a pattern of abusive behavior, one of the elements of child abuse. However, she maintains there is insufficient evidence to show another element: that her behavior was a substantial threat to her children. First, she argues that her actions do not comport with the definition of "threat." Second, she argues that the only evidence of substantial threat was the testimony of social workers, but that "none of these workers gave any reason for their conclusion."

¶5 As to Mary's first argument, she states that Webster's Dictionary defines threat as "an expression of intention to inflict evil, injury, or damage." She contends no witnesses testified that she expressed an intent to inflict evil, injury or damage on Chris or Jennifer. However, intent is by its nature rarely susceptible to proof by direct evidence. *Clark v. State*, 62 Wis. 2d 194, 197, 214 N.W.2d 450 (1974). Mary also fails to recognize that the dictionary also defines threat as "an indication of something impending." WEBSTER'S THIRD NEW INT'L DICTIONARY 2382 (unabr. 1993). Thus, a threat is not necessarily based solely on intention.

¶6 The basis of the petition to terminate Mary's parental rights, WIS. STAT. § 48.415(5), is also helpful in determining what behavior constitutes a "substantial threat." The statute states that child abuse is established "by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat" Thus, a jury can look at a parent's pattern of

behavior and not simply whether there is intent to do harm. Behavior itself can create a substantial threat to a child.

¶7 As to Mary's second argument—lack of evidence of substantial threat—three social workers testified regarding their concerns for Chris's and Jennifer's safety. Tammy Schreiber testified that Mary put limitations on their access to Chris and Jennifer and that the children were guarded around the social workers. Kathy Tingo testified the children were removed from the home at about the same age Antonia and James began suffering from abuse. Tingo stated:

Initially it was [Antonia], and then it became [another son, James], and at that point that we removed the children there was minor evidence in the files that Chris and Jenny had received some [abuse], but at that point in time Chris and Jennifer were being withheld from our agency. The caseworker had a hard time getting into the home to meet with them and talk with them.

All three social workers testified that, based on their experiences, Mary's pattern of abusive behavior posed a substantial threat to Chris's and Jennifer's health. Contrary to Mary's argument, their opinions are supported by the record.

¶8 Mary has been in contact with human services since 1984, when Antonia was injured and bruised from allegedly falling on the floor several times. As indicated, from 1992 to 2003, Mary's children were placed outside the home on approximately twenty-five occasions due to abuse, suspected abuse, and neglect.

¶9 Antonia, who is now an adult, testified regarding the abuse in Mary's home. She stated that Mary pulled her hair, threw food at her, and on one occasion threw a glass bottle at her. Mary stabbed Antonia with a scissors, and held a shotgun to her head. Antonia observed Mary beat James, as well as pull

Chris's and Jennifer's hair. Antonia told a social worker that Mary was "physical" with Chris and Jennifer. She expressed fears for the welfare of her siblings. She stated that she felt "her mom is going to kill [Jennifer]," that "her mom spanked Jenny hard, wants her out of the house." Finally, Schreiber testified that the children had unexplained marks and bruises that were not consistent with Mary's explanations for them.

¶10 Mary argues that just because Antonia was abused does not mean that Chris and Jennifer were abused also. She notes that there is no evidence that Chris and Jennifer were actually abused. She also points to Schreiber's testimony that, although she doubted it was the case, Mary's family could have been one where some of the children were abused but not others. However, a threat to the health of the children does not necessarily involve only physical abuse. The abuse can be emotional as well. WISCONSIN JI—CHILDREN 342, which the jury received in this case, states, "health includes physical, emotional, or mental health." Mary does not dispute that abuse has taken place in her home, but argues it was not directed towards Chris and Jennifer. The jury could reasonably conclude that living in an abusive environment is a substantial threat to Chris's and Jennifer's emotional or mental health.

¶11 Finally, the County was not required to prove that the threat to Chris's and Jennifer's health was present and continuing. See *In re Guenther D.M.*, 198 Wis. 2d 10, 18, 542 N.W.2d 162 (Ct. App. 1995). Instead, it only had to show that the "behavior ... has occurred in the past and was a threat to the children's welfare." *Id.* at 17. Again, Mary does not dispute that Antonia and James suffered abuse. As Tingo testified, Chris and Jennifer were removed from the home at the same age that abuse of Antonia and James began. The jury could

reasonably conclude that there was a significant threat that Chris and Jennifer would suffer abuse as well based on Mary's past behavior.

By the Court.—Orders affirmed.

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

