

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 6, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**Nos. 95-2793
95-2794**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

No. 95-2793

**In the Interest of
Casey James B.-S.,
A Child Under the
Age of 18 Years:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

LINDA B.-S.,

Respondent-Appellant.

No. 95-2794

**In the Interest of
Jamie Lyn B.-S.,
A Child Under the
Age of 18 Years:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

LINDA B.-S.,

Respondent-Appellant.

APPEAL from orders of the circuit court for Racine County:
GERALD P. PTACEK, Judge. *Affirmed.*

BROWN, J. Linda B.-S. appeals from orders terminating her parental rights to Jamie Lyn and Casey James B.-S. She contends that the trial court erred by concluding that she abandoned her children because it failed to consider certain contacts she had with them. She also challenges the trial court's alternative finding that Jamie and Casey are in continuing need of protection or services. She complains that the State did not prove that Racine County Human Services (RCHS) was diligent in its efforts to assist her to meet certain court-ordered conditions. She also challenges the trial court's finding of a substantial likelihood that she would not meet these court-ordered conditions within the twelve months following her TPR hearing. However, because the trial court's findings are not clearly erroneous, we affirm the orders terminating Linda's parental rights.

The trial court made the following findings to support its orders. The first contact between Linda, her children and RCHS occurred on March 24, 1992. The children were detained after Linda was arrested for violating a temporary restraining order and was involuntarily committed when she began to chant, sing in tongues and hallucinate that God and the Devil talked to her.

CHIPS petitions were dismissed when Linda agreed to voluntary psychological treatment and to place her children in foster care. In April 1992, however, Linda left treatment and took the children to Illinois. She stayed with the children in a homeless shelter before moving in with her husband.¹

Linda returned to Racine the following July and began moving from shelter to shelter. In September 1992, RCHS again took care of the children when Linda was evicted from a shelter because of her bizarre and belligerent behavior.

In April 1993, the trial court found Jamie and Casey in need of protection or services and entered dispositional orders placing the children in foster care. Linda was present at the dispositional hearing and was warned regarding the termination of her parental rights. In April 1994, the trial court extended the order for another year. Linda did not appear at the second proceeding despite repeated efforts to contact her.

After the first disposition, RCHS began providing direct services through a caseworker whose role was to supervise Linda's visits with her children, instruct her on parenting techniques and provide any other needed services, such as transportation. In June 1993, RCHS made an appointment for Linda with the Kaiser Parent Aide Program, but she refused to participate. Linda maintained that she was a good parent who did not need any services.

¹ In these same proceedings, the trial court also terminated the parental rights of her husband, James S. He has not appealed the orders.

Linda likewise refused referrals to Lutheran Social Services and Children's Services Society that were to provide counseling to the children. In addition, Linda refused other services offered by the Wisconsin Probation and Parole Department. Based on her reactions to attempted intervention, the trial court concluded that Linda "has no insight into her mental problems and how they affect the children." Since Linda also refused medical treatment for her mental disability, the trial court reasoned that all services would prove "ineffective."

Because of her mental health problems, the trial court concluded that it was unlikely that Linda would meet the conditions specified in the CHIPS order necessary for the return of her children. It also concluded that any solution to her mental health problems would require forced medication. But since such treatment would require her institutionalization, it would preclude the placement of the children with her. Furthermore, the trial court found that Linda has not adequately cared for her children for at least three years and has refused any outside assistance.

The trial court thus made two ultimate findings. First, it concluded that Linda had abandoned her children. *See* § 48.415(1), STATS. Second, it found that Jamie and Casey were in continuing need of protection or services. *See* § 48.415(2). Accordingly, it terminated Linda's parental rights.

On appeal, Linda challenges the trial court's determination that she abandoned her children. Specifically, she claims that the trial court failed to

consider contacts she had with her children between April 1993 and June 1995; she also claims that the trial court did not address her rebuttal evidence showing that she did not disassociate herself from Jamie and Casey. We review the trial court's findings under the clearly erroneous standard. *State v. Raymond C.*, 187 Wis.2d 10, 14, 522 N.W.2d 243, 245 (Ct. App. 1994).

In her brief, Linda explains that the record is "full of instances" when she made personal contact or otherwise communicated with her children during the same period in which she was found to have abandoned Casey and Jamie. She further describes how:

Judge Ptacek failed to consider many instances mentioned in the record wherein [Linda] attempted to contact or communicate or actually did contact and communicate with her children. The State did not present clear and convincing evidence at trial that [Linda] failed, for any six month period, to visit or communicate with her children.

Nonetheless, we have reviewed the record against the trial court's findings and are satisfied that its analysis accounts for all the "instances" cited by Linda.

The above passage correctly outlines how the State had to show that Linda did not have contact with her children for six months. *See* § 48.415(1)(a)2, STATS. The trial court, however, measured the six months from July 1993 to the following January, not the fourteen months between April 1993 and June 1995 which Linda relies on in her brief. Moreover, out of the nine "instances" Linda cites, we find only one in this six-month period which is not explicitly accounted for in the trial court's findings.

Here, Linda explains that she sent Casey a card for his birthday which falls on January 17. Her factual basis is the testimony of her RCHS caseworker. The caseworker stated that she forwarded birthday cards and Christmas cards to the children for the 1994 holiday season. Furthermore, the caseworker testified that such contacts are meaningful. Nonetheless, the most that can be inferred from this evidence is that Linda sent Casey a card for his birthday in 1995. This is because she testified that she sent the Christmas card at the same time and along with the birthday cards. The birthday cards were sent in 1995. Linda has not pointed to any other fact which would support reversing the trial court's finding that no contact occurred between July 1993 and January 1994.

Despite her failure to maintain regular physical contact with her children over these six months, Linda next complains that the record is "replete with proof that [she] never disassociated herself from her children." She maintains that the trial court failed to properly consider this rebuttal evidence. *See* § 48.415(1)(c), STATS.

The record reveals that, through her testimony, Linda convinced the trial court that she wanted to "be a mother to her children." Indeed, the record contains descriptions of Linda's letters to RCHS where she described her desire to "get her babies back." But parental affirmations about a desire to be with a child, standing alone, are not sufficient evidence to rebut a finding that the child has been abandoned. There must also be objective evidence revealing how the parent tried to maintain a relationship with his or her child. *See, e.g.,*

Rhonda R.D. v. Franklin R.D., 191 Wis.2d 680, 712, 530 N.W.2d 34, 46-47 (Ct. App. 1995) (explaining that “[t]he parent could have sent presents”). As discussed above, Linda did not provide the trial court with any objective evidence that she made some effort to contact her children during the six months between July 1993 and January 1994. We thus uphold the trial court's finding that Linda abandoned her children under § 48.415(1), STATS., and affirm the trial court's orders terminating her parental rights to Casey and Jamie.

The trial court alternatively found that Linda's parental rights should be terminated because Casey and Jamie were in continuing need of protection or services. *See* § 48.415(2), STATS. We will address Linda's challenges to these findings as well. The trial court's findings are properly addressed under the clearly erroneous standard. *See Raymond C.*, 187 Wis.2d at 14, 522 N.W.2d at 245.

Linda first challenges the trial court's conclusion that RCHS made a diligent effort to provide the services set out in the original dispositional order. She argues that RCHS's primary caseworker reached a personal conclusion that she would never become a successful parent and thus frustrated her efforts to fulfill the goals outlined by the order.

The caseworker did testify that her agency's efforts were frustrated by Linda's mental health problems and that she believed that there was little else the agency could do for her. However, her opinion about Linda's

likelihood of success does not seem to have hampered RCHS's attempt to provide services.

Indeed, Linda's failure to fulfill the goals of the order are really linked with her refusal to participate. For example, Linda argues to this court that RCHS did not act "earnestly and energetically" when it tried to help Linda learn parenting techniques. She points to how the instructor failed to show up for her first scheduled meeting in July 1993. But in these same passages, Linda admits that she "[u]nfortunately ... missed two subsequent meetings ... and was terminated from the program in August 1993." In the face of these two missed meetings, and the other evidence illustrating Linda's continual refusal to accept help, RCHS's single scheduling mistake is not sufficient grounds for overturning the trial court's conclusion that RCHS acted diligently.

Finally, Linda challenges the trial court's finding that there was a substantial likelihood that she would not meet the court-ordered conditions within the following twelve months. *See* § 48.415(2)(c), STATS. Linda claims that the trial court erred when it concluded that she will not voluntarily take the medication necessary to control her mental health problems.

On appeal, Linda points to how she took the step of admitting the "possibility" that she is suffering from a mental illness. Moreover, Linda notes that two psychologists testified that with proper treatment she could be successfully reunited with her children.

Nonetheless, there was ample evidence before the trial court revealing Linda's continued failure to make any progress over the past two years. And while these psychologists acknowledged the possibility of success in the future, the evidence Linda points this court towards on appeal does not convince us that her recovery was so certain to occur over those next twelve months that we should overturn the trial court's finding.

Because Linda has failed to present evidence revealing any error in the trial court's fact-finding, we affirm its conclusions that Linda abandoned her children and that Casey and Jamie are children in need of continuing protection or services pursuant to § 48.415(1) and (2), STATS. Accordingly, we affirm the trial court's orders terminating her parental rights.

By the Court. – Orders affirmed.

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