

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JANUARY 9, 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(1), STATS.

**NOTICE**

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

No. 95-3177

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**IN THE INTEREST OF  
BABY BOY C., A CHILD  
UNDER THE AGE OF 18:**

**JEANNINE M. C.,**

**Petitioner-Respondent,**

**v.**

**MICHAEL A. C.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for Polk County:  
ROBERT RASMUSSEN, Judge. *Affirmed.*

CANE, P.J. Michael A. C. appeals an order terminating his parental rights to the minor child, Baby Boy C. The jury found that under § 48.415(6), STATS., Michael had not established a substantial parental relationship with the child and had not assumed parental responsibility for the child. Michael does not challenge the jury's findings. His sole contention is, in essence, that § 48.415(6) cannot be used as a basis for termination of parental rights if paternity was adjudicated prior to the filing of the petition for

termination of parental rights. This court disagrees and therefore affirms the order terminating his parental rights.

The relevant facts are undisputed. On January 23, 1995, four days prior to the birth of Baby Boy C., Michael filed a petition for determination of paternity. The mother did not dispute that Michael was the father and consequently on March 10, 1995, the court adjudged Michael the father of Baby Boy C. Because an earlier petition for termination of Michael's parental rights had gone unserved, the mother again petitioned for termination of Michael's parental rights on March 21, 1995. The jury trial was held on June 26 and 27, 1995.

Section 48.415, STATS., sets forth eight different grounds for the involuntary termination of parental rights. The state relied on § 48.415(6) as the grounds for the involuntary termination of Michael's parental rights. That section reads:

(6) **Failure to assume parental responsibility.**

(a) Failure to assume parental responsibility may be established by a showing that a child is a nonmarital child who has not been adopted or whose parents have not subsequently intermarried under s. 767.60, that paternity was not adjudicated prior to the filing of the petition for termination of parental rights and:

1. The person or persons who may be the father of the child have been given notice under s. 48.42 but have failed to appear or otherwise submit to the jurisdiction of the court and that such person or persons have never had a substantial parental relationship with the child; *or*
2. That *although paternity to the child has been adjudicated* under s. 48.423, the father did not establish a substantial parental relationship with the child prior to the adjudication of paternity although the father had reason to believe that he was the father of the child and had an opportunity to establish a substantial parental relationship with the child.

- (b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child or the mother during her pregnancy and whether the person has neglected or refused to provide care or support even though the person had the opportunity and ability to do so. (Emphasis added.)

Michael argues that because his paternity of the child had been adjudicated prior to the filing of the petition for termination of parental rights, this section, used by the state as the basis for termination of his parental rights, was inapplicable. He also contends the trial court erred when it directed a finding in the special verdict that paternity was not adjudicated prior to the filing of the petition. He reasons therefore that the ground under § 48.415(6), STATS., was insufficient to support an order terminating his parental rights.

The issue of whether § 48.415(6), STATS., applies to the circumstances in this case involves the interpretation and application of that statute. The construction and application of a statute to undisputed facts is a question of law this court reviews de novo. *Gonzalez v. Teskey*, 160 Wis.2d 1, 7-8, 465 N.W.2d 525, 528 (Ct. App. 1990). The purpose of statutory construction is to achieve a reasonable construction that will effectuate the legislature's intent. *State v. Pham*, 137 Wis.2d 31, 33-34, 403 N.W.2d 35, 36 (1987). A fundamental premise of statutory construction is that it should avoid any result that would be absurd or unreasonable. *State v. Moore*, 167 Wis.2d 491, 496, 481 N.W.2d 633, 635 (1992). A literal reading of a statute may be rejected if it leads to an absurd or unreasonable result. *Bob Ryan Leasing v. Sampair*, 125 Wis.2d 266, 268, 371 N.W.2d 405, 405-06 (Ct. App. 1985).

The supreme court recognized in *In re Baby Girl K*, 113 Wis.2d 429, 438, 335 N.W.2d 846, 851 (1983), that:

*Section 48.415(6)2, Stats., allows the parental rights of a father whose paternity has been adjudicated to be terminated under certain conditions. The conditions exist where a father has not established a substantial parental relationship prior to the adjudication of paternity even though he had reason to believe he was the father of the child and had an opportunity to establish such a relationship. (Emphasis added.)*

The trial court in the present case relied on § 48.415(6)2, STATS., as a ground for the termination of Michael's parental rights. As the supreme court recognized in *Baby Girl K.*, this is a separate section addressing the circumstance where a father has been adjudicated the father and the inquiry therefore becomes whether the adjudicated father, having the opportunity, failed to establish a substantial parental relationship with the child.

Here, the trial court also recognized that although Michael's paternity was established pursuant to § 767.45, STATS., rather than § 48.423, STATS., the grounds set forth in s. 48.415(6)2, STATS., applied. The trial court concluded:

[I]t makes no difference in this court's opinion whether the adjudication of paternity occurred under 48.423 or whether it occurred under Chapter 767. We still need to get to whether or not the child has been provided for, whether there has been an assumption of parental responsibility, and to allow the fact that the adjudication of paternity occurred under Chapter 767 rather than 48.423 would thwart that desire.

In Michael's reply brief, he "agrees that under which statute paternity was adjudicated is immaterial." This court also agrees. Although the supreme court in *Baby Girl K.* did not address the nature of the father's adjudication, § 48.423, STATS., as opposed to § 767.45, STATS., this court is satisfied that the chapter under which the father was adjudicated is irrelevant when reviewing § 48.415, STATS., as a whole. A fair reading of § 48.415 indicates the legislature's intent to include under § 48.415(6)2, STATS., the circumstance

where the father has been adjudicated the parent but failed to establish a substantial parental relationship with the nonmarital child prior to the adjudication of paternity. On the other hand, § 48.415(6)1, STATS., is intended to apply to the circumstance where the father has not been adjudicated the father and failed to establish a substantial parental relationship with the nonmarital child.

Were this court to adopt Michael's literal interpretation, this would lead to an absurd or unreasonable result and one which would not effectuate the legislature's intent. Accepting Michael's argument, a person could rush to the court and be declared the parent prior to any petition for termination of rights being filed and thus nullify § 48.415(6), STATS., as a ground for termination of parental rights. This would contravene the legislature's announced social policy of providing grounds for terminating parental rights when that parent fails to establish a substantial parental relationship with the nonmarital child. It would also be in direct conflict with § 48.415(6)2, STATS., as recognized in *Baby Girl K.*, which provides a grounds for terminating an adjudicated parent's rights when that person fails to assume parental responsibility.

Although the trial court directed the verdict to find that Michael's adjudication of paternity occurred after the filing of the petition in this case, in light of this court's holding, Michael was not prejudiced. Accordingly, the order terminating Michael's parental rights to Baby Boy C. is affirmed.

*By the Court.* – Order affirmed.

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