

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 23, 2002**

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 No. 02-2774**

**Cir. Ct. No. 01-TP-125A**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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

**BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,**

**PETITIONER-RESPONDENT,**

**v.**

**CARRIE M.W.,**

**RESPONDENT-APPELLANT,**

**CHAD D.,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Brown County:  
RICHARD J. DIETZ, Judge. *Affirmed.*

¶1 CANE, C.J.<sup>1</sup> Carrie M.W. appeals an order terminating her parental rights to Hope D. She argues that there was insufficient evidence to support the jury's finding that grounds existed for terminating her parental rights and that the trial court erroneously exercised its discretion when it terminated her rights. We reject both of these arguments and affirm the trial court's order.

### BACKGROUND

¶2 Brown County petitioned to terminate Carrie's parental rights to Hope in November 2001. The alleged ground for termination was that Hope was in continuing need of protection or services pursuant to WIS. STAT. § 48.415(2). Hope had been placed in a foster home in January 2001 when Brown County received a referral after Carrie's arrest for forgery. At the time of her arrest, Carrie was on probation, also for forgery. Carrie's probation agent allowed her to remain free pending probation revocation.

¶3 Carrie and her children were living at Carrie's parents' home at the time of the referral. The County placed Hope and her brother in foster care on an emergency basis after determining the home was dirty and unsafe for the children. In February, Carrie missed her probation revocation hearing and her probation agent learned that since the proceedings had begun, Carrie had stolen from her parents and committed another forgery. The agent placed Carrie in custody. Eventually, her probation was revoked and Carrie was sent to prison.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 In April, the trial court entered a CHIPS order continuing the foster placement and requiring Carrie to satisfy several conditions before her children would be returned. These included completion of a parenting program, a psychological evaluation and an alcohol and other drug assessment. In addition, the court ordered Carrie to maintain a stable living environment and employment, meet with department social workers, obey her probation conditions, and participate in counseling. The court informed Carrie orally and in writing that her parental rights could be terminated if she failed to comply with these conditions.

¶5 At trial in June 2002, Carrie testified she had completed a parenting program in prison, but that her caseworker had been unable to provide her with any other services. Carrie also said she had received conduct reports while in prison for possessing contraband and also lost two off-site jobs for misconduct. She said she believed she could satisfy the conditions for Hope's return<sup>2</sup> within a year of her release from prison, which was scheduled for about a month after the trial. Carrie said she would be on probation until 2006.

¶6 Mary Vander Steeg, the Brown County social worker who filed the petition, said Carrie would not be able to complete the conditions within a year. She said Carrie had numerous opportunities in prison to demonstrate her ability to make good choices and follow through on them, but failed to do so. Vander Steeg also said Carrie did not take responsibility for her circumstances. Another social worker, Mary Larsen, said Carrie had admitted to using drugs and came to an appointment under the influence. In addition, Larsen said Carrie had missed about half of her appointments and failed to come to a scheduled parenting class.

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<sup>2</sup> By the time of trial, Carrie's parents had guardianship of Hope's brother.

¶7 Carrie offered her mother and father as witnesses. Both admitted their house was very dirty when Hope and her brother were removed, but now claimed the house had been cleaned. Further, Carrie's father said it was not Carrie's fault the house had been dirty. Neither parent testified they were willing to care for Hope or that Carrie would be living with them upon her release from prison.

¶8 The jury determined grounds existed to terminate Carrie's parental rights to Hope. Specifically, the jury determined Hope had been adjudged to be in need of protection and services and placed outside the home for six months pursuant to a court order, that Brown County had made reasonable efforts to provide the services ordered by the court, that Carrie had failed to meet the conditions established for Hope's return, and that there was a substantial likelihood she would be unable to meet these conditions within a year.

¶9 At the dispositional hearing, the County presented a report Vander Steeg prepared concluding it was in Hope's best interest for Carrie's rights to be terminated. Hope's foster mother also testified she was willing to adopt Hope. The court found Carrie's conduct sufficiently egregious to warrant termination of her rights. After considering Hope's best interests, the court terminated Carrie's rights. Carrie appeals.

## DISCUSSION

¶10 Carrie first claims the evidence presented at trial was not sufficient to support the jury's finding she would not be able to satisfy the conditions for Hope's return within a year under WIS. STAT. § 48.415(2)(a)3. This court will uphold a jury verdict if there is any credible evidence to support it. *Kinship Inspection Serv., Inc. v. Newcomer*, 231 Wis. 2d 559, 570, 605 N.W.2d 579 (Ct.

App. 1999). The credibility of the witnesses and the weight accorded to their testimony are left to the jury. *Richards v. Mendivil*, 200 Wis. 2d 665, 671, 548 N.W.2d 85 (Ct. App. 1996). This court must search the record to find evidence supporting the verdict and accept all inferences drawn by the jury. *Id.*

¶11 In support of her claim, Carrie points to the fact that her parents' home was clean at the time of the disposition, that she had completed a parenting class in prison, and that she had worked while in prison. While this arguably supports Carrie's claim that she would be able to satisfy the conditions within a year, we do not search for evidence to sustain a verdict the jury could have reached, but did not. See *Heideman v. American Fam. Ins. Group*, 163 Wis. 2d 847, 863-64, 473 N.W.2d 14 (Ct. App. 1991). Rather, we look for evidence to sustain the jury's verdict, and we conclude the evidence does so here.

¶12 The record shows Carrie failed to attend many of her required appointments with her social worker. She also violated the conditions of her probation and continued to engage in criminal behavior. While she did work in prison, she also lost these jobs due to misconduct and this postponed her release date. The conditions for Hope's return included maintaining employment, a stable living environment, meeting with social workers and obeying her probation conditions. The trial court informed Carrie her parental rights could be terminated if she failed to comply with these conditions. Given the evidence presented at trial, the jury could reasonably conclude Carrie would not fulfill these conditions within a year.

¶13 Next, Carrie argues the trial court erroneously exercised its discretion when it terminated her parental rights. Once grounds for termination have been found, the ultimate determination whether to terminate parental rights

lies within the trial court's discretion. See *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. A circuit court properly exercises its discretion when it employs a rational thought process based on an examination of the facts and an application of the correct standard of law. *David S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993). When determining whether to terminate parental rights, the court must consider any reports submitted by an agency under WIS. STAT. § 48.425 and the factors listed in WIS. STAT. § 48.426(3). *In re Prestin T.B.*, 2002 WI 95, ¶29, 255 Wis. 2d 170, 648 N.W.2d 402. The court may also consider other factors, but in all cases, the factors must be calibrated to the best interests of the child. *Id.* at ¶30.

¶14 Here, the court first determined Carrie's past conduct was egregious, and then went through the factors listed in WIS. STAT. § 48.426(3). The court determined Hope was adoptable and likely to be adopted, that she was healthy, that she had not developed a substantial relationship with Carrie or any other family member, that Hope and Carrie had been separated for a lengthy period of time, and that Hope would be able to enter a more stable environment because of the termination. The court also noted Hope was too young to express her wishes. In addition, the court accepted a report Vander Steeg submitted. The court properly exercised its discretion when it terminated Carrie's parental rights to Hope.

¶15 Carrie contends the trial court erred because it overlooked the possibility her parents could care for Hope until Carrie got out of prison. She does not explain how this alone constitutes an erroneous exercise of discretion, nor does the record reveal any willingness by Carrie's parents to take care of Hope. In addition, the court noted Hope had not developed a relationship with Carrie or any other family member. Based on these considerations, we are satisfied the court

did not erroneously exercise its discretion by failing to consider Hope's placement with Carrie's parents.

¶16 Carrie also argues the court erred by finding her conduct egregious. We need not address this issue because our supreme court determined in *Prestin T.B.* that courts are not required to make this finding. *Id.* at ¶36. Instead, the proper inquiry is the best interests of the child, including the factors listed in WIS. STAT. § 48.426(3) and any agency reports. *Id.* at ¶29. The court did that here.

*By the Court.*—Order affirmed.

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

