

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 16, 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 No. 04-0023
STATE OF WISCONSIN**

Cir. Ct. No. 02CI000001

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE COMMITMENT OF ROBERT L. KRUSE:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

ROBERT L. KRUSE,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Jefferson County: JOHN ULLSVIK, Judge. *Affirmed.*

Before Deininger, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Robert Kruse appeals a judgment finding him to be a sexually violent person and ordering him committed to a secure mental health facility and an order denying his motion for reconsideration. The sole issue on

appeal is whether the trial court erroneously exercised its discretion by admitting evidence that Kruse had burned his one-year-old daughter's fingers with a cigarette lighter as a form of discipline twenty years earlier. We conclude the evidence was properly admitted and affirm.

¶2 We first note that the limitations on the admission of other acts evidence set forth in WIS. STAT. § 904.04(2) (2001-02)¹ do not apply in the context of WIS. STAT. ch. 980 proceedings. *State v. Franklin*, 2004 WI 38, ¶14, 270 Wis. 2d 271, 677 N.W.2d 276. The test for admissibility is merely whether the proffered evidence is relevant under WIS. STAT. §§ 904.01 and 904.02, in that it relates to a fact or proposition of consequence to the determination of the action and its probative value substantially outweighs the danger of unfair prejudice or confusion of issues under WIS. STAT. § 904.03. *Id.*, ¶16. We review the trial court's admissibility ruling under the usual erroneous exercise of discretion standard applicable to evidentiary determinations. *Id.*, ¶6.

¶3 Kruse argues that the burning incident was irrelevant to the question of whether he was likely to engage in future acts of sexual violence because the incident was not sexual in nature. We conclude that an act showing a person to have a capacity for violence against children is relevant to the determination of whether that person is likely to commit future acts of sexual violence against children. A person who has a mental disorder that predisposes him to commit sexually violent acts, and who has also demonstrated a capacity to harm a child, could be more likely to follow through on committing a future act of sexual

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

violence against a child. The trial court could consider such evidence in addition to the opinions proffered by the expert witnesses. Thus, we are satisfied that the trial court could reasonably consider the burning incident as part of a pattern of behavior showing Kruse's disregard for the safety of children and/or lack of ability to control his violent urges, whether sexual in nature or not. We are further satisfied that the trial court could reasonably deem the danger of unfair prejudice from the admission of the burning incident to be low and outweighed by its probative value, taking into account that Kruse's history of sexual assaults against children was already before the court. In short, we see no misuse of discretion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

