

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 2009

David R. Schanker
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. 2009AP1426
2009AP1427**

**Cir. Ct. Nos. 2008TP46
2008TP47**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

No. 2009AP1426

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

ROCK COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

PATRICIA A.,

RESPONDENT-APPELLANT.

No. 2009AP1427

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

ROCK COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

PATRICIA A.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Rock County:
R.A. BATES, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ Patricia A. appeals the order terminating her parental rights to Julia, d/o/b April 18, 2000, and Jonathon, d/o/b April 14, 2003.² She contends there was insufficient evidence that the Rock County Department of Human Services made the requisite reasonable efforts, that she failed to meet the conditions for the return of her children, and that she would not meet the conditions for their return within the next nine months. We conclude there was sufficient evidence and we affirm.

BACKGROUND

¶2 In February 2007, Patricia brought her daughter, Julia, then almost seven, to the Crossroads Counseling Center in Janesville for an assessment for possible treatment. Patricia expressed concerns that she and Julia were not connecting very well, that Julia was acting out a lot, that she was withdrawn, that

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² We note the petition and order terminating parental rights spell this child's name as "Johnathon," while a letter from Patricia to the circuit court spells it "Johnathan." We use the spelling contained in the caption, although we recognize it may not be correct.

she was not able to stay on task, and that she had some odd behaviors, including talking to herself. Julia began day treatment at Crossroads in March 2007. She was diagnosed at that time with attention deficit disorder, hyperactivity disorder, and oppositional defiant disorder.

¶3 When two of the counselors involved in Julia's treatment made a visit to Patricia's home in April 2007, they found the house very dirty and cluttered, with garbage on the floor. Julia, Jonathon, who was then four, and a younger child, Jenna, were removed from the home on April 27, 2007. Patricia was ordered by the City of Janesville to vacate her home due to its condition, and a notice was posted on her door that the house had been declared uninhabitable.

¶4 Jenna was placed with her father, who is not the father of Julia and Jonathon. Julia and Jonathon were found to be children in need of protection and services and were placed with foster parents. As part of the dispositional orders entered in July 2007, the court adopted permanency plans for Julia and Jonathon, setting forth the conditions that Patricia had to meet before the children were returned to her home. The permanency plans were the same for both children. The return conditions were:

- (1) The mother must maintain a clean, safe, and stable residence, suitable for children.
- (2) The mother must stabilize her mental health in order to handle the daily stress of parenting the child. This will include taking any medication as prescribed by her treating physician.
- (3) The mother must demonstrate the ability to meet the child's physical, medical, educational, and emotional needs on a daily basis.

The permanency plan also ordered the Department to provide specified services to assist Patricia in meeting the return conditions and to address the needs of the family.

¶5 Patricia had supervised visits with the children outside her home, and in July or August 2007 the supervised visits were moved to her home. For reasons that will be discussed later in the opinion, the visits stopped from December 2007 to approximately January or February 2008 and then resumed. The court extended the dispositional orders in January 2008 because Patricia had not met the return conditions at that time.

¶6 In August 2008 the Department filed petitions to terminate Patricia's parental rights to Julia and Jonathon, alleging grounds under WIS. STAT. § 48.415(2) for "continuing need of protection and services."³ A fact-finding hearing was held before a jury in January 2009. For each child, the jury found that the child had been adjudged in need of protection and services and had been placed outside the home for six months or more, that the Department had made reasonable efforts to provide the services ordered by the court, that Patricia had failed to meet the conditions established for the safe return of the child to her home, and that there was a substantial likelihood she would not meet the conditions for return within nine months following the conclusion of the fact-finding hearing. At the disposition hearing, the court determined it was in the best interests of each child to terminate Patricia's parental rights.

³ A petition was also filed against the father of Julia and Jonathon and he agreed to the termination of his parental rights.

DISCUSSION

¶7 In order to establish grounds under WIS. STAT. § 48.415(2) for termination of parental rights, the Department must prove: 1) the child has been adjudged to be a child in need of protection and services and placed, or continued in a placement, outside his or her home for a total period of six months or longer pursuant to one or more court orders containing the notice required by law; 2) the agency responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the court; 3) the parent has failed to meet the conditions established for the safe return of the child to the home; and 4) there is a substantial likelihood that the parent will not meet these return conditions within the nine-month period following the fact-finding hearing. WIS. STAT. § 48.415(2). These elements must be proved by clear and convincing evidence. WIS. STAT. §§ 48.424(2), 48.31(1).⁴

¶8 Patricia does not dispute the jury's finding that the Department established the first element. However, she contends there was insufficient evidence to support the jury's findings that the Department made a reasonable effort to provide the services ordered by the court, that she failed to meet the conditions established for the return of the children to their home, and that there was a substantial likelihood she would not meet the conditions within the nine-month period following the fact-finding hearing.

⁴ In her reply brief, Patricia contends that the Department misstates the proper burden of proof because in its argument, after summarizing the evidence presented by the witnesses for the Department, it states that Patricia did not produce any evidence to show the contrary. Reading this statement in context, we do not agree with Patricia that the Department is misstating the burden of proof. Rather, the Department is describing its view of the evidence presented.

¶9 The scope of our review of a jury’s findings is narrow. We affirm the jury’s verdict if there is any credible evidence that under any reasonable view supports the verdict. *In re Termination of Parental Rights to Teyon D.*, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. If conflicting reasonable inferences may be drawn from the evidence, we draw the reasonable inference that supports the jury’s verdict. *Id.* It is the role of the jury, not the appellate court, to assess the credibility of witnesses and the weight to be given to the testimony of those witnesses. *Morden v. Continental AG*, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. On review, we search the record for credible evidence that supports the jury’s verdict, not for evidence that supports a verdict that the jury could have reached but did not. *Id.*⁵

I. Department’s Efforts

¶10 The “reasonable effort” required by the department is defined as follows:

2.a. In this subdivision, “reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.

⁵ We agree with Patricia that she was not required to raise her claim of insufficiency of the evidence in the circuit court before appealing on this ground. *See* WIS. STAT. RULE 809.30(2)(h) (providing that a party may appeal on the ground of sufficiency of the evidence without first filing a postconviction or post-disposition motion). We also agree with her that the rule under which an appellate court gives special deference to a jury verdict when the court has approved the jury’s verdict is not applicable here. The rule cited by the Department applies when the court has denied a post-verdict motion under WIS. STAT. § 805.14(5) based on insufficiency of the evidence. *See Morden v. Continental AG*, 2000 WI 51, ¶¶32-33, 40, 235 Wis. 2d 325, 611 N.W.2d 659. When an appeal is filed pursuant to RULE 809.30, there is no post-disposition motion based on insufficiency of the evidence for the court to rule on.

WIS. STAT. § 48.415(2)(a)2.a.

¶11 The evidence, viewed most favorably to the verdict, shows the following. The court order required Patricia to participate in individual counseling with a provider approved by the Department, to follow through all treatment recommendations, and to complete a psychological evaluation and cognitive assessment. There was evidence that in March 2008 Patricia was discharged by her counselor at Genesis Counseling for missing appointments. When this happened, the case worker assigned to this case, Lyndsey Pope, asked the Crossroads counselors of Julia and Jonathon for a referral for Patricia to a Crossroads counselor. Patricia began seeing Margit Stenseng Patterson in late April 2008. The Department paid for a psychological evaluation and cognitive assessment by Dr. Michael Kaye. The interviews and tests occurred in December 2007 and January 2008, and Dr. Kaye issued a report in February 2008. Patricia was initially resistant to this evaluation and the Department had to push her to do this.

¶12 Patricia was ordered to complete a parenting program approved by the department. A free parenting program was made available to Patricia, which she completed in August 2007. In addition, the Department provided two persons to work with Patricia on parenting. One person focused on one-on-one discussions on the stresses of parenting and organizational skills, such as cleaning, and also assisted with transportation to appointments. The other person focused on interactions between Patricia and her children and was present at visits, modeling parenting for Patricia.

¶13 The Department was ordered to provide case management services. Pope testified that she provided case management services, which included

supervising Julia's and Jonathon's visits with Patricia, offering transportation to school meetings and appointments, monthly meetings with the service providers and Patricia to discuss what was going well and what still needed to be done under the permanency plans, updates on the children, and helping Patricia get energy assistance for her light bills. Pope also testified that part of her role in supervising Julia's and Jonathon's visits with Patricia was to model how to deal with them when they throw tantrums or don't follow rules and to help Patricia with techniques for engaging them in activities.

¶14 The court order provided that the Department "will provide background information and updates on family dynamics to the service providers as needed." Pope testified that she provided information about the family and updates on a regular basis to the persons providing services to the children and Patricia, except that this was difficult with Patricia's counselor, Patterson, because Patterson would not return calls or share information. Julia's and Jonathon's counselors confirmed that Pope shared background information and updates with them. Patterson confirmed that she did not attend the regular staffings⁶ on the case and that Pope did call her. In Patterson's view, they had "pretty regular contact" through phone messages.

¶15 Patricia's challenge to the sufficiency of evidence on the Department's effort is based solely on the suspension of Jonathon's visits with Patricia from December 2007 to January or February 2008. According to Patricia, the only reason for suspending the visits was so that Julia could participate in a

⁶ "Staffings" are meetings in which parents, foster parents, counselors, therapists, social workers, teachers, and other people working with the family are invited to participate.

special treatment, EMDR,⁷ and this did not necessitate suspending visits with Jonathon. The suspension of her visits with Jonathon, Patricia asserts, set back her relationship with him and reduced her chance to show she could handle the daily stresses of parenting him.

¶16 The evidence on this point, viewed most favorably to the jury's finding, is as follows. When Patricia brought Julia to Crossroads, she was diagnosed with attention deficit disorder, hyperactivity disorder, and oppositional defiant disorder. The oppositional defiant disorder was subsequently dropped and was replaced by a diagnosis of post-traumatic stress disorder.⁸ Julia was placed in the day treatment program at Crossroads. At that time, she had a lot of anger and could become physically aggressive in the home and at school. She was emotionally withdrawn and would get "numb," saying she had no feelings. When she was angry, she would threaten to hurt herself. When she was asked about her family, she would crawl under the table and try to hide.

¶17 Jonathon was diagnosed with adjustment disorder and "rule out" attention deficit disorder with hyperactivity and post-traumatic stress disorder.⁹ The symptoms of adjustment disorder included, among others, his biting children at school. When he was first placed with the foster parents at the age of four, Jonathon did not know how to brush his teeth, he was not potty-trained, and he

⁷ Eye Movement Desensitization Processing and Reprocessing.

⁸ The post-traumatic stress disorder was originally a "rule out" diagnosis. This means that it is a diagnosis that is not certain but, based on the information available, it could be the correct diagnosis. Other "rule out" diagnoses of Julia were mood disorder, anxiety, and depression.

⁹ See footnote 8 on the meaning of "rule out."

was not speaking intelligibly but would use his own “gibber language” and did not seem to understand simple directions.

¶18 Initially after the children were removed from Patricia’s home, there were supervised visits two days a week held at the Health Care Center. Toward the end of July or the beginning of August 2007, the visits began to take place in Patricia’s home, initially completely supervised and, beginning in September, partially supervised. The unsupervised portion of the visits slowly increased as Patricia was doing better with the children to about forty minutes of unsupervised contact. The visits did not progress to unsupervised contact because both children’s behaviors started to regress. In response to the question “[W]hat did you do then?” Pope testified:

In...December, when we—after meeting with mom and staffing and going over the behaviors and it being consistent and, um, mom not really having any reasoning behind why the behaviors had changed, in agreement with Crossroads, we decided to...stop visits...[and] start the EMDR treatment.

¶19 EMDR treatment is a very specific treatment for processing trauma and requires that the person being treated is in a safe, stable environment with a good support system. The treatment team at Crossroads was concerned that the relationship between Julia and Patricia at the time wouldn’t be supportive of doing the EMDR treatment and requested that the visits stop until it could assess how Julia would do with that treatment.

¶20 Pope testified that, before the decision to stop visitation with both children was made, it was discussed with Patricia at the regular staffing and she did not voice any reservations about stopping the visits with the children. Pope testified that in January or February of 2008 the decision was made to resume their

supervised visits with Patricia because they began to see Julia's and Jonathon's behavior improving.

¶21 A reasonable jury could credit this testimony and could decide that it was clear and convincing evidence that the visits between Jonathon and Patricia were suspended for that period of time because they were having a negative affect on him. A reasonable jury could thus decide that the decision to suspend visitation between Jonathon and Patricia was not a failure to provide reasonable efforts to facilitate his relationship with his mother.

¶22 We conclude that the evidence summarized in paragraphs 11 through 14 constitutes clear and convincing evidence that the Department made the requisite reasonable effort to provide the services ordered by the court.

II. Failure to Meet Conditions of Return

¶23 Patricia contends there was insufficient evidence that at the time of hearing she had not met all three conditions for the children's return. We do not discuss the first condition—maintaining a clean, safe, and stable residence suitable for children—because we conclude that there was sufficient evidence she had not met the second and third conditions. The second condition is that Patricia stabilize her mental health in order to handle the daily stress of parenting the children. The third is that she demonstrate the ability to meet the children's physical, medical, educational, and emotional needs on a daily basis. We consider these two conditions together in the following discussion.

¶24 Dr. Kaye diagnosed Patricia with obsessive compulsive disorder (OCD), dysthymia (chronic, low-grade depression), and post-traumatic stress disorder. He testified that all three of these conditions are fairly chronic and take a

long time to treat; “most people don’t resolve them, but they learn to cope better and lessen the impact and the negative features of these mental conditions on their life.”

¶25 With regard to Patricia’s parenting abilities, Dr. Kaye testified as follows. Patricia viewed her family as being perfect with no problems or conflict, which did not comport with his understanding and showed some problems of denial. On the stress inventory, which looked at how her own characteristics and her child’s characteristics cause her stress, she saw Julia as difficult to parent, not meeting her expectations, not being her ideal child, and having a lot of negative feelings that caused Patricia stress. Patricia identified with the role of being a mother, but also reported overidentifying. In Dr. Kaye’s words, this is “almost to the point of what’s called enmeshed, where the boundary between where one stops...and one starts gets blurred. That she tends to fill her own needs by being a parent.” Patricia rated her own health as poor and as interfering with her child rearing and she “also reported a very high level of outside life stress to the point where she...even becomes too stressed out.” She described her house as having few rules and the rules that she had were inconsistently enforced.

¶26 Julia’s counselor, Kelly McKinnon, testified that Julia stayed in the day treatment program fifteen months rather than the usual twelve months because of her need to be able to process her trauma. The information Patricia gave about Julia’s history was that there had been about ten moves in Julia’s life, Julia had been around “unsafe” people, and she had witnessed problems between her parents. Julia reported that she remembered times when Patricia had left her alone and left her with Jonathon.

¶27 McKinnon observed Patricia on numerous occasions at staffings, as well as observing her and Julia together at Julia's day treatment and the aftercare program. Patricia's appearance varied a lot: she was sometimes properly groomed and other sometimes disheveled. She was sometimes very anxious; other times playful. Julia's response to her mother varied depending on how her mother was that day, and sometimes she would "shut down" in response to her mother's presence. McKinnon was concerned with Patricia's flat affect at the staffings because she felt Patricia might be disconnecting. Although Julia has made a lot of progress in treatment and the two medications she takes for attention deficit disorder have had a positive impact, McKinnon views Julia as "a pretty fragile child" when it comes to mental health. She is concerned about the stability of the environment Patricia provides, Patricia's mental health issues, and her ability to meet Julia's needs if Julia were to return to Patricia's home. She is also concerned about Patricia's difficulty in separating her own anxieties based on her own experiences from Julia's issues, and she gave several examples. Julia will continue to need ongoing treatment probably for years, with the frequency depending on how stable her life is. McKinnon has not seen a big difference in Patricia's interaction with Julia from when she first started working with them.

¶28 Jonathon's counselor, Amy Roy, began working with him in the fall of 2008 and before that she was Julia's primary case manager at Crossroads. She has interacted with Patricia in those roles. She has concerns about Patricia's mental health and in particular her difficulty in separating her own issues from Julia's. At staffings Patricia's behavior varied from being despondent to being argumentative to appearing not to understand.

¶29 Roy testified that Jonathon is "extremely active." Tests show there is a high probability Jonathon has attention deficit disorder but he is too young to

make a definite diagnosis. Children with this disorder need parenting that provides structure, predictability, positive reinforcement, behavior management, and tasks broken down to smaller parts. The “rule out” diagnosis of post-traumatic stress is based both on the family history and on Jonathon’s play with “sand trays,” which show chaos and death and dying and going away. Overall, Jonathon needs predictability and security from the adults in his life. Her observation of Jonathon’s interaction with Patricia was that he left the room when she asked for a hug.

¶30 Pope testified that before Patricia began seeing Patterson, there were periods of time when Patricia would deny that she even had any mental health issues that needed to be addressed. At numerous staffings where the topic was following through with her medications, Patricia blamed the Department, primarily Pope, for forcing her doctor to put her on medication. At one point when Patricia’s cousin was supervising Patricia’s visits with the children, Pope offered to supervise so there could be longer visits, but Patricia said she could not handle having longer visits. Patricia gave birth to another daughter in July 2008, Janessa, who lives with her. Pope testified that shortly after this child’s birth, Patricia asked her, “How can I parent three children? When can I have help in my visits?”

¶31 At the time of the fact-finding hearing in January 2009, the children had two weekly visits with their mother; each lasted between an hour and a half and an hour and 45 minutes. In these visits Pope was still working with Patricia on how to engage the children in activities and how to follow through with them when they misbehave. How well Patricia did this depended on whether she had a good day or a stressful day. Generally the first part of the visits went well, but as the children start wanting to do different things, Patricia became more stressed and

frustrated and seemed to want the kids to leave. Longer unsupervised visits are not possible now because of Patricia's inconsistency in coping with the children's behavior and based on the children's therapists' recommendations. Pope had told Patricia that she needed to focus more on interactions with the children during the visits. Although Patricia would do so during the next visit, that would trail off after a couple weeks.

¶32 Pope testified that in the three-to-six-month period before the fact-finding hearing she observed more distance between Patricia and the children, with Patricia not asking how they were doing, not interacting with them, and tending to focus more on how things were going in her life. Patricia's moving away from the children to do something else during visits was "pretty consistent..." and concerned Pope from a safety standpoint. Patricia commented to Pope that Julia and Jonathon were distancing themselves from her but she did not ask for assistance in trying to deal with that and did not offer any idea of what she could do to change that.

¶33 According to the testimony of the foster mother, she made it clear to Patricia that she could call any time she wanted. However, Patricia called only when necessary to transmit information and she never asked to talk to the children.

¶34 Patricia's counselor, Patterson, testified that the goal established at the time she started counseling Patricia in late April 2008 was to help her stabilize her psychiatric condition because "there was a lot of question that she wasn't stable psychiatrically." They have worked on her OCD and her past trauma issues; the past traumas have affected her behavior quite significantly. Patricia's medication is working. Patterson believes Patricia is "doing pretty well...takes care of the stuff she needs to take care of...seems to be coping pretty well."

Patricia is still in continuing need of counseling services and “still has some work to do on resolving some of the things that have happened to her and getting in a better place so those things don’t interfere when she gets stressed.”

¶35 Patricia testified that, when the children were removed from her home, she was “in disarray in every aspect of [her] life,” but in her therapy with Patterson she was able to work on the stressors in her life that caused her to “go into the OCD.” She believed she could now provide for Julia’s and Jonathon’s needs on a daily basis, with the Department helping her in dealing with Julia’s behavior problems and with both children’s emotional needs. She was able to handle the daily stress of parenting Janessa. She did not disagree with the testimony that her relationship with Julia was not really any different than when the children were removed from her home. She acknowledged that she had chosen not to have visits with Jenna and had seen her only once between August and December of 2008 because, she explained, she “ha[d] been focusing more on taking care of what I need to get done.”

¶36 We conclude that this constitutes clear and convincing evidence that Patricia has not stabilized her mental health to the point where she can handle the daily stress of parenting Julia and Jonathon and has not demonstrated the ability to meet their emotional needs on a daily basis. We recognize the evidence shows that Patricia has made progress in addressing her mental health issues and that, for the most part, she has attended the sessions and appointments relating to Julia and Jonathon and has cooperated with the treatment recommended for them. She is to be commended for this. However, the evidence of how she handles the visits she has with the two children, even with another adult there to help out, is strong evidence that she is not able to manage them on her own. The fact that she is able to handle parenting Janessa, still an infant, when there are no other children at

home, does not require a reasonable jury to conclude that she can handle the daily stress of parenting Julia and Jonathon in addition to Janessa.

¶37 Patricia is no doubt sincere in her love and concern for Julia and Jonathon. However, a reasonable jury could decide, based on the testimony of McKinnon, Roy, and Pope, that there is clear and convincing evidence that she has not demonstrated an ability to meet their emotional needs. Patricia's position appears to be that, while Julia is a fragile child, Jonathon has no problems and thus there is even less basis for a finding that she cannot meet his needs. While it is certainly true that Julia does have greater needs, there is clear and convincing evidence that Jonathon, too, requires stability, security, and predictability from a parent and that Patricia has not demonstrated she can provide these.

III. Substantial Likelihood Will Not Meet Return Conditions

¶38 In addition to proving that Patricia has failed to meet the return conditions, the Department must prove "there is a substantial likelihood that [she] will not meet these conditions within the 9-month period following the fact-finding hearing...." WIS. STAT. § 48.415(2)(a)3. Patricia contends that her progress in therapy and Patterson's testimony that she is "tak[ing] care of the stuff she needs to take care of" shows that, even if she did not meet the conditions of return at the time of the fact-finding hearing, she will be able to do so within nine months. Focusing again on the second and third return conditions, we conclude the evidence is sufficient to clearly and convincingly establish a substantial likelihood that Patricia will be not able to meet these conditions within that time period.

¶39 At the time of the fact-finding hearing in January 2009, the children had been removed from Patricia's home for almost two years and, but for the

suspension of visitation for one to two months in late 2007 and early 2008, they had regular visits with her. However, there is ample evidence that, even with the assistance provided her, Patricia had not progressed to the point where she was able to handle the children on her own for more than short periods of time. As noted above, there is evidence of Patricia's disengagement, the lack of improvement in her relationships with the children over the two years, and her failure to initiate contact with her children by telephone. There is also evidence that at the staffing meetings Patricia was regularly asked whether there was anything else the Department could do for her, and she responded that she couldn't think of anything. A jury could reasonably infer from this evidence that Patricia's ability to handle the daily stress of parenting Julia and Jonathon and to meet their needs was not going to improve significantly. From her testimony that she had stopped visiting Jenna so that she could focus on taking care of "what I need to get done," a jury could reasonably infer that Patricia lacks an understanding of the importance of maintaining a connection with her children.

¶40 This evidence and these reasonable inferences, together with the other evidence summarized above, provides a clear and convincing basis for the jury's finding that there was a substantial likelihood that Patricia would not meet the conditions for return of the children within nine months following the conclusion of the hearing. This is true notwithstanding Patterson's testimony. Patterson acknowledged that she had never seen Julia or Jonathon. A reasonable jury could conclude that Patterson's testimony on the progress Patricia was making in therapy was not evidence that she was making progress in her ability to parent Julia and Jonathon.

¶41 Patricia suggests the jury's verdict was based on an impermissible comparison between her parenting abilities and those of the foster parents and on

an impermissible standard that she be an ideal parent. We disagree. The jury was instructed on the statutory standard. We assume the jury follows the court's instructions. *See Staehler v. Beuthin*, 206 Wis. 2d 610, 621, 557 N.W.2d 487 (Ct. App. 1996). A reasonable jury could find that the statutory standard was met by clear and convincing evidence.

By the Court.—Orders affirmed.

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

