

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 26, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

Nos. 97-2683
97-2684
97-2685

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

No. 97-2683

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TINA H.,

RESPONDENT-APPELLANT.

No. 97-2684

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TINA H.,

RESPONDENT-APPELLANT.

No. 97-2685

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TINA H.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Kenosha County: S. MICHAEL WILK, Judge. *Affirmed.*

BROWN, J. Tina H. appeals from the termination of her parental rights to her three children.¹ She claims that the State failed to establish grounds for termination because it failed to meet the statutory requirements of § 48.415(2)(b)2, STATS., which requires the state to make a diligent effort to provide her with parenting services. Tina also argues that the trial court erred when it

¹ This is a consolidated appeal from three separate cases ordering the termination of Tina H.'s parental rights.

found that there was a substantial likelihood that she would not have been able to meet the conditions for the return of her children within twelve months. We affirm for the following reasons. First, there was sufficient evidence to show that the State's efforts were diligent pursuant to § 48.415(2)(b)2. Also, there was sufficient evidence to sustain the trial court's conclusion that Tina was unlikely to remedy the conditions causing the removal of the children from her custody pursuant to § 48.415(2)(c).

Tina is the mother of four children, Rena M.A., Samuel S.A., Edmund J.A. and David A.² Samuel and Edmund were adjudicated to be in need of protection or services in 1991, and Rena in 1993. Since then, all three have resided outside the home. At the time of the dispositional hearings, the juvenile court entered specific conditions for return to the mother, and these dispositional orders were extended each year up to the present. These conditions were never met.

In August 1996, the State filed a petition for termination of Tina's parental rights under § 48.415(2), STATS. After a bench trial, the court found that the elements of § 48.415(2) had been proved by clear and convincing evidence and that grounds existed for the termination of Tina's parental rights. Subsequently, the court found that termination of Tina's parental rights was in the best interest of the children and entered termination orders.

The question of whether grounds exist for the termination of parental rights is one of fact. *See* § 48.415, STATS. The trial court's findings of fact will

² Tina voluntarily surrendered her parental rights over David A. She does not contest this decision on appeal. Also, the father of all four children, who is not married to Tina, has voluntarily relinquished his parental rights over all four children.

not be overturned unless they are clearly erroneous. *See* § 805.17(2), STATS. The clearly erroneous test is essentially the same as the great weight and clear preponderance of the evidence test. *See Noll v. Dimiceli's, Inc.*, 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983). To reverse the trial court's findings, the contrary finding must itself be supported by the great weight and clear preponderance of the evidence. *See Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 249-50, 274 N.W.2d 647, 650 (1979).

The dispute on the first issue before us essentially centers on the question of how much effort constitutes "diligent effort" pursuant to § 48.415(2)(b)2, STATS. This section provides that "the agency responsible for the care of the child and the family has made a diligent effort to provide the services ordered by the court." Section 48.415(2)(b)2. "[D]iligent 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, the level of cooperation of the parent and other relevant circumstances of the case." Section 48.415(2)(b).

The evidence supports the court's finding that the department made a diligent effort to provide the services ordered by the court. The record reflects that the Department of Social Services complied with the court's orders and Tina received numerous appropriate services through the department in an attempt to foster Tina's parenting skills. For example, Tina was provided with home care services and received services from the Family Preservation Program, Project Home, the Community Impact Program and Women's Horizons. She also received parenting classes through the Kenosha Human Development Services, alcohol and drug assessments, supervised visitation through the Professional

Services Group, psychological evaluations and therapy, funding through Aid to Families with Dependent Children and Social Security, contacts with the Sharing Center and the Shalom Center, along with numerous direct contacts with her case worker at the department. As a result, Tina was introduced to support groups and received numerous home visits plus phone contacts and regular counseling in order to assist her in developing parenting skills and satisfying the conditions for the return of her children.

Tina contends, however, that the department failed to provide all of the necessary services to her and her children. She claims that had the department provided different services, and better tailored the services it did provide in order to accommodate her low IQ, the results may have been more favorable.

The statutes only require “diligent effort” and not “extraordinary diligence.” Therefore, the department is not required to exhaust every conceivable option before moving to terminate parental rights. Moreover, an evaluation of Tina revealed that she was intellectually competent to comply with the court orders, understood the situation before her and could make the appropriate adjustments despite her low IQ. Finally, the record clearly shows that the department was aware of Tina’s low IQ when it assessed her needs and provided her with services to aid her in developing her parenting skills.

However, Tina also claims that individual department workers failed to exercise diligent efforts to provide parenting skills and that the foster parents worked to undermine her parenting ability. She contends that her failure to meet the conditions for the return of her children was not her fault but the result of improper or negligent actions by both department workers and the foster parents. She points to her testimony and the testimony of her sister to support this

argument. However, the record contains ample evidence from which the trial court could conclude that the department workers diligently provided services and that the foster parents did not play a role in Tina's failure to parent her children, and we dismiss this claim without further comment. Therefore, the trial court's finding that the department was diligent is supported by the great weight and clear preponderance of the evidence and Tina's argument on the first issue fails.

Next, Tina argues that the evidence does not support the trial court's finding that there was a substantial likelihood she would not meet the conditions required for the return of her children within twelve months. That finding of fact is entitled to deference if there is any credible evidence to support it. *See* § 805.17(2), STATS.

The record clearly supports the court's finding that Tina failed to meet the conditions for the return of her children, and that even with the diligent assistance of the department, she would "not be able to meet the conditions required for the return of each of the children in the future." The record shows that Tina repeatedly chose to lie to her service providers in an attempt to hide the fact that she continually violated the court's orders to refrain from contact with abusive alcohol or drug addicted men. Moreover, the expert witnesses and social workers agreed that even with the diligent effort of the department, Tina consistently failed to demonstrate an ability to provide appropriate care and discipline for the children, and her caseworker testified that instead of Tina's parenting skills improving, they actually deteriorated. Further, each of these witnesses uniformly concluded that continued services would not be beneficial because Tina had consistently failed to demonstrate retention of the parenting skills taught to her over the years, and that in their professional opinions, Tina

would be unable to become an appropriate parent within the next few years. Therefore, we conclude that the court properly entered the orders terminating Tina's parental rights.

By the Court.—Orders affirmed.

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

