

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 10, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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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.

No. 98-2617

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

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

BROWN COUNTY,

PETITIONER-RESPONDENT,

V.

SARAH D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
J. D. MC KAY, Judge. *Affirmed.*

MYSE, J. Sarah D. appeals an order terminating her parental rights to Rachel F. Sarah contends that the evidence was insufficient for the jury to conclude that the Brown County Human Services Department exercised a diligent effort to provide court-ordered services to her and Rachel. Sarah also contends that the trial court erred by determining that termination of Sarah's parental rights

was in Rachel's best interests. Because the evidence is sufficient to support the jury's determination that the County made a diligent effort to provide court-ordered services to Sarah and Rachel as required under § 48.415(2)(b), STATS., and that the trial court properly exercised its discretion by terminating Sarah's parental rights to Rachel, this court affirms the order.

Sarah D. and Bryan F. are Rachel's biological parents. In April 1997, the Brown County Human Services Department took Rachel into protective custody because Sarah failed to pick her up from a babysitter's house for several days. There were also concerns that Sarah was not adequately supervising Rachel. Subsequently, a trial court found Rachel to be a child in need of protective services and entered a dispositional order setting forth conditions that Sarah was required to fulfill in order for Rachel to return home. Those conditions included: (1) participation in an AODA assessment and successful completion of all treatment recommendations; (2) enrollment in and completion of the Alternatives to Violence program; (3) enrollment in individual therapy, and if deemed appropriate, obtain a psychological evaluation; (4) cooperation in Rachel's placement and consistent visitation; (5) enrollment in and completion of Parent/Child Interaction Group; (6) demonstration of ability to financially provide for Rachel; and (7) obtain and maintain safe housing for herself and Rachel. Rachel was placed with her paternal grandparents.

In February 1998, the department petitioned the trial court to terminate Sarah's and Bryan's parental rights. Only Sarah contested the petition. After a two-day jury trial, the jury found that the department had made a diligent effort to provide the court-ordered services, that Sarah had failed to demonstrate substantial progress toward meeting the conditions of the dispositional order, and that there was a substantial likelihood that Sarah would not meet the conditions

within the next twelve months. At a subsequent dispositional hearing, the trial court found that termination of Sarah's parental rights was in Rachel's best interests and entered a termination order.

On appeal, Sarah first contends that there is insufficient evidence to support the jury's determination that the County made a diligent effort to provide court-ordered services to Sarah and Rachel as required under § 48.415(2)(b), STATS. The agency responsible for the care of the child and the family must make a diligent effort to provide court-ordered services. *See* § 48.415(2)(b)2, STATS. "Diligent effort" is defined as "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)1, STATS. Whether the department made a diligent effort to provide court-ordered services is a fact-sensitive inquiry that must consider the totality of circumstances as they exist in each case. *In re D.P.*, 170 Wis.2d 313, 331-32, 488 N.W.2d 133, 140 (Ct. App. 1992). This court upholds the jury's finding on this issue if it is supported by credible evidence. *Foseid v. State Bank*, 197 Wis.2d 772, 782, 541 N.W.2d 203, 207 (Ct. App. 1995).

The evidence supports the jury's finding that the department made a diligent effort to provide the court-ordered services. The department provided an AODA assessment for Sarah at the county mental health center. A psychological evaluation was needed to complete the assessment. Sarah testified that she refused the evaluation because she thought it was unfair. The mental health center representative testified that she thought Sarah was fearful that the test results might prevent her from getting Rachel back. Repeated efforts by Sarah's social workers to remind Sarah she needed to complete this requirement and to assist

Sarah in setting up the appointment resulted in Sarah becoming angry and resistant. The social workers also reminded Sarah on several occasions to enroll in the Alternatives to Violence anger management program. Sarah did not enroll and testified that she gave up because the social workers were making her upset. Sarah was required to participate in a parent/child interaction class and maintain a consistent visitation schedule with Rachel. After several sessions, she stopped attending the class and was terminated for lack of attendance. When Sarah explained that her job interfered with her attendance at this class, she was offered a place on a waiting list for another class. Sarah's visitation with Rachel, scheduled concurrent with the parenting class, was sporadic and inconsistent. As an alternative, she was offered individual supervised visitation, but when required to call ahead to confirm her presence at the visits, Sarah did not call. When questioned about securing appropriate housing, Sarah testified that she had not maintained the same residence for six months.

The record reflects that the department made diligent efforts to provide the court-ordered services. Sarah was provided service for every court-ordered requirement: AODA treatment, an anger management program, individual counseling, supervised visitation with Rachel and parenting classes. The social workers met with Sarah on a monthly basis to review her conditions and progress. They maintained regular contact with the service providers. When Sarah experienced difficulty, the social workers tried to work with her, offering her assistance setting up necessary appointments, making sure she had contact names, and problem-solving with Sarah when there were conflicts between her job and meeting other conditions.

Sarah maintains that the social workers failed to consider financial factors that operated against her when they set up her services, specifically that she

was precluded from finishing her parenting classes and visiting Rachel consistently because of job conflicts. The record reflects, however, that Sarah was offered an alternative parenting class although she was first put on a waiting list. She was also offered supervised individual sessions, but was required to call by noon to confirm the visitation, a condition with which Sarah did not comply.

Sarah also contends that social workers failed to consider psychological factors that worked against her as well. Sarah asserts that the department did not consider her background as a young, uneducated, divorced woman who had been abused as a child and who felt that no one treated her fairly. Sarah complains that the social workers should have been “nicer” to her or should have anticipated that she would be difficult to work with. However, the statutes only require that the department make a “diligent effort.” They do not require extraordinary efforts. Here, the social workers made repeated efforts to remind her of her responsibilities and to help her set up appointments. It is apparent from the record that the department worked to accommodate her difficulties. She was accorded the opportunity to participate in an anger management program and participate in individual counseling which could have assisted her with these psychological issues. Furthermore, even Sarah acknowledged that the social workers encouraged her and praised her for the progress she did make in completing the court-ordered conditions. This court concludes, therefore, that the record supplies ample credible evidence from which the jury could conclude that the department made a diligent effort within the meaning of § 48.415(2)(b)2, STATS., to provide Sarah court-ordered services.

Sarah next contends that the trial court erroneously exercised its discretion by determining that the termination of Sarah’s parental rights was in Rachel’s best interests. This court disagrees.

The ultimate decision whether to terminate parental rights is discretionary. *In re J.L.W.*, 102 Wis.2d 118, 131, 306 N.W.2d 46, 52 (1981). The trial court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982). The trial court's underlying findings of fact will not be set aside unless clearly erroneous. Section 805.17(2), STATS. This court has also stated that, "[b]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions." *Schneller v. St. Mary's Hosp.*, 155 Wis.2d 365, 374, 455 N.W.2d 250, 254 (Ct. App. 1990), *aff'd*, 162 Wis.2d 296, 470 N.W.2d 873 (1991).

Section 48.426(3), STATS., identifies a series of factors the trial court considers when assessing the best interests of the child. Those factors include but are not limited to:

- (a) The likelihood of the child's adoption after termination.
- (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
- (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
- (d) The wishes of the child.
- (e) The duration of the separation of the parent from the child.
- (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

Section 48.426(3), STATS.

It is readily apparent from the record that the trial court was disturbed by Sarah's preoccupation with her own needs and desires and lack of demonstrated concern for Rachel's needs. Sarah's absence from the dispositional hearing further impressed this factor on the court. The trial court did acknowledge that Sarah "loves her child in whatever way she perceives that loving relationship." The court, however, was strongly influenced by the fact that Rachel had already developed a good relationship with her paternal grandparents and by the likelihood that Rachel would be able to enter into a more stable and permanent family relationship because her grandparents had expressed an interest in adopting Rachel if Sarah's parental rights were terminated. In making its determination, the trial court considered the jury's finding, the evidence presented, the social worker's court report, counsels' arguments, and the guardian ad litem's recommendation. This court concludes that the trial court reasonably exercised its discretion in this matter. It considered the facts of record and the applicable law and demonstrated a rational process in reaching a reasonable conclusion.

Sarah, however, contends that the record does not support the trial court's finding that she is unfit. Section 48.424(4), STATS., mandates that the trial court find the parent unfit if the jury finds grounds exist for terminating Sarah's parental rights. Because the jury did find grounds, the trial court's finding was proper.

Sarah further argues that the trial court failed to consider Rachel's wishes and the strength of the bond between Rachel and Sarah in deciding to terminate her parental rights. The court did, however, acknowledge Sarah's feelings toward Rachel, but also expressed overriding concern about Sarah's self-

absorbed actions and attitudes. Further, the court's decision reflected that it considered all of the reports and documents on file, which included the department's report indicating that Rachel, at age five, was too young to adequately express her wishes regarding this matter.

Finally, Sarah contends that the court failed to consider that Rachel's placement with her paternal grandparents could confuse Rachel as the father and his family remain in her life while Sarah is no longer present. The trial court noted that this was only an issue with Sarah and that Rachel's best interests would be served by maintaining the positive relationship already established with her grandparents and the prospect of entering a permanent family environment through adoption.

Because we conclude that there is sufficient evidence to support the jury's determination that the County made a diligent effort to provide court-ordered services to Sarah and Rachel as required under § 48.415(2)(b), STATS., and that the trial court properly exercised its discretion by terminating Sarah's parental rights to Rachel, this court affirms the trial court's order.

By the Court.—Order affirmed.

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

