

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 22, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0573

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

**IN RE THE TERMINATION OF PARENTAL
RIGHTS TO DONALD B. AND RAHMIL B.,
PERSONS UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

DONALD B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Donald B. appeals from an order terminating his parental rights to his two children, Donald B., Jr., and Rahmil B. He raises two

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1997-98).

issues in this appeal: (1) whether there was sufficient credible evidence adduced at trial to conclude that he never established a substantial parental relationship with his children; and (2) whether the jury rendered an inconsistent verdict. Because there was credible evidence to support the jury's finding, and because the verdict was not inconsistent, this court affirms.

I. BACKGROUND

¶2 Donald Jr. was born on June 27, 1991. Rahmil was born on June 9, 1992. Donald B. was adjudicated to be the father of both children. The mother of the children was Antoinette M. Although never married, Antoinette and Donald B. lived together in an apartment with the children until they were evicted in July 1992. The rent at the apartment was only \$140 per month and the two were receiving \$900 per month in public assistance. Despite this, eviction was based on failure to pay the rent. After the eviction, Donald B. no longer lived with the children, who continued to reside with Antoinette.

¶3 On July 20, 1995, Renee King, a foster care worker for Milwaukee County, made an unannounced home visit to Antoinette's home. King made the following observations:

The house was filthy, the floors were dirty and dirty laundry was thrown about the house. There was no kitchen table, no curtains and no bed frames. There was a refrigerator with no food in it, except one package of frozen meat. The cupboards were empty.

The children's clothing [was] dirty. Their hygiene was poor.

¶4 Donald B. was present at the time of this visit. Although he did not live there, he was "in and out." He showed King a \$20 bill that he had in his pocket and indicated he would buy food for the children with the money.

¶5 King returned on August 7, 1995, to check on the situation and found that the children had been left alone inside the apartment. King noted: “The house was filthy. There was no food in the residence. The children were only wearing underwear. Their hygiene was dirty.... There was no electricity in the residence. There was one package of chicken. Dirty clothes were strewn all over.” The two children were removed from the home and placed in foster care with Ella M. Ella M. described the condition of the boys when they first arrived: neither could speak, use utensils to eat, or use the bathroom; they refused to keep their clothes on and picked things out of the garbage to eat; and the boys, although only four- and three-years old, acted out sexually.

¶6 After the children were removed from the home, Donald B. told the caseworker that the children could not be placed with him as he did not want to take care of them. He did not see the boys again until May 1997, when he contacted the caseworker and indicated that he was interested in visiting with the children. He continued to visit with the boys until October 1998. During his last visit, Donald B. became angry at the caseworker because she would not leave him alone with his children. He started yelling and swearing, which frightened the children and they began to cry. Donald B. never paid support for the children, although he was under a court order to do so.

¶7 A petition for termination of parental rights was filed on October 20, 1998.² The petition alleged that grounds existed to terminate Donald’s parental rights because he had failed to assume parental responsibility for both children as

² A petition seeking to terminate both Donald’s and Antoinette’s parental rights was filed. This appeal, however, involves only Donald.

defined in WIS. STAT. § 48.415(6) (1997-98)³ and because both children remained in continuing need of protection or services, pursuant to § 48.415(2).

¶8 The case was presented to a jury in August 1999. The jury returned a unanimous verdict finding that: (1) Donald failed to assume parental responsibility for the children; and (2) Donald had demonstrated substantial progress toward meeting the conditions for the return of the children to his care. At the dispositional hearing, the trial court concluded that grounds to terminate Donald's parental rights were established by the jury's determination that Donald failed to assume parental responsibility. An order terminating Donald's parental rights was entered. Donald appealed from the order, alleging that counsel was ineffective for failing to argue that the verdict was inconsistent. This court remanded the case for an evidentiary hearing. After conducting the evidentiary hearing, the trial court concluded that the jury's verdict was not inconsistent and, therefore, trial counsel did not provide ineffective assistance for failing to raise that issue. Donald now appeals.

II. DISCUSSION

A. Credible Evidence to Support Jury's Finding.

¶9 Donald claims that because he lived with Donald Jr. for one year and with Rahmil for one month before the eviction in July 1992, the jury could not find that he never accepted "significant responsibility for the daily supervision, education, protection and care of the child." This court disagrees.

³ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶10 A jury finding will not be overturned if there is any credible evidence to support the verdict. *See Coryell v. Conn*, 88 Wis. 2d 310, 315, 276 N.W.2d 723 (1979). The record contains ample credible evidence to support the jury's finding.

¶11 Under WIS. STAT. § 48.415, there are a variety of grounds which provide the basis for termination of parental rights. One of those grounds is contained in subsection (6) and provides:

FAILURE TO ASSUME PARENTAL RESPONSIBILITY.

(a) Failure to assume parental responsibility, which shall be established by proving that the parent ... ha[s] never had a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.

Subsection (6) is the basis upon which Donald's parental rights were terminated. He argues that because he lived with the children, the jury could not find that he *never* had a substantial parental relationship with the child. This court disagrees.

¶12 The trial court rejected this argument offering the following reasoning:

[T]he evidence established that during the period of time that they resided ... with their mother and father together ... that [the children] were subjected to what can only clearly be characterized a[s] most neglectful of treatment in the home.

....

[I]t is very clear to me that recently ... Mr. B. ha[s] made substantial effort[] to get [his] act[] together. But during a substantial period that these children have been the responsibility of the System Mr. B. ... [was] off doing [his] own thing including drugs and alcohol abuse, serious involvement with the Criminal Justice system, without ... recogni[zing his] parental responsibility ... [or] the [e]ffect

of [his] non-involvement on the[] children ... and without ... recogni[zing] ... the need to prioritize the needs, both physical and emotional, of these children; to prioritize those needs over [his] own perceived needs.

The ability to do that, the ability to prioritize the needs of your children over your own perceived needs is the most basic and absolutely essential quality of any good parent. If you can't do that you cannot be a good parent.

Any person who chooses to become [a] parent[] must focus and constantly demonstrate that quality on a full-time basis. Parenting is not and never can be an occasional commitment.... Mr. B. [has not demonstrated that commitment.]

....

[Y]ou need to understand, Mr. B., that for a substantial period of these children's lives [there] has been a prolonged, dramatic and total abdication of responsibility for these children on your part

This court agrees with the trial court's analysis. The fact that Donald, at one point in time, lived with the children does not automatically demonstrate that he established a substantial parental relationship. The jury heard evidence that Donald never paid any support for the children, that he frequently walked around the home naked, engaged in inappropriate sexual activity in front of the children, spent the \$900 monthly income on things other than the basic needs of the home, and he failed to teach his children basic living skills, such as keeping your clothes on, using the toilet, using utensils, and learning how to speak. Moreover, Donald acknowledges the deplorable conditions the children were subjected to while living with Antoinette alone. Yet, he failed to take any action to protect, care for, or assume responsibility for the children despite his knowledge of Antoinette's neglect of their basic needs.

¶13 This evidence is sufficient to support the jury's finding that Donald failed to assume parental responsibility.

B. Inconsistent Verdict.

¶14 Donald also claims that the jury rendered an inconsistent verdict when it found against him on the failure to assume responsibility question, but found in his favor on the question regarding whether he was making substantial progress on the conditions for the return of the children. The trial court concluded that the verdict was not inconsistent. This court agrees.

¶15 An inconsistent verdict is one in which the jury answers are logically repugnant to one another. *See Fondell v. Lucky Stores, Inc.*, 85 Wis. 2d 220, 228, 270 N.W.2d 205 (1978). Another way of framing the question is to ask whether both findings of the jury could be correct. *See Statz v. Pohl*, 266 Wis. 23, 28, 62 N.W.2d 556 (1954).

¶16 This court concludes that the question posed could be answered affirmatively. Both the jury's verdict finding Donald had failed to assume parental responsibility, and its verdict finding that Donald had made progress toward meeting conditions of return, could be correct based on the evidence presented in this case. The jury was convinced that Donald was making some efforts beginning in May 1997, to see his children. However, those efforts were insufficient to overcome what was almost a total abdication of parental responsibility for the children from at least July 1992.

¶17 As noted by the trial court, the jury concluded that Donald was "working on the conditions of return that had been established in the most recent court order. But clearly the evidence established that this was a recent development." The jury believed that the relationship between Donald and his children did not constitute a substantial parental relationship. Thus, even though Donald was working on satisfying the conditions for the return of the children, he

was never able to establish a substantial parental relationship. Based on the evidence presented, the jury verdict was reasonable and certainly not repugnant.

By the Court.—Order affirmed.

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

