

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 27, 2001

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.

Nos. 01-0135 & 01-0136

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

No. 01-0135

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

PATRICIA T.,

RESPONDENT-APPELLANT.

No. 01-0136

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

STATE OF WISCONSIN,
PETITIONER-RESPONDENT,
v.
PATRICIA T.,
RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN W. MICKIEWICZ, Reserve Judge. *Affirmed.*

¶1 FINE, J. Patricia T. appeals from an order terminating her parental rights to Carla T. and Sylvester K. She claims that her admission to one count of the petition to terminate her parental rights to the children was not knowingly and voluntarily entered. We affirm.

¶2 On March 3, 2000, the State filed a petition seeking to terminate Patricia T.’s parental rights to Carla, then eleven, and Sylvester, then five. On August 22, 2000, less than a week before a jury trial was scheduled to start on whether the allegations in the petition were true, Patricia T. appeared in court with her attorney to enter a no-contest plea to the petition’s assertion that she had “abandoned the children, as that term is defined in sec. 48.415(1)(a)2, Wis. Stats., in that she has had no visits, communication or contact with the children from July 30, 1996 through February 5, 1997, when a visit occurred.”¹

¹ WISCONSIN STAT. § 48.415(1)(a)2 provides:

At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights.

(continued)

¶3 Before accepting a plea to a petition to terminate a person's parental rights, the circuit court must do all of the following:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.

(b) Establish whether any promises or threats were made to elicit an admission and alert all unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.

(bm) Establish whether a proposed adoptive parent of the child has been identified. If a proposed adoptive parent of the child has been identified and the proposed adoptive parent is not a relative of the child, the court shall order the petitioner to submit a report to the court containing the information specified in s. 48.913 (7). The court shall review the report to determine whether any payments or agreement to make payments set forth in the report are coercive to the birth parent of the child or to an alleged to presumed father of the child or are impermissible under s. 48.913 (4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall dismiss the petition or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the

Grounds for termination of parental rights shall be one of the following:

(1) ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:

...

2. That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

matter to the district attorney for prosecution under s. 948.24 (1). This paragraph does not apply if the petition was filed with a petition for adoptive placement under s. 48.837 (2).

(c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

WISCONSIN STAT. § 48.422(7).

¶4 Patricia T. does not contend that the circuit court did not literally follow the requirements set out in WIS. STAT. § 48.422(7), but she argues that the circuit court never told her that, in the words of her brief on this appeal, that, “a plea to the grounds would almost surely mean that her rights would be terminated,” and that, therefore, her plea was not knowing or voluntary. Patricia T., however, misapprehends the test. The statute does not require that in accepting a plea to the factual grounds asserted in a petition the circuit court have a crystal ball and weigh whether, under all the circumstances to be explored at the dispositional hearing, termination would be in a child’s best interests. *See* WIS. STAT. § 48.426(2) (in deciding whether to terminate a person’s parental rights to a child, the circuit court must apply “the best interests of the child” as “the prevailing factor considered”). Indeed, WIS. STAT. § 48.422(7)(a) only requires that the parent be advised of “the potential dispositions.” That was done here.

¶5 Significantly, after a discussion about whether Patricia T.’s family would be involved in the post-plea and dispositional phases, she asked the circuit court: “Because of the fact that my family may not be involved, does that mean that I won’t have a chance of getting my kids back or my family have a chance of getting them?” There was then the following colloquy:

THE COURT: What happens at the dispositional hearing is that the judge has to determine whether it’s in the best interests of your children to terminate your parental

rights. And the first part of this whole process is whether or not there are grounds.²

Today you agree[d] that the ground of abandonment applied. You entered a -- an admission to the fact that you had not had contact or communications with your children for the relevant, legal period of time that constitutes abandonment.

MS. T[]: By doing that I just lost them already?

THE COURT: No. That decision is made at the second-- the first part is whether there are grounds. The second part is whether it's in their best interests to terminate your parental rights.

That decision is what's going to be made at the next hearing date when all of the people testify about the connections the children have to you and any family members and matters like that.

When Patricia T. asked whether her sister would be able to get her children, the circuit court responded:

If your parental rights are terminated, then the only way your sister would be able to participate is as a -- an adoptive resource or as a foster parent. And right now your children are placed with another family who wants to adopt them.

Those are all things that I'm sure will be testified to at the dispositional hearing. And the judge will have to decide after listening to everything what is in your children's best interest.

Patricia T. replied: "Okay, Thank you."

² A judge other than the judge taking Patricia T.'s plea to the petition was going to preside over the dispositional hearing.

¶6 Patricia T. has not demonstrated that her admission to one of the grounds asserted in the petition to terminate her parental rights to her children was not knowing or voluntary.

By the Court.—Order affirmed.

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

