COURT OF APPEALS
DECISION
DATED AND FILED

September 13, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 01-1723

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

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

LA CROSSE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

STACEY A. M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: JOHN J. PERLICH, Judge. *Reversed and cause remanded with directions.*

¶1 DYKMAN, J. This is an appeal from an order terminating Stacey A.M.'s parental rights to Quianna M.M. The issue is one of statutory

interpretation: whether WIS. STAT. § 48.415(9) (1999-2000),[1] which establishes "Parenthood as a result of sexual assault" as a ground for involuntary termination of parental rights, applies to a mother whose child was conceived as a result of intercourse with a person who has not attained the age of sixteen years, an act criminalized by WIS. STAT. § 948.02(2).

¶2 We conclude that WIS. STAT. § 48.415(9) is ambiguous as to the extent of its applicability. After examining the statute and its legislative history, we hold that § 48.415(9) was intended to be used to terminate the parental rights of fathers whose sexual assault results in the birth of a child but not the parental rights of a mother of a child who is either the victim or the perpetrator of a sexual assault.

¶3 On May 5, 1997, Stacey A.M., an adult, gave birth to Quianna M.M. The father was subsequently determined to be Quisto P., whose date of birth is August 13, 1984. On January 20, 1998, Stacey A.M. was convicted of engaging in repeated acts of sexual assault of Quisto P., contrary to WIS. STAT. § 948.025(1), and sentenced to twenty-two years in prison.[2]

¶4 The La Crosse County Department of Human Services petitioned for the termination of Stacey A.M.'s parental rights, asserting that Quianna M.M.'s birth occurred as a result of Stacey A.M.'s sexual assault of Quisto P., a ground

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] Stacy A.M. was also convicted of sexual assault of a child pursuant to WIS. STAT. § 948.02(2) and sentenced to twenty years of probation consecutive to her twenty-two-year prison term.

for involuntary termination of parental rights found in WIS. STAT. § 48.415.[3] Stacey A.M. moved to dismiss La Crosse County's petition, asserting that § 48.415(9) applies only to fathers convicted of sexual assaults. The trial court denied her motion, and terminated her parental rights. Stacey A.M. appeals.

¶5 We start with the statute La Crosse County used as the ground to terminate Stacey A.M.'s parental rights. WISCONSIN STAT. § 48.415 provides in part:

> **Grounds for involuntary termination of parental rights.** At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:
>
> ….
>
> (9) PARENTHOOD AS A RESULT OF SEXUAL ASSAULT. (a) Parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. … 948.025. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the person who may be the father of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the mother of the child.

¶6 Because our review involves only the interpretation and application of WIS. STAT. § 48.415(9) to undisputed facts, our review is *de novo*. *See* ***Teague v. Bad River Band of Chippewa Indians*****,** 2000 WI 79, ¶17, 236 Wis. 2d 384, 612 N.W.2d 709. The goal of statutory interpretation is to discern and give effect to

[3] La Crosse County also alleged another ground for termination of Stacey A.M.'s parental rights, Continuing need of protection or services, WIS. STAT. § 48.415(2), but subsequently dismissed that ground.

the intent of the legislature. ***Id.*** We first look for intent in the plain language of the statute. ***Id.*** If the statute is plain and unambiguous, that is the end of our inquiry. ***Id***. Only if the statutory language is ambiguous or unclear may we examine further, into the statute's history, scope, context, subject matter and objective to determine legislative intent. ***Id.*** Whether a statute is ambiguous is a question of law that we review de novo. ***In Interest of T.P.S.***, 168 Wis. 2d 259, 263, 483 N.W.2d 591 (Ct. App. 1992). A statute is ambiguous if it is capable of being understood in two or more different ways by reasonably well-informed persons. ***Teague***, 236 Wis. 2d at 395.

¶7 If WIS. STAT. § 48.415(9)(a) consisted only of its first sentence, this case would probably not be here, at least in this form.[4] Read alone, that sentence is unambiguous and would require La Crosse County to prove only that Quianna M.M. was conceived as a result of a sexual assault. The gender of the sexual assault perpetrator and the sexual assault victim would be irrelevant. The parental rights to a child born as a result of a sexual assault could be terminated upon proof of the sexual assault. La Crosse County asks us to adopt this meaning of WIS. STAT. § 48.415(9)(a), adding that the second sentence of the statute merely explains one way that it can prove the child's conception. Thus, it argues, the second sentence's reference to "father" is not significant.

¶8 That was the interpretation adopted by the trial court. Were we to adopt this interpretation, we would have to accept that the legislature intended that the parental rights of both sexual assault perpetrators and sexual assault victims

[4] Neither party addresses possible constitutional considerations which might be applicable to this case, and we therefore do not consider whether either the state or federal constitution would apply here.

could be terminated by showing that a child was conceived as a result of a sexual assault, since that sentence does not distinguish between victims and perpetrators. The legislature could not have intended a second victimization of sexual assault victims. We therefore conclude that we need to read beyond the first sentence of WIS. STAT. § 48.415(9)(a) because we are not to interpret a statute in a way that would lead to absurd results. ***State v. Piddington***, 2001 WI 24, ¶65, 241 Wis. 2d 754, 623 N.W.2d 528.

¶9 We agree with La Crosse County that the second sentence of WIS. STAT. § 48.415(9)(a) is indeed an example of how La Crosse County could prove a § 48.415(9) termination of parental rights case. And we agree that by using the word "may," La Crosse County is not limited to that form of proof, but is free to use other methods of proving parenthood as a result of sexual assault. But once we examine the second sentence of the statute, it is apparent that it is applicable only to sexual assault perpetrators who become fathers as a result of the sexual assault. This casts significant doubt on La Crosse County's view that the statute is gender non-specific. Thus, reading § 48.415(9)(a) as a whole, a second reasonable interpretation of the statue arises: only sexual assault perpetrators who become fathers as a result of the assault are covered by § 48.415(9)(a).

¶10 This interpretation is enhanced by considering WIS. STAT. § 48.415(9)(b), which provides that if a county proves a § 48.415(9)(a) termination of parental rights case, the mother of the child may be heard on her desire for the termination of the father's parental rights. Had the legislature intended § 48.415(9) to be gender non-specific, it would have provided that in cases where parenthood arose as a result of a sexual assault, both mothers and fathers could be heard on their desire for the termination of the other's parental rights.

¶11 Thus, having concluded that there are two competing interpretations of WIS. STAT. § 48.415(9), we will explore further to determine which interpretation is the more likely meaning the legislature intended.

¶12 WISCONSIN STAT. § 48.415(9) began as three companion bills, 1995 Senate Bill 3, 1995 Senate Bill 34, and 1995 Assembly Bill 222. The first entry in the Legislative Reference Bureau file for Senate Bill 34 is a memo dated November 17, 1994, from Senator Charles Chvala to "All Legislators." The memo states: "I will be introducing legislation allowing a court to terminate the parental rights of a rapist if a child is conceived as a result of a sexual assault and the rapist has been convicted of that sexual assault."

¶13 Senate Bill 34 reads in its entirety, excepting its provision for initial applicability:

> SECTION 1 48.415(8)[5] of the statutes is created to read:
>
> 48.415(8) PARENTHOOD AS A RESULT OF SEXUAL ASSAULT. Parenthood as a result of sexual assault may be established by a showing that the child was conceived as a result of a sexual assault in violation of s. 940.225(1), (2) or (3) or 948.02(1) or (2) or 948.025 and that the person whose parental rights are sought to be terminated has been convicted of that sexual assault.

¶14 The pertinent part of the Legislative Reference Bureau analysis provides: "This bill adds as a ground for involuntary termination of parental rights parenthood as a result of sexual assault, and that the person whose parental rights are sought to be terminated has been convicted of that sexual assault." Senate Bill 3 was not introduced.

[5] The subsection was later changed from (8) to (9).

¶15 In the Assembly, Representative Brandemuehl sponsored identical legislation. 1995 Assembly Bill 222 was introduced March 17, 1995, using the same language as Senate Bill 34. But included in the drafting file for AB 222 is a September 1, 1995 memo from "Anne," an employee of the Legislative Council staff, to "Gordon," a drafter at the Legislative Reference Bureau, in which Anne made a request on behalf of Representative Brandemuehl for six revisions to be made to 1995 AB 222. She wrote:

> Representative Brandemuehl [the bill's sponsor] would like the following to be included in the new sub. to AB 222:
>
> ….
>
> (5) Amend the grounds created by AB 222 to make them apply to fathers only.
>
> ….
>
> Thanks. The exec. for AB 222 is scheduled for September 7. I'd like to do a memo by then, but I could do that late on Wed. I hope we've given you enough time!"

¶16 The language of AB 222 was expanded by Assembly Substitute Amendment 1 to 1995 Assembly Bill 222, dated September 7, 1995, to add the second sentence of what is now WIS. STAT. § 48.415(9)(a). Language amending WIS. STAT. § 48.42(2m) was also added by Assembly Substitute Amendment 1. The language added to § 48.42(2m) provided that fathers of children conceived as a result of sexual assault need not be given notice of a proceeding to terminate their parental rights.

¶17 We interpret the second sentence of WIS. STAT.§ 48.415(1)(a) as incorporating request (5) from Representative Brandemuehl that the statute "apply to fathers only." Each of the other five requests were included in the amendment.

Furthermore, there would be no reason for the second sentence of WIS. STAT. § 48.415(9) to have been drafted were it not for Representative Brandemuehl's request to amend the ground created by AB 222 to make it apply to fathers only. There is no other place in the new statute which refers to fathers.

¶18 Bill drafters do not draft bills they think are good ideas. The 1993-1994 Bill Drafting Manual of the Legislative Reference Bureau provides in its forward at page 2: "Attorneys employed by the LRB write legislation for other people: legislators and representatives of state agencies and of certain other organizations. You should not and cannot make the basic policy decision for the requester." Thus, the language in the second sentence of WIS. STAT. § 48.415(9) must have been based on a request from a legislator. It would not have been "Gordon's" idea.

¶19 The correlation between 1995 Assembly Bill 222, the memorandum from "Anne," writing for Representative Brandemuehl, the sponsor of Assembly Bill 222, and Assembly Substitute Amendment 1 to 1995 Assembly Bill 222 creates more than a strong inference that the Legislative Reference Bureau draftsperson drafted the second sentence of WIS. STAT. § 48.415(9) believing that he was following Representative Brandemuehl's request to Amend Assembly Bill 222 to apply only to fathers. Though the way § 48.415(9) was drafted eventually gave rise to the case we decide today, the intent behind the amendment to Assembly Bill 222 becomes clear: WISCONSIN STAT. § 48.415(9) was intended to apply to persons who are the fathers of children conceived as a result of sexual assault. And the evidence of the Wisconsin Senate's intent is also compelling: Senator Chvala, in a letter to legislators included in the drafting record for 1995 SB 34, noted that the statute was intended to apply to "rapists," a word defined in WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993) as "one who

commits rape." And that dictionary defines "rape" as "illicit sexual intercourse without the consent of the woman and effected by force, duress, intimidation or deception as to the nature of the act."

¶20 Though the La Crosse County Department of Human Services asks us to give the first sentence of WIS. STAT. § 48.415(9)(a) its plain, obvious and ordinary meaning, we decline to do that because it would result in the statute plainly applying to a mother whose child was born as a result of a sexual assault in which she was the victim. That cannot have been the intent of the legislature when it enacted the statute. The indications from the drafting records of 1995 Assembly Bill 222 and 1995 Senate Bill 34 are compelling evidence that both bodies intended to apply WIS. STAT. § 48.415(9) to fathers only.

¶21 We conclude that WIS. STAT. § 48.415(9) applies only to persons who father children conceived as a result of their sexual assault. Stacey A.M. is not such a person. Accordingly, we reverse the Circuit Court's order terminating Stacey A.M.'s parental rights, and remand with directions to dismiss La Crosse County Department of Human Services' petition to terminate Stacey A.M.'s parental rights.

By the Court.—Judgment reversed and cause remanded with directions.

Not recommended for inclusion in the official reports.