

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 3, 2004

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 03-3347

Cir. Ct. No. 03TP000016

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MARTHA P.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Martha P. appeals the order terminating her parental rights to Coreyonto. She contends that the evidence submitted to the jury was

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

insufficient to prove either that she never had a substantial parental relationship with Coreyonto or to prove that she abandoned Coreyonto. Because sufficient evidence was presented to support the jury's verdicts that both grounds for terminating her parental rights were established, this court affirms.

I. BACKGROUND.

¶2 Martha P. gave birth to Coreyonto on October 14, 1999. He is one of her five children. Coreyonto was removed from his mother's care and placed in a foster home when he was four days old because it was believed that Martha P. was unable to care for him. He also has significant health problems. On May 9, 2000, Coreyonto was found to be a child in need of protection or services (CHIPS) by the juvenile court and he remained outside of Martha P.'s home. In January 2003, the State filed a petition seeking to terminate Martha P.'s parental rights to Coreyonto P.² The petition alleged that Martha P. had failed to assume parental responsibility for Coreyonto, as defined in WIS. STAT. § 48.415(6), and had abandoned him, as defined in WIS. STAT. § 48.415(1)(a)2.³

¶3 Martha P. contested the petition and the case was tried to a jury in July 2003. The jury returned verdicts finding that Martha P. had abandoned Coreyonto and had failed to assume parental responsibility for him. Following the jury verdict, the trial court found Martha P. unfit. Several weeks later, the trial court held a dispositional hearing. Martha P. failed to appear for the hearing and

² The petition also sought to terminate the parental rights of Coreyonto's adjudicated father. Ultimately, a default judgment terminating his rights was entered after attempts at personal service failed and the State resorted to publication.

³ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

was found in default. The trial court determined that it was in the best interest of Coreyonto to terminate Martha P.'s parental rights.

II. ANALYSIS.

¶4 In reviewing sufficiency claims, this court reviews the record to determine whether there is any credible evidence to support the jury's verdict. *Morden v. Continental AG*, 2000 WI 51, ¶¶38-39, 235 Wis. 2d 325, 611 N.W.2d 659. "[I]f there is any credible evidence, under any reasonable view, that leads to an inference supporting the jury's finding, [this court] will not overturn that finding." *Id.*, ¶38; *see also State v. Quinsanna D.*, 2000 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. Terminations of parental rights cases are civil in nature; thus, "[g]rounds for termination must be proven by clear and convincing evidence." *See Ann M.M. v. Rob S.*, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993); *see also* WIS. STAT. § 48.31(1), 48.424(2). Moreover, the credibility of witnesses and the weight afforded the evidence are left to the jury. *Whitaker v. State*, 83 Wis. 2d 368, 377, 265 N.W.2d 575 (1978).

¶5 At trial, the State presented evidence that Martha P. occasionally visited with Coreyonto, but that in 2002, she did not visit him at all between May and December. Also, testimony established that, during Coreyonto's life, Martha P. purchased very few gifts for him and never paid any child support. Coreyonto's foster mothers testified that Martha P. never attended any of his doctor's appointments, participated in his therapy or speech classes, or asked where he was attending preschool.

¶6 Martha admitted she did not see Coreyonto for more than six months, but claimed that this was due to her difficulty in obtaining a suitable residence. Testimony at trial revealed that during a two-year time frame when

Coreyonto was in foster care she lived at six different addresses and was evicted once. A social worker also testified that Martha P. was offered visits with Coreyonto at the office, but she refused the offer. Although Martha P. was originally allowed overnight visits, a social worker testified that he suspended Coreyonto's overnight visits with Martha P. because of a lack of suitable housing and conditions, including unsavory roommates, and because Coreyonto experienced night tremors after the visits.

¶7 Martha P. also insisted that the fact that she did not know the address or telephone number of the foster parent contributed to her failure to communicate or visit with Coreyonto. However, the social workers disputed this allegation, noting that Martha P.'s sister had a child in the same foster home and that the foster mother has lived at the same address for thirty-four years. On cross-examination, Martha P. was shown the court orders, a copy of which she had already received, reflecting the foster mother's address. Evidence was also admitted indicating that Martha P. had mental health problems.

A. Sufficient evidence was presented to support the jury's finding that Martha P. failed to assume parental responsibility for Coreyonto.

¶8 There is ample evidence in the record to support the jury's verdict that Martha P. failed to assume parental responsibility for Coreyonto. Failure to assume parental responsibility can be established by proving that the parent has never had a substantial parental relationship with the child. WIS. STAT. § 48.415(6). The statute goes on to explain that:

“[S]ubstantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person

has ever expressed concern for or interest in the support, care or well-being of the child, [and] whether the person has neglected or refused to provide care or support for the child[.]

¶9 As noted, Martha P. has never lived with Coreyonto, nor has she ever supported him. She has never even purchased anything for him beyond an occasional small gift. She has played almost no role in his life—she has never been involved in his schooling, health care, or his treatment for his special needs. Indeed, Martha P. testified that she believed that Coreyonto had no special needs.

¶10 Martha P. submits that because Coreyonto has had three-day visits with her, the jury did not have sufficient evidence to find that she had failed to assume parental responsibility. She is mistaken. The statute points out that the failure to assume parental responsibility means failing to establish a *substantial* relationship with the child. Here, the evidence was overwhelming that Martha P. had no substantial relationship with Coreyonto.

B. The evidence also supports the jury’s finding that Martha P. abandoned Coreyonto.

¶11 Martha P. also contends there was insufficient evidence to prove that she abandoned Coreyonto. This court disagrees.

¶12 Abandonment can be established by proving “[t]hat the child has been placed, or continued in a placement, outside the parent’s home by a court order containing the notice required ... and that the parent has failed to visit or communicate with the child for a period of 3 months or longer.” WIS. STAT. § 48.415(1)(a)2.

¶13 Testimony was admitted at trial indicating that Martha P. failed to visit, call, send cards, letters, or gifts to Coreyonto for a period of over six months.

Martha P. acknowledges that she failed to visit with Coreyonto for quite some time, but she claims that her lack of adequate housing prevented her from doing so. This assertion is countered by the testimony of the social worker who offered to set up visitation between Martha P. and Coreyonto at his office, but was rebuffed by Martha P. Moreover, even if Martha P.'s housing problems prevented her from visiting Coreyonto, it does not explain her failure to call, write or inquire as to Coreyonto's welfare for such a long period of time. Consequently, more than sufficient evidence was presented to permit the jury to find that Martha P. abandoned Coreyonto, and she presented no valid excuses for her conduct.

¶14 For the reasons stated, the trial court's order terminating Martha P.'s parental rights to Coreyonto is affirmed.

By the Court.—Order affirmed.

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

