

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 6, 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. 04-0195
STATE OF WISCONSIN**

Cir. Ct. No. 02TP000232

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JAMES W.,

RESPONDENT-APPELLANT.

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

¶1 WEDEMEYER, P.J.¹ James W. appeals from an order terminating his parental rights to Jamie W. James claims the trial court erroneously exercised

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

its discretion in permitting the foster mother to testify during the grounds phase of the termination proceedings. Because the trial court did not erroneously exercise its discretion in permitting the limited testimony, this court affirms.

BACKGROUND

¶2 Jamie was born on January 10, 2000, and immediately placed in protective custody. On April 9, 2001, she was found to be a child in need of protection or services. On April 1, 2002, the State filed a petition to terminate James's parental rights. The petition alleged that Jamie was a child in continuing need of protection or services pursuant to WIS. STAT. § 48.415(2) (2001-02),² and that James failed to assume parental responsibility pursuant to WIS. STAT. § 48.415(6).

¶3 After several adjournments, a final pretrial hearing was conducted on June 3, 2003. At that hearing, James moved to exclude testimony from Jamie's foster parents on the grounds that it was irrelevant during the initial phase of the termination proceeding. The trial court ruled that the foster parents would be permitted to testify, but cautioned the State that the testimony should be limited to issues related to the grounds phase and should not address any information regarding the best interests of the child.

¶4 During the trial, the State called the foster mother who testified as to the care and condition of Jamie. At the conclusion of the trial, the jury returned a verdict finding that grounds existed to terminate James's parental rights. After the

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

dispositional hearing, the trial court found that it was in Jamie's best interests to terminate James's parental rights. James now appeals from that order.³

DISCUSSION

¶5 James argues that the trial court erroneously exercised its discretion in allowing the foster mother to testify during the grounds phase of the termination proceeding regarding the daily care she provided to Jamie. This court reviews an evidentiary decision under the discretionary standard of review. *LaCrosse County Dep't of Human Servs. v. Tara P.*, 2002 WI App 84, 252 Wis. 2d 179, 643 N.W.2d 194. As long as the trial court applied the pertinent facts to the correct law and reached a reasonable determination, this court will uphold its decision. *State v. Wollman*, 86 Wis. 2d 459, 464, 273 N.W.2d 225 (1979). Based on this limited standard of review, this court cannot reverse the trial court's evidentiary determination in this case.

¶6 The facts in this case demonstrate that the child, Jamie, had special needs, including a serious heart condition, which required extraordinary care and medical attention. In order to prove that James failed to establish a substantial parental relationship with Jamie, the State proffered the testimony of the foster mother. By way of the foster mother's testimony, the State was able to demonstrate that James was not providing for the care, protection, education, and special needs of this child. Although it is true that some of this information could have been introduced to the jury through other witnesses, it was the foster mother

³ The parental rights of Jamie's biological mother were also terminated. The biological mother does not appeal from the termination order.

who functioned as the “captain of the ship.” It was most logical, as a result, to offer the foster mother’s testimony to the jury.

¶7 James argues that he was prejudiced by the admission of this testimony because it could be used by the jury to assess the “best interests” of Jamie, which should not take place during the grounds phase of the termination petition. Although the trial court noted there might be a risk of this happening, it cautioned the State to limit the foster mother’s testimony to avoid this result. Having reviewed the foster mother’s testimony, this court concludes that the proffered testimony was limited to providing the jury with information relative to the care, needs, and condition of Jamie.

¶8 Moreover, the trial court specifically and repeatedly instructed the jury that it was not to consider the best interests of the child when rendering the verdict. Thus, the limiting instructions rectified any possibility of prejudice. There is nothing in the record that convinces this court that the jury failed to act in accordance with the trial court’s limiting instructions. *State v. Edwardsen*, 146 Wis. 2d 198, 210, 430 N.W.2d 604 (Ct. App. 1988). Accordingly, this court concludes that the trial court did not erroneously exercise its discretion in admitting the limited testimony of the foster mother in this case.

By the Court.—Order affirmed.

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

