COURT OF APPEALS
DECISION
DATED AND FILED

November 22, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2270 **Cir. Ct. No. 2005TP120**

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SHEILA MCK.,

RESPONDENT-APPELLANT.

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

¶1 FINE, J. Sheila McK. appeals an order terminating her parental rights to Aundre W. She challenges the trial court's findings, entered on her default, that she failed to assume parental responsibility for Aundre, *see* WIS.

STAT. § 48.415(6), and that Aundre was a child in continuing need of protection or services, *see* § 48.415(2). We affirm on the first ground, and, accordingly, do not address the second. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

I.

¶2 This is an horrendous case. Aundre was born in May of 1997. According to the testimony of Aundre's social worker, Aundre was taken into custody because of concerns about his health while he was with Sheila McK., specifically osteomyelitis that developed three years after surgery to correct a club-foot condition with which Aundre was born. When taken from Sheila McK., Aundre weighed only thirty-seven pounds even though he was six years old. In addition to his foot condition, Aundre was born with spina bifida and cerebral palsy. The social worker testified that the osteomyelitis developed because Sheila McK. did not properly take care of him. Both Sheila McK. and the boy's father, whose case is not before us, have what the social worker agreed was "cognitive delay," and the authorities charged with ensuring Aundre's health were concerned that Sheila McK. did not have the ability to properly care for Aundre and his significant needs. The social worker told the trial court that the foster parent with whom Aundre was staying wanted to adopt Aundre if the court terminated Sheila McK.'s and the father's parental rights to him.

¶3 After hearing from the social worker, the trial court found that there were grounds to terminate Sheila McK.'s parental rights to Aundre, and that termination was in Aundre's best interests. In her appeal, Sheila McK. does not contend that she either did not default or that the trial court was not justified in hearing evidence in her absence. She also does not challenge the trial court's

determination in the best-interests phase—namely, that once grounds for termination of parental rights were found that it was in Aundre's best interests that Sheila McK.'s parental rights to him be terminated. Accordingly, we limit our discussion to whether the State satisfied its burden on whether there was sufficient evidence presented at the hearing to justify finding that the State had met its burden of proof on the parental-responsibility ground. ***Ibid.***

II.

¶4 A trial court may enter default judgment in a termination-of-parental-rights case if the parent without excuse does not appear for the fact-finding hearing, as long as the trial court holds a fact-finding hearing and finds, based on that evidence, that the State has proven "by clear and convincing evidence" that there are grounds to terminate the defaulting parent's parental rights. ***Evelyn C. R. v. Tykila S.***, 2001 WI 110, ¶¶17–26, 246 Wis. 2d 1, 13–18, 629 N.W.2d 768, 774–776. As noted, the trial court here held the required evidentiary hearing. Thus, the issue is whether there was sufficient evidence to support its findings that the State proved by clear and convincing evidence that Sheila McK. had failed to assume parental responsibility for Aundre. We uphold a trial court's findings of fact unless they are "clearly erroneous." WIS. STAT. RULE 805.17(2); *see* ***State v. Raymond C.***, 187 Wis. 2d 10, 16, 522 N.W.2d 243, 246 (Ct. App. 1994) (applying "clearly erroneous" standard in a termination-of-parental-rights case).

¶5 WISCONSIN STAT. § 48.415(6) provides:

> (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have 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. 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, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ever expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

Section 48.415(6)(b) encompasses within the concept of "substantial parental relationship" whether the birth-parent "has neglected … to provide care … for the child." That care, of course, must be commensurate with the child's needs—here, significant and substantial. Thus, mere temporal and geographical confluence between a biological parent and his or her child does not prevent the fact-finder from determining that the biological parent did not give to the child requisite parental care. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶32, 259 Wis. 2d 429, 450, 655 N.W.2d 752, 762. This is true even though the biological parent may have been prevented by circumstances, here, arguably mental illness, from providing that care. *Cf*. ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 684, 500 N.W.2d 649, 654 (1993) ("[T]he Wisconsin legislature has concluded that a person's parental rights may be terminated without proof that the person had the opportunity and ability to establish a substantial parental relationship with the child.").

¶6 Sheila McK. contends, however, that ***Quinsanna D.*** "was wrongly decided" and that the word "never" in WIS. STAT. § 48.415(6)(a) makes even transitory care and concern sufficient to establish the requisite "substantial parental relationship." We disagree. Indeed, the joint brief filed by the State and

the guardian *ad litem* puts it well: "To hold the definition of a 'substantial parental relationship' to such a low standard is to make a mockery of the 'paramount goal' of Chapter 48, 'to protect children.' Wis. Stat. § 48.01(1)(a)." Moreover, we are bound by ***Quinsanna D.*** *See* ***Cook v. Cook***, 208 Wis. 2d 166, 185–190, 560 N.W.2d 246, 254–256 (1997) (court of appeals bound by published decisions of the court of appeals).

By the Court.—Order affirmed.

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