

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2011

A. John Voelker
Acting 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. 2010AP2157

Cir. Ct. No. 2009TP31

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

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

MARATHON COUNTY DEPARTMENT OF SOCIAL SERVICES,

PETITIONER-RESPONDENT,

v.

LARRY O.,

RESPONDENT,

JULIE H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Marathon County:
VINCENT K. HOWARD, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ Julie H. appeals an order terminating her parental rights to Nadia H. Julie argues the evidence was insufficient to support the circuit court's finding that she did not comply with the conditions for return of Nadia in a CHIPS dispositional order. Based on our review of the record, we conclude there is sufficient evidence to uphold the circuit court's determination. We affirm.

BACKGROUND

¶2 In May 2007, Nadia was removed from Julie's home due to risk of neglect. Nadia was placed in foster care. The County filed a petition alleging Nadia was a child in need of protection or services. A jury subsequently found Nadia to be in need of protection or services, and the court entered a dispositional order in August 2008. Nadia remained in foster care.

¶3 In October 2009, the County filed a petition to terminate Julie's and Larry O.'s parental rights to Nadia.² As a basis for the request to terminate the parental rights, the County alleged the parents had not made efforts to comply with specific conditions outlined in the dispositional order and, consequently, Nadia remained a child in need of continuing protection or services.

¶4 For Julie, the County alleged she had failed to comply with conditions five, seven, and eight. These conditions provide:

5. The mother of the child shall submit to random [urine analyses] to determine whether she has consumed any alcohol or other drugs as a condition for the return of the child to her home....

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² Larry's parental rights were also terminated. Larry has not appealed.

-
7. The parents must meet the basic needs for their child. Meeting the basic needs for the child will be measured by the parents' ability to:
 - a. Provide for security needs for the child, such as protection, safety, and supervision.

-
8. The parents will follow recommendations made by Dr. Steven Benson's psychological evaluation.... The parents shall address treatment issues identified by Dr. Benson with said treating therapists. The parents shall then undergo a second evaluation within four months of the disposition to determine whether progress has been made toward treatment goals....

¶5 At a trial to the circuit court, the County offered testimony from Debra Jakel. Jakel supervised the case from August 2006 until August 2009. Jakel testified about the formation of the conditions in the dispositional order and Julie's subsequent compliance with them. Jakel explained that the condition for random urine analyses was imposed because the Marathon County Department of Social Services was concerned about Julie's marijuana use. For example, Jakel explained when Nadia was first removed from Julie's home, Julie told Jakel that she would sleep for time periods of one and one-half days. Jakel testified that originally Julie's drug screens were negative but once Julie was off probation, the test results were consistently positive. Julie refused AODA, telling Jakel she did not have a problem. The Department was concerned that Julie's substance abuse would interfere with her ability to parent a child as young as Nadia.

¶6 Explaining additional safety concerns, Jakel testified that Dr. Benson had evaluated Julie's live-in fiancé, Richard S., who was a registered child sex offender, and found him to be a potential safety concern for Nadia. Jakel discussed with Julie the Department's concern regarding Richard and told Julie

that Richard would need to follow Benson's recommendations for therapy and visitation before the Department would deem it safe for Nadia to return home. Jakel testified that Richard has not participated in therapy and visits.

¶7 Benson testified that he evaluated Julie on two occasions and diagnosed her with bipolar disorder, attention deficient disorder, post-traumatic stress disorder, and narcissistic personality disorder. He recommended Julie seek treatment for these mental health disorders. Benson testified that Julie refused to accept at least two of her diagnoses.

¶8 Julie testified she uses marijuana to control her bipolar disorder. Julie explained she submitted to random drug screens; however, she admitted she missed a few appointments. Julie also conceded she knew Richard would have to participate in Benson's therapy and visit recommendations before her home would be considered safe for Nadia. Julie opined Richard would not be a threat to Nadia, reasoning in part that he has not had an opportunity to reoffend. Finally, Julie testified that except for the diagnosis of bipolar disorder, she completely disagreed with Benson's mental health diagnoses.

¶9 The circuit court found Julie had not complied with the conditions for return. The court noted Benson diagnosed Julie with a narcissistic personality disorder, and Julie dismissed his diagnosis. The court found Julie continuously put herself before Nadia, and it questioned whether Julie could provide for Nadia's safety.

¶10 As an example, the court highlighted Julie's marijuana use and expressed concern that Julie was using marijuana to self-medicate instead of seeking proper prescription medication. The court found it interesting that Julie could abstain from marijuana use while on probation but could not abstain when it

could affect her child's return to her. In terms of Richard, the court noted that although Julie cannot control whether Richard participates in therapy or visitation, Julie needed to make the "tough choice" of deciding whether she wanted her child back or whether she wanted to live with Richard. Finally, the court concluded that because Julie refused to accept Benson's diagnoses and recognize her various mental health issues, she did not comply with Benson's treatment recommendations. The circuit court found Julie to be an unfit parent and, following a dispositional hearing, terminated Julie's parental rights.

DISCUSSION

¶11 Wisconsin uses a two-part statutory procedure for the involuntary termination of parental rights. "In the first, or 'grounds' phase of the proceeding, the petitioner must prove by clear and convincing evidence that one or more of the statutorily enumerated grounds for termination of parental rights exist." *Steven V. v. Kelley H.*, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856.

¶12 In this case, the County petitioned for the termination of Julie's parental rights, alleging Nadia continued to be a child in need of protection or services. As a result, the County needed to prove that Julie "has failed to meet the [CHIPS dispositional] conditions established for the safe return of the child to the home." See WIS. STAT. § 48.415(2)(a)3.

¶13 Julie alleges there was insufficient evidence to support a finding that she failed to comply with the dispositional order conditions. A fact finder's decision must be sustained if there is any credible evidence, when viewed in a light most favorable to the prevailing party, to support it. See *State v. DeLain*, 2005 WI 52, ¶11, 280 Wis. 2d 51, 695 N.W.2d 484. "Although we apply the standard set out in *DeLain*, we are mindful that terminations of parental rights are

among the most severe forms of state action, involving as they do the awesome authority of the State to destroy permanently all legal recognition of the parental relationship.” *Sheboygan County DHHS v. Tanya M.B.*, 2010 WI 55, ¶49, 325 Wis. 2d 524, 785 N.W.2d 369 (quotations omitted).

¶14 First, Julie argues the condition that she provide for Nadia’s protection and safety did not specifically state that for her home to be considered safe, she must either force Richard to participate in therapy and visits or not live with him. Julie argues no one told her that she had to choose between Richard and Nadia. We reject her argument, noting she testified that she knew Richard would have to participate in therapy and visits in order for her home to be considered safe. Moreover, we determine the evidence of Richard’s nonparticipation along with Julie’s knowledge that Richard’s nonparticipation continued to make her residence unsafe sufficiently supports a finding that Julie did not provide for Nadia’s safety.

¶15 Second, Julie argues the County failed to prove noncompliance with Benson’s treatment recommendations. She contends that the condition does not say she must agree with Benson’s diagnoses, and she asserts that as long as she was seeing a therapist for mental health,³ she was complying with Benson’s recommendation for treatment. We conclude the evidence of Julie’s refusal to accept Benson’s diagnoses and seek treatment for these disorders is sufficient to support a finding that Julie violated the condition to comply with Benson’s treatment recommendations.

³ At trial, Julie testified she had stopped seeing her therapist months ago because of a billing discrepancy, but planned on returning to therapy in the future.

¶16 Finally, Julie argues the condition that she participate in random urine analyses only meant she was required to submit to drug screens—not abstain from illegal drug use. Julie asserts the County’s evidence of her repeated positive drug screens shows compliance with the condition. In response, the County argues that even if the condition meant she was only supposed to participate in random drug screens, Julie testified she missed test appointments.⁴

¶17 At the outset, we find preposterous Julie’s argument that she was permitted to use illicit substances as long as she complied with drug screening. Regardless, the circuit court determined Julie’s marijuana use evidenced a *safety* concern because she was self-medicating with the marijuana instead of seeking proper treatment and proper prescription medicine for her bipolar disorder.⁵ Condition seven required Julie to provide for Nadia’s safety and security. Further, the court found that Julie’s choice to abstain from marijuana while on probation compared with her decision to begin using once off probation, showed an example of Julie’s narcissism—specifically, she was putting her needs first, regardless of the consequences to Nadia. The court noted Julie refused to get treatment for Benson’s diagnosis of narcissism, which was in violation of condition eight. We conclude the record establishes there was sufficient evidence supporting the circuit court’s determination that Julie failed to comply with the dispositional order conditions for return.

⁴ We suggest that precisely worded conditions of return in CHIPS dispositional orders would eliminate needless appellate issues.

⁵ Julie testified that none of her treating therapists approved of her marijuana use.

By the Court.—Order affirmed.

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