

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 6, 2013

Diane M. Fremgen
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 Nos. 2013AP637
2013AP638
2013AP639**

**Cir. Ct. Nos. 2011TP097
2011TP098
2011TP362**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SHIPRIA C.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SHIPRIA C.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

SHIPRIA C.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County:
JOHN DiMOTTO, Judge. *Affirmed.*

¶1 BRENNAN, J.¹ Shipria C. appeals from the circuit court's orders terminating her parental rights to her children Jay'vion W. (born January 27, 2008), Jay'liyah W. (born May 4, 2009), and Jay'den W. (born December 24, 2010).² Shipria argues that there was insufficient evidence from which the jury could reasonably conclude that she would not meet the court-ordered conditions

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The parental rights of the children's fathers are not before us on appeal.

for the return of her children within nine months following the fact-finding hearing. We disagree and affirm.

BACKGROUND

¶2 On August 29, 2009, Shipria took her three-year-old daughter Ja'zhyia H. to the emergency room for a burn injury to the child's foot.³ Upon examination of the injury, doctors concluded that someone had intentionally inflicted the injury. Shipria was the only adult with the child on the night of the burn, and she denied knowing how the injury occurred. Consequently, on August 31, 2009, emergency room physicians alerted the police and the Bureau of Milwaukee Child Welfare ("BMCW") of a suspicious injury to a child.

¶3 On September 2, 2009, based on grounds of medical and supervisory neglect, the circuit court issued a temporary physical custody order for Ja'zhyia and for Shipria's two other children, nineteen-month-old Jay'vion and four-month-old Jay'liyah. Pursuant to the order, the BMCW took the children under its temporary protection.

¶4 On September 8, 2009, the State filed children-in-need-of-protection-or-services ("CHIPS") petitions for Jay'vion and Jay'liyah. At a hearing on January 21, 2010, the circuit court granted the CHIPS petitions for both children. On February 12, 2010, the circuit court entered a dispositional order placing the children outside of Shipria's home and listing the conditions of return while warning of possible termination of parental rights.

³ Shipria's parental rights to Ja'zhyia are not before us on appeal.

¶5 Later that year, on October 27, 2010, Shipria pled guilty to the criminal charge of neglecting a child for the injuries Ja'zhyia sustained on August 29, 2009. At sentencing, on December 9, 2010, the circuit court stayed Shipria's five-year sentence and instead placed her on probation for three years, ordering her to 180 days of incarceration as a condition of her probation.⁴

¶6 On December 24, 2010, while Shipria was incarcerated, she gave birth to Jay'den. Thereafter, on December 29, 2010, the State filed a temporary physical custody petition for Jay'den, and on January 3, 2011, the State filed a CHIPS petition. On April 26, 2011, the circuit court found Jay'den to be a child in need of protection and services, and on May 31, 2011, the circuit court entered a dispositional order pertaining to the conditions of Jay'den's return to Shipria while warning of possible termination of parental rights.

¶7 Two months before the circuit court entered the dispositional order for Jay'den, on March 29, 2011, the State petitioned for the involuntary termination of Shipria's parental rights to Jay'vion and Jay'liyah. The State petitioned to terminate on the grounds of continuing CHIPS and for failure to assume parental responsibility. On December 8, 2011, the State also petitioned for the involuntary termination of Shipria's parental rights to Jay'den on the same grounds. The circuit court consolidated the three cases on February 27, 2012.

¶8 From May 22 through 25, 2012, the circuit court held a fact-finding hearing on whether there were grounds to terminate Shipria's parental rights to all three children. At the hearing, the State called Molly McGregor, the case manager

⁴ Shipria testified that she was incarcerated from December 9, 2010 through April 10, 2011.

in charge of the case from January 2010 through April 2011. McGregor testified that she did not believe Shipria had satisfied the dispositional conditions necessary for the children's return, requiring Shipria to work with a "parenting assistant, home management, individual therapy and participate in visitation."

¶9 McGregor testified that Shipria's behavior was cyclical, in that she "at times would engage very well ... and there was sometimes that she would not cooperate at all to the extent of flat out being there and not engaging." McGregor noted that Shipria missed so many scheduled visitations with the children that BMCW reduced the number of visitations from two per week to one, and that when Shipria did come, she was often late and her interactions with the children were poor. Because the children experienced behavioral changes and were sad when they came to see Shipria and she was not there, the BMCW attempted to institute a call-ahead policy. However, the policy failed because Shipria would call and tell the agency workers she was coming, the children would come for a visit, and Shipria still would not show up. Furthermore, McGregor testified that while Shipria did attend some parenting classes, she often spent that time texting rather than participating and failed to utilize any of the skills she was being taught at the parenting classes during visitation.

¶10 McGregor also testified that Shipria did not satisfy the condition that she attend individual therapy. McGregor testified that while she had referred Shipria to numerous therapy providers, all of the providers discharged Shipria either for failing to attend scheduled appointments or for failing to contact them at all.

¶11 McGregor also testified that Shipria did not understand the needs of her children as evidenced by her actions when she attended scheduled visitations.

Shipria would often raise her voice with the children, swear at the social workers in front of the children, and say “shut up” a lot. McGregor testified that on one occasion Jay’viyon, who was two years old at the time, hit Shipria. Shipria then hit the child back, and even after the objections of the visitation workers, continued to hit the child. McGregor also testified that Shipria “struggled” to understand “age-appropriate expectations” for the children. For example, McGregor testified regarding a visit during which Jay’liyah, who was one year old at the time, finished her bottle and needed more. Shipria called the child “spoiled” and “needy” and did not appear to “understand[] exactly what an infant would require and when.”

¶12 The State also called Tanya Bitter-Schnell, the case manager who supervised the case from December 2009 through April 2011, and again, from September 2011 until January 2012. Bitter-Schnell testified that Shipria was not making the behavioral changes addressed by the court-ordered conditions for return. Bitter-Schnell cited Shipria’s failure to follow through on referrals to agencies and service providers, as well as concerns regarding her failure to regularly attend visitation and her behavior at the visitations she did attend. Bitter-Schnell also expressed concern that Shipria had lost her job and her home and failed to take advantage of the services provided to her by BMCW to obtain housing. Furthermore, Shipria’s inability to obtain housing, or to keep in touch with BMCW regarding where she could be contacted, made it difficult to help Shipria obtain the services she needed.

¶13 Ashley Steinberg, the case manager since January 2012, testified that after nearly two years, Shipria still had not met the condition of completing individual therapy. Steinberg based her testimony on the fact that at visits Shipria

would still get angry and frustrated with the children and often yell at them, including Jay'den, the seventeen-month-old child. Steinberg also testified that she recently referred Shipria to a new therapy agency. The therapy agency attempted to contact Shipria on five different occasions and on each occasion the therapist failed to reach Shipria even though they had the correct number.

¶14 Concerning the requirement of acquiring stable housing conditions, Steinberg testified that Shipria currently resided in an apartment with a roommate who owned drug paraphernalia. Steinberg observed the drug paraphernalia in plain sight on two separate occasions, the more recent occasion being a month before the hearing, even though Steinberg had warned Shipria that the drug paraphernalia was inappropriate.

¶15 Shipria also testified. When asked if she believed she had met all the requirements necessary to regain her children, Shipria stated, "I believe I have, and I believe there's stuff that I haven't met." Regarding her attitude and issues at visitation, Shipria testified that she never had problems with the children; the only problems she ever had were with the workers who were supervising the visitation. Shipria also testified that the reason she would miss or be late to visitations was because she had "a lot going on, and it never just was like oh, well, forget my kids."

¶16 At the conclusion of the fact-finding hearing, the jury found that: (1) each child had been found to be in need of services and protection; (2) each child had lived outside Shipria's home for longer than six months; (3) the BMWWC made a reasonable effort to provide services; (4) Shipria failed to satisfy the dispositional conditions necessary for the return of each child; and (5) there was a substantial likelihood that Shipria would not meet the conditions for return

of each child within nine months. The jury also unanimously found that Shipria had *not* failed to assume parental responsibility for each of the children.

¶17 The circuit court found that there was a basis in the record for the jury's verdicts, noting that only ten of the twelve jurors agreed that there was a substantial likelihood that Shipria would not meet the conditions for return within nine months, but that only ten jurors were needed to be in agreement to reach a verdict. As such, the circuit court found that the State had established grounds for termination based upon a continuing-CHIPS petition and found Shipria unfit.

¶18 On August 21, 2012, and November 6, 2012, the circuit court conducted the dispositional hearing. At the hearing, the circuit court heard testimony from, among others, the children's foster parents, Shipria, and Dr. Michelle Iyamah, an expert witness who administered a parental capacity study of the foster parents and a psychological evaluation of Shipria.

¶19 Following the hearing, the circuit court held that it was in the best interest of the children to terminate Shipria's parental rights. The circuit court found that the likelihood of adoption by the foster parents was very great. Furthermore, the circuit court found that the children did not have a substantial parental relationship with Shipria, but instead had one with their foster parents. In fact, the circuit court found that it would be more harmful to sever the relationship between the children and their foster parents than to sever the relationship between the children and Shipria. Finally, the circuit court found that through terminating Shipria's parental rights the children would "enter [] more stable and permanent family relationship[s]." Given these findings, the circuit court terminated Shipria's parental rights, concluding it was in the best interest of the children. Shipria appeals.

DISCUSSION

¶20 Shipria's primary complaint on appeal is that there is insufficient evidence to support the jury's finding that she was substantially unlikely to meet the required conditions for her children's return within the nine months following the fact-finding hearing. In support of her argument, she points out that two jurors dissented on that issue, and she blames the State and the court proceedings for her inability to find a permanent job.

¶21 To establish the continuing-CHIPS ground for termination of parental rights, the State must prove that: (1) the child has been adjudged to be a child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders; (2) the agency responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the court; (3) the child has been outside the home for a cumulative total period of six months or longer pursuant to such orders; (4) the parent has failed to meet the conditions established for the safe return of the child to the home; and (5) there is a substantial likelihood that the parent will not meet the conditions within the nine-month period following the fact-finding hearing. WIS. STAT. § 48.415(2)(a). Here, Shipria only contends that there was insufficient evidence to support the jury's finding that there was not a substantial likelihood that she would meet the court-ordered conditions of return in the nine months following the fact-finding hearing.

¶22 Terminations of parental rights are civil in nature; thus, grounds for termination must be proven by clear and convincing evidence. *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). We will sustain a jury verdict if there is any credible

evidence to support it. *Morden v. Continental AG*, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659. If this court finds any credible evidence in the record on which the jury could have based its decision, the verdict will be affirmed. *See id.*, ¶39. Accordingly, appellate courts search the record for credible evidence that sustains the jury's verdict, not for evidence to support a verdict that the jury could have reached but did not. *Id.* Moreover, the credibility of witnesses and the weight afforded the evidence are left to the jury. *Id.* Only when the evidence is inherently or patently incredible will the court substitute its judgment for that of the factfinder. *State v. Saunders*, 196 Wis. 2d 45, 54, 538 N.W.2d 546 (Ct. App. 1995).

¶23 In the present case, there is credible evidence to support the jury's finding that Shipria would not meet the court-ordered conditions of return in the nine months following the fact-finding hearing.

¶24 First, the evidence was sufficient to demonstrate that there was a substantial likelihood that Shipria would not meet the court-ordered condition that she address her mental health needs by attending and actively participating in individual therapy. The testimony at the hearing revealed that Shipria had a history of evading or not participating in individual therapy sessions.

¶25 McGregor testified that, during her time as case manager, she had helped Shipria set up individual therapy meetings with at least four different therapists between January 2010 and May 2010. However, with each therapist Shipria either failed to attend the meetings or failed to respond to the therapist's attempts at setting up a meeting. After a certain number of missed meetings or failed attempts, the therapists would drop Shipria. Furthermore, McGregor testified that while Shipria did attend some parenting classes, she often spent that

time texting rather than participating and failed to utilize any of the skills she was being taught during visitation.

¶26 Steinberg similarly testified that while she was case manager Shipria approached her about attending individualized therapy. After referring Shipria to a therapist, the therapist attempted to contact Shipria five times and each time Shipria did not respond or call back. That evidence is sufficient to support the jury's conclusion that Shipria would not meet the court-ordered condition that she actively attend and participate in individual therapy.

¶27 Second, the evidence was sufficient to demonstrate that there was a substantial likelihood that Shipria would not meet the court-ordered condition that she obtain suitable housing and maintain a stable source of income. Bitter-Schnell testified that, from December 2009 through April 2011, Shipria continuously moved to new houses and failed to give Bitter-Schnell her contact information. Steinberg testified that she observed drug paraphernalia in Shipria's current home on two different occasions, most recently, only a month before the hearing, even though Steinberg had warned Shipria that such paraphernalia was inappropriate. While prior to the hearing Shipria had acquired multiple jobs through a temporary job agency, McGregor testified that while she worked with Shipria from January 2010 through April 2011, Shipria was unemployed. While in her brief to this court, Shipria blames her inability to find suitable housing or a stable job on the State and the pending TPR cases, she does not dispute that the facts at the hearing demonstrated that she had not met that particular court-ordered condition. Those facts are sufficient for the jury to conclude that Shipria would not meet the

court-ordered condition that she obtain suitable housing and maintain a stable source of income.⁵

¶28 Third, and perhaps most importantly, the evidence at the hearing was sufficient to support the conclusion that Shipria would not meet the court-ordered requirement that she understand her children's development needs and how to keep her children safe. The evidence at the hearing revealed that Shipria often missed scheduled visitations with the children, or that if she did come, she was often late, and that she failed to apply the knowledge she was given at various parenting classes during her visits with the children. There was testimony that during visitation Shipria was irritated, rude, and aggressive; she would swear, and tell the children to shut up, and threatened to hit them despite being told that such behavior was inappropriate. McGregor testified that during one visitation when two-year-old Jay'vion hit Shipria, Shipria hit him back, and, in fact, continued to hit Jay'vion even over the objections of the visitation workers. McGregor also testified to a visit during which one-year-old Jay'liyah finished her bottle and needed more, and Shipria's response was to call the child spoiled and needy. Rather than take responsibility for her poor parenting choices during visitations, Shipria testified that she never had problems with the children and that her only

⁵ Shipria's brief to this court focuses almost exclusively on the single court-ordered condition for return that she obtain suitable housing and maintain a stable source of income. Her primary complaint is that if she failed to meet this requirement it is the State's fault because her conviction for neglecting a child and the time requirements of the TPR proceedings have frustrated her ability to find a stable job and thereby made it difficult to find suitable housing. Even if we were to accept Shipria's argument, and to be clear, we do not, she ignores the fact that there was substantial evidence in the record to support the jury's conclusion that she also did not satisfy the other court-ordered conditions for the return of her children and likely would not do so in the nine months following the fact-finding hearing. WISCONSIN STAT. § 48.415(2)(a) requires that *all* of the conditions for return be satisfied, not just the condition that she obtain suitable housing and a stable source of income.

problem was with the case workers who supervised the visits. This evidence is sufficient to support the jury's conclusion that Shipria would not meet the court-ordered condition that she understand her children's development needs and how to keep them safe in the following nine months.

¶29 In sum, there is sufficient evidence in the record to support the jury's verdict that Shipria would not meet all the conditions for return in the nine months following the fact-finding hearing. She had already had thirty-three months to do so and had not, and during her testimony Shipria failed to either acknowledge or take responsibility for her past failures, instead choosing to blame the social workers for her mistakes. Moreover, Shipria's insistence in her brief that the dissent of two jurors on this issue should persuade us that the conclusion of the other ten jurors was unreasonable is unconvincing. The agreement of ten jurors is all that is necessary. *See* WIS. STAT. § 805.09 (A verdict agreed to by five-sixths of the jurors shall be the verdict of the jury.); *Door Cnty. DHFS v. Scott S.*, 230 Wis. 2d 460, 465, 602 N.W.2d 167 (Ct. App. 1999) (The rules of civil procedure govern termination-of-parental-rights proceedings.). To hold otherwise, would throw our entire judicial system into disarray by calling into question any verdict on which a juror dissented.

¶30 Finally, we also reject Shipria's conclusory and underdeveloped argument that *Kenosha County Department of Human Services v. Jodie W.*, 2006 WI 93, 293 Wis. 2d 530, 716 N.W.2d 845, requires the immediate return of Jay'den to her care. In *Jodie W.*, we held that the circuit court erred when it "deemed Jodie unfit solely by virtue of her status as an incarcerated person without regard for her actual parenting activities or the condition of her child." *Id.*, ¶¶55-56. That is not the case here. As set forth above, there was sufficient

evidence outside of Shipria's status as an incarcerated person to establish that she was unfit. Any argument to the contrary is completely without merit.

By the Court.—Orders affirmed.

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

