

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 29, 2015

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. 2015AP1726
2015AP1727
2015AP1728**

**Cir. Ct. Nos. 2015TP1
2015TP2
2015TP3**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO M. L. D.,
A PERSON UNDER THE AGE OF 18:**

N. A. H.,

PETITIONER-RESPONDENT,

v.

J. R. D.,

RESPONDENT-APPELLANT.

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO E. N. D.,
A PERSON UNDER THE AGE OF 18:**

N. A. H.,

PETITIONER-RESPONDENT,

v.

J. R. D.,

RESPONDENT-APPELLANT.

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

N. A. H.,

PETITIONER-RESPONDENT,

V.

J. R. D.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Dodge County:
JOSEPH G. SCIASCIA, Judge. *Affirmed.*

¶1 KLOPPENBURG, P.J.¹ J.R.D., the father of three minor children, M.L.D., E.N.D., and V.A.D., appeals the orders terminating his parental rights to the children. The father argues that the orders should be reversed because: (1) the petition to terminate did not give him sufficient notice of the grounds for termination; and (2) the circuit court demonstrated a “lack of impartiality” when, according to the father, it “told the Petitioner [mother] to proceed on different grounds.” For the reasons set forth below, I reject the father’s arguments and affirm.

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

BACKGROUND

¶2 The following is a summary of the undisputed facts. N.A.H. is the mother, and J.R.D. is the father, of M.L.D., E.N.D., and V.A.D. The mother and father divorced in 2009.

¶3 On January 2, 2015, the mother filed petitions to terminate the father's parental rights to each of the children and stated as grounds for termination WIS. STAT. § 48.415(1), (2), and (6).² The mother attached to each of the petitions a statement of facts and circumstances supporting those grounds.

¶4 On March 19, 2015, the father filed a motion to dismiss on the basis that “the facts alleged in the petition do not support facts and circumstances to establish grounds for termination under secs. 48.415 (1), (2), or (6), Stats.”

¶5 The circuit court held a hearing on March 30, 2015. The court dismissed the grounds under WIS. STAT. § 48.415(1) and (2), but found that adequate notice had been given under § 48.415(6) and, therefore, allowed the mother to proceed on that ground.³ The court rescheduled the trial to begin on April 14, 2015.

² WISCONSIN STAT. § 48.415 enumerates various grounds for involuntary termination of parental rights. Subsection (1) is abandonment. Subsection (2) is continuing need of protection or services. Subsection (6) is failure to assume parental responsibility.

³ The court also noted that the statement of facts “describes the grounds in [WIS. STAT. § 48.415(4)], even though it doesn't specifically refer to that subsection.” WISCONSIN STAT. § 48.415(4) concerns the “continuing denial of periods of physical placement or visitation” ground for termination of parental rights.

¶6 After a bench trial, the circuit court found sufficient evidence supporting two separate grounds for termination of the father’s parental rights—continuing denial of periods of physical placement or visitation under WIS. STAT. § 48.415(4) and failure to assume parental responsibility under § 48.415(6). The court also found the father unfit and that it was in the best interests of the children that the father’s parental rights be terminated.

DISCUSSION

¶7 The father does not challenge the circuit court’s trial findings as to the father’s fitness or the children’s best interests. Rather, the father argues that the orders terminating his parental rights should be reversed because: (1) the petition to terminate did not give him sufficient notice of the grounds for termination; and (2) the circuit court demonstrated a “lack of impartiality” when, according to the father, it “told the Petitioner [mother] to proceed on different grounds.” As I explain below, I reject the father’s arguments because: (1) the petition sufficiently alleged facts supporting the failure to assume parental responsibility ground for termination of parental rights under WIS. STAT. § 48.415(6); and (2) the father fails to show that the circuit court was biased against him.

A. Sufficiency of Pleadings

¶8 “The sufficiency of a pleading presents a question of law.” *Sheboygan Cnty. v. D.T.*, 167 Wis. 2d 276, 282, 481 N.W.2d 493 (Ct. App. 1992). “In reviewing the sufficiency of a pleading in a juvenile court proceeding, we may draw reasonable inferences from the allegations in the petition.” *Monroe Cnty. v. Jennifer V.*, 200 Wis. 2d 678, 684-85, 548 N.W.2d 837 (Ct. App. 1996)

¶9 “Wisconsin, like the federal system, has ‘notice pleading’ so that legal disputes are resolved on the merits of the case rather than on the technical niceties of pleading.” *Hlavinka v. Blunt, Ellis & Loewi, Inc.*, 174 Wis. 2d 381, 403, 497 N.W.2d 756 (Ct. App. 1993) (quoted source omitted). However, “a pleading must give the defending party fair notice of not only the plaintiff’s claim but ‘the grounds upon which it rests’ as well.” *Id.* (quoted source omitted).

¶10 The sufficiency of a petition for termination of parental rights is controlled by WIS. STAT. § 48.42, which reads:

(1) PETITION. A proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child’s parent, an agency or a person authorized to file a petition under s. 48.25 or 48.835. The petition shall be entitled “In the interest of (child’s name), a person under the age of 18” and shall set forth with specificity:

....

(c) One of the following:

1. A statement that consent will be given to termination of parental rights as provided in s. 48.41.
2. *A statement of the grounds for involuntary termination of parental rights under s. 48.415 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.*

(Emphasis added.)

¶11 Here, the mother alleged as one ground for termination WIS. STAT. § 48.415(6), the failure to assume parental responsibility, which is “established by proving that the parent ... ha[s] not had a substantial parental relationship with the child.” *See* WIS. STAT. § 48.415(6)(a). That subsection provides that the fact

finder “may consider such factors, including, but not limited to, whether the person has 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.” WIS. STAT. § 48.415(6)(b).

¶12 The mother alleged the following facts and circumstances to support the alleged ground:

- In 2010, the circuit court reduced the father’s periods of placement and ordered him to comply with certain conditions.
- The circuit court subsequently suspended all periods of placement and, again, ordered the father to comply with certain conditions in order to regain placement with his children.
- As of the date of the petition, the father has failed to comply with those conditions and has not seen or spoken to his children since 2010.
- The father owed over \$7,500 in child support.

A fact finder could reasonably infer from the alleged facts that the father has not “expressed concern for or interest in the support, care or well-being of the child” and has “neglected or refused to provide care or support for the child.” *See* WIS. STAT. § 48.415(6)(b). Therefore, the petition to terminate the father’s parental rights sufficiently alleged facts supporting the failure to assume parental responsibility ground for termination of parental rights under WIS. STAT.

§ 48.415(6) and, accordingly, satisfied the pleadings requirements under WIS. STAT. § 48.42(1)(c)2.⁴

B. Circuit Court Bias

¶13 The father argues that the orders terminating his parental rights should be reversed because the circuit court’s “lengthy exchange” with the mother’s counsel demonstrated objective bias. Whether the circuit court “was a neutral and detached magistrate as mandated by the United States and Wisconsin Constitutions is a question of constitutional fact that we review de novo without deference to the [circuit] court.” *State v. McBride*, 187 Wis. 2d 409, 414, 523 N.W.2d 106 (Ct. App. 1994).

¶14 Generally, “there is a presumption that a judge is free of bias and prejudice.” *Id.* “To overcome this presumption, the party asserting judicial bias must show that the judge is biased or prejudiced by a preponderance of the evidence.” *Id.* at 415. “When evaluating whether a [party] has rebutted the presumption in favor of the court’s impartiality, we generally apply two tests, one subjective and one objective.” *State v. Goodson*, 2009 WI App 107, ¶8, 320 Wis. 2d 166, 771 N.W.2d 385. The issue here is whether the circuit court was objectively biased. “[T]he appearance of partiality constitutes objective bias when

⁴ The parties also dispute whether the petitions to terminate the father’s parental rights sufficiently gave notice of an alternative ground for termination, WIS. STAT. § 48.415(4), the “continuing denial of periods of physical placement or visitation” ground. As noted above, the petitions gave sufficient notice of the failure to assume parental responsibility ground for termination under § 48.415(6). Therefore, I do not address the alternative ground for termination. See *Barrows v. American Family Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) (“An appellate court need not address every issue raised by the parties when one issue is dispositive.”).

a reasonable person could question the court's impartiality based on the court's statements." *Id.*, ¶9.

¶15 Here, the father contends that the circuit court's exchange with the mother's counsel during the hearing on the father's motion to dismiss demonstrated "the court's assistance to [the mother] and rebuts the presumption of impartiality." The father suggests that the circuit court should have "simply rule[d] on [the father's] motion to dismiss" and that it was improper for the court to have gone "through the petition addendum line-by-line." The father points to portions of the transcript where the circuit court asked the parties clarifying questions and suggested that the alleged facts may also support an alternative ground for termination.

¶16 None of this constitutes objective bias. First, it is expected that the circuit court would have read the attached statement of facts "line-by-line" in order to determine whether it sufficiently alleges facts supporting the grounds for termination. Second, there is nothing improper about the circuit court asking the parties clarifying questions. Third, the father's counsel also had a lengthy exchange with the circuit court spanning several pages of transcript. In sum, the father fails to show that any reasonable person could question the court's impartiality here, and therefore, the father's judicial bias argument fails.

CONCLUSION

¶17 For the reasons set forth above, I affirm the circuit court's orders terminating the father's parental rights to each of the children.

By the Court.—Orders affirmed.

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

