COURT OF APPEALS
DECISION
DATED AND FILED

July 31, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1057 **Cir. Ct. No. 2013TP29**

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

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

PORTAGE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

JULIE G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Portage County: TODD P. WOLF, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.[1] Julie G. appeals an order terminating her parental rights to her daughter, Brooklyn K. A jury found that grounds existed to terminate Julie's parental rights to Brooklyn based on "continuing need of protection or services" (continuing CHIPS) under WIS. STAT. § 48.415(2), and "failure to assume parental responsibility" under § 48.415(6). Julie raises four main arguments in this appeal: (1) the Portage County Department of Health and Human Services (the Department) failed to prove the continuing CHIPS ground because the Department did not prove that Julie received the warnings required by WIS. STAT. § 48.356; (2) the order terminating Julie's parental rights "based on continuing CHIPS must be vacated because many of the conditions of return were impossible for Julie to meet" due to her incarceration; (3) the jury's finding that grounds existed to terminate Julie's parental rights to Brooklyn based on failure to assume parental responsibility is not supported by substantial evidence; and (4) Julie is entitled to a new trial in the interest of justice because the closing argument made by the Department's counsel "so confused the issues before the jury that the real controversy was not fully tried." For the reasons that follow, I reject each of these arguments and affirm the circuit court's order.

BACKGROUND

The Termination of Parental Rights Proceeding Generally

¶2 Wisconsin uses a statutory two-part process for the involuntary termination of parental rights (TPR). ***Sheboygan Cnty. Dep't of Health & Human Servs. v. Julie A.B.***, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402.

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

The first phase is a fact-finding hearing (trial) "to determine … [w]hether grounds exist for the termination of parental rights." WIS. STAT. § 48.424(1)(a). During this phase, "'the parent's rights are paramount.'" ***Julie A.B.***, 255 Wis. 2d 170, ¶24 (quoted source omitted). "[T]he 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. "If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit." WIS. STAT. § 48.424(4).

¶3 The second phase of the TPR proceeding is a dispositional hearing, where the focus shifts to the best interest of the child. ***Julie A.B.***, 255 Wis. 2d 170, ¶28. Based on the child's best interest, the court may dismiss the petition or terminate parental rights. *See* WIS. STAT. § 48.427(2), (3).

Facts in This Case

¶4 Julie G. is the biological mother of Brooklyn K., who was born in November 2008. On April 5, 2013, the Department filed a petition seeking to terminate Julie's parental rights to Brooklyn. As grounds for termination, the Department alleged continuing CHIPS, pursuant to WIS. STAT. § 48.415(2), and failure to assume parental responsibility, pursuant to § 48.415(6)(a).

¶5 During the grounds phase, Julie elected to have the case tried to a jury. The facts that follow are taken from the testimony presented and evidence introduced at the trial.

¶6 Brooklyn was first removed from Julie's home in January 2010. At that time, the Department was providing services to Julie because a CHIPS order was in place for her older son. Brooklyn's removal in January 2010 followed an

unannounced visit to Julie's home by a Department social worker and Julie's probation agent. Regarding this visit, the Department social worker testified that:

- Julie's home was in "disarray," with "[p]otatoes all over the house, dishes on the counter, in the sink, [and] rotting food in the refrigerator."
- Julie's probation agent asked to see Julie's medications, and Julie was not able to present the bottle for her Adderall prescription.
- The bottle containing Julie's Ambien prescription also contained pills "that didn't match up with the other ones." When Julie's probation agent called the pharmacy regarding these pills, the pharmacy stated that it did not carry that type of Ambien and would not have distributed it.
- Brooklyn had "significant diaper rash."

Julie was subsequently taken into custody on a probation hold and placed in jail.[2]

¶7 On January 12, 2010, Portage County filed a "Petition for Protection or Services," alleging that Brooklyn was a "child ... in need of protection or services" under WIS. STAT. §§ 48.13(1) and 48.13(10m).[3] The January 2010 petition stated that Brooklyn was placed outside the home because Julie was incarcerated and unable to care for Brooklyn.

¶8 On April 8, 2010, the circuit court held a dispositional hearing and issued a dispositional order. The April 2010 order indicated that the court found Brooklyn to be a child in need of protection or services under WIS. STAT. §§ 48.13(1) and 48.13(10m) and continued Brooklyn's out-of-home placement.

[2] Julie was released from jail in March 2010.

[3] The 2011-12 version of WIS. STAT. §§ 48.13(1) and 48.13(10m) is the same as the 2009-10 version that was in effect when the petition was filed.

¶9 The April 2010 order also contained conditions for Julie to meet to have Brooklyn returned to her home and written warnings of the potential grounds for termination of parental rights. The conditions for return required Julie to:

- Complete a mental health assessment and follow any recommendations made as a result of that assessment;
- Cooperate with the services of a home and financial manager in the areas of budgeting, daily living, parenting, and visitation;
- Complete an alcohol and other drug abuse (AODA) assessment and follow any recommended treatment made as a result of such assessment;
- Participate in individual and family counseling at the direction of the designated mental health provider;
- Remain under the care of a psychiatrist and take any medication as prescribed by the psychiatrist;
- Cooperate with the mental health case manager from the Community Support program and follow any recommendations made by the mental health case manager;
- Cooperate with the social worker assigned to monitor the CHIPS court order;
- Sign all necessary releases of information for her and Brooklyn as requested by the social worker;
- Allow the assigned social worker and home and financial manager access to her home at any time;
- Participate in regular visitation with Brooklyn;
- Maintain safe, healthy, and suitable housing for her and Brooklyn;
- Cooperate with her probation agent and follow all rules of her court-ordered supervision.

The April 2010 order also stated that the Department planned to provide Julie with the following services: "psychiatric and psychological services, parental capacity evaluation, home and financial management, AODA assessment, case

management, supe[r]vised/monitored visits and other needed services as identified."

¶10 Brooklyn was returned to Julie's home on August 23, 2010. Even though Brooklyn was returned to Julie's home, the Department's case remained open. A new Department social worker was assigned to Julie's case in October 2010. The Department social worker testified that at that time Julie "was doing really well."

¶11 The Department social worker testified that she visited Julie at her home at least once a month, and that in July 2011 she became concerned with changes in Julie's behavior. The social worker testified that, starting in July 2011: "[A]t home visits [Julie] was very resistant. She would repeat herself a lot. She had rapid speech. She just seemed completely unfocused. She had lost employment." The social worker visited Julie "two or three times" in July 2011 and "about four times" in August 2011 because she "was concerned for [Julie's] welfare and the children's welfare." The social worker testified:

> [Julie] was at risk for losing her housing. She'd gotten a disconnection notice, so she didn't have utilities. We were trying to help her maintain her housing. There was money[] available to make sure that could be paid. It was very odd because in the past she was eager, willing to accept help from us, but for some reason she didn't want to do the paperwork. She didn't want to cooperate with W-2 and emergency assistance to get the resources she needed to maintain the housing for herself and her kids.

The social worker further explained that Julie became "paranoid" and "was talking about legal matters" even though "[a]t that time she didn't have legal matters going on." The social worker "asked [Julie] for a urine screen because [she] was

worried [Julie] was using drugs or misusing prescription medication, and [Julie] refused a urine screen."[4]

¶12 In July 2011, Julie also started to talk about moving. The Department social worker testified that she informed Julie "if you move, you have to tell me where you're going." The social worker made an unannounced visit to Julie's home on either August 24, 2011, or August 25, 2011, and Julie was not home. The home was dark and it did not look like anyone was living there. The social worker was unable to locate Julie until August 29, 2011, when the Department found Julie and her children at Julie's friend's house. The social worker testified that at that time Julie "was insistent that she was going to be leaving now that I [the social worker] knew where she was. [Julie] was still focused on legal matters that didn't really make any sense … and I [the social worker] really was concerned that she was misusing medication." The Department removed Brooklyn from Julie's care on August 29, 2011, because of these concerns.

¶13 On August 31, 2011, the circuit court issued an "Order for Temporary Physical Custody," which placed Brooklyn outside Julie's home based on the court's finding that "[c]ontinuation of residence in the home at this time" was "contrary to [Brooklyn's] welfare." The August 2011 order contained three conditions for Julie to meet to have Brooklyn returned:

[4] Julie and the Department social worker also testified regarding Julie's mental health issues and drug use. Julie testified that she has been diagnosed with depression, obsessive-compulsive disorder, and bipolar disorder. The social worker testified that Julie has struggled with amphetamine use and has been diagnosed with "opiate and amphetamine abuse," and that there have "been concerns [Julie] abused Xanax, Ambien and morphine."

> First, Julie needs to provide an address for ... whoever she will be staying with. Second, the social worker has to confirm that this is an appropriate residence. Third, [Julie] will have to make an appointment with her mental health worker to have a drug screen done to determine whether her levels of medication are appropriate. If these three things are done, the social worker can return [the] children to her.

The Department social worker testified that Julie made no efforts to comply with these conditions, and instead "laughed … and said, nice try, Judge, but no thanks."

¶14 In September 2011, Julie was arrested, charged with threatening a judge, and placed in jail. Julie was subsequently convicted of this offense, sentenced to a six-year term of imprisonment, and placed at Taycheedah Correctional Institution.

¶15 Julie had been incarcerated for over two years by the date of the TPR trial, which was held in December 2013. The Department social worker testified that Brooklyn was at that time five years old. The social worker testified that during Brooklyn's five years of life, Brooklyn had been placed outside of Julie's home for a total of thirty-eight months.

¶16 At the close of the trial, the jury found grounds to terminate Julie's parental rights based on continuing CHIPS and failure to assume parental responsibility. The circuit court thereafter found Julie unfit, pursuant to WIS. STAT. § 48.424(4). The court then held a dispositional hearing, pursuant to WIS. STAT. § 48.427, after which the court terminated Julie's parental rights to Brooklyn. Julie now appeals.

DISCUSSION

¶17 As stated, Julie raises four main arguments, all relating to the trial in the initial grounds phase of the TPR proceeding. I address each argument in turn.

Whether Julie Received the Warnings Required by WIS. STAT. § 48.356

¶18 Julie argues that the Department failed to prove the continuing CHIPS ground for termination of her parental rights because the Department "did not prove [that] Julie received" the warnings required by WIS. STAT. § 48.356. More specifically, Julie asserts:

> In order to terminate a parent's rights to his or her child pursuant to continuing CHIPS, the petitioner must prove that the relevant order placing the child outside of the home contained warnings to the parent of the possibility of termination of parental rights. Pursuant to Wis. Stat. § 48.415(2), the court order placing the child out of the home must contain the notice required by Wis. Stat. § 48.356(2) …. The record in this case fails to establish that notice.

¶19 Julie's argument invokes two related statutes: WIS. STAT. § 48.415(2) and WIS. STAT. § 48.356. Subsection 48.415(2) provides that grounds to terminate a parent's rights based on "[c]ontinuing need of protection or services … shall be established by proving," among other factors:

> (a) 1. That 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 under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 *containing the notice* required by s. 48.356(2) or 938.356(2).

(Emphasis added.) Section 48.356 provides in relevant part:

> (1) Whenever the court orders a child to be placed outside his or her home … because the child … has

> been adjudged to be in need of protection or services under s. 48.345, 48.347, 48.357, 48.363, or 48.365 and whenever the court reviews a permanency plan under s. 48.38 (5m), the court shall orally inform the parent or parents who appear in court … of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child … to be returned to the home ....
>
> a. In addition to the notice required under sub. (1), *any written order which places a child … outside the home* … shall notify the parent or parents … of the information specified under sub. (1).

(Emphasis added.)

¶20 Julie relies on ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607, to support her lack-of-warnings argument.[5] However, Julie's case is distinguishable from ***Steven H.*** In ***Steven H.***, the father challenged the validity of the petition seeking to terminate his parental rights to his daughter on the basis that some of the orders that placed his daughter outside the home did not contain the written notice prescribed by WIS. STAT. § 48.356(2). ***Steven H.***, 233 Wis. 2d 344, ¶10. The supreme court explained that while two of the orders that initially placed the daughter outside the home did not contain the written notice prescribed by § 48.356(2), "[t]he last order entered a year before the start of the proceeding to involuntarily terminate parental rights did contain the written notice required by § 48.356(2)." ***Steven H.***, 233 Wis. 2d 344, ¶¶18, 23. The supreme court rejected the father's argument that "any and all orders … must contain the statutory written notice in order for the termination proceedings to be

[5] Julie also discusses ***State v. Patricia A.P.***, 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995). The issue in ***Patricia A.P.*** was whether the State violated the mother's due process rights by "substantially chang[ing] the type of conduct that may lead to the loss of [parental] rights without notice to the parent." ***Id.*** at 863. Julie acknowledges that this is not the issue in this appeal, and I therefore do not address ***Patricia A.P.*** further.

valid," and held: "Under [WIS. STAT.] § 48.415(2) the parents will be given adequate notice of the conditions for return and time to make any necessary changes to forestall the termination of parental rights if the *last order* issued at least six months before the filing of the petition involuntarily terminating parental rights contains *the written notice*." ***Id.***, ¶31 (emphasis added).

¶21 In Julie's case, the TPR petition was filed on April 5, 2013. Based on the representations of the parties and the evidence introduced at trial, the last order issued before the filing of the TPR petition was the "Order for Revision and Order for Change of Placement," which was issued by the circuit court on February 3, 2012. The order states that "[a] request for change of placement was filed" and a "hearing on the request was held on ... February 3, 2012, which is the effective date of this order." The order reflects that the circuit court granted the Department's request to change Brooklyn's out-of-home placement. The order also states that Julie was present at the hearing, and that "[t]he parent(s) who appeared in court have been orally advised of the applicable grounds for termination of parental rights (TPR) and the conditions that are necessary for a safe return to the home or a restoration of visitation rights. Written TPR Warnings are attached." Two documents are attached to the order: a document entitled "Updated and Revised Court Conditions for the mother, Ms. Julie [G]"; and a document entitled "Notice Concerning Grounds to Terminate Parental Rights."

¶22 The "Notice Concerning Grounds to Terminate Parental Rights" states in relevant part:

> Your parental rights can be terminated against your will under certain circumstances. A list of potential grounds to terminate your parental rights is given below. Those that are check-marked may be most applicable to you, although you should be aware that if any of the others also exist now or in the future, your parental rights can be taken from you.

> **Abandonment.** *Any of the following must be proven by evidence that:*
>
> ....
>
> You have failed to visit or communicate with your child for: three months or longer after your child has been placed, or continued in a placement, outside your home by a court order.
>
> ....
>
> **Continuing Need of Protection or Services.** *As proven by evidence that:*
>
> A court placed, or continued in a placement, your child outside your home after a judgment that your child is in need of protection or services under §§48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365, Wis. Stats., and:
>
> - The agency responsible for the care of your child has made a reasonable effort to provide the services ordered by the court;
> - Your child has been outside your home for a cumulative total period of six months or longer under a court order;
> - You have failed to meet the conditions established for the safe return of your child to your home; and,
> - There is a substantial likelihood that you will not meet these conditions within the 9-month period following the fact-finding hearing under §48.424, Wis. Stats.
>
> ....
>
> **Failure to Assume Parental Responsibility.** *As proven by evidence that:*
>
> - You are or may be a parent of a child.
> - You have not had a substantial parental relationship with the child.

¶23 Julie does not argue that she did not receive the February 2012 order containing these warnings. Instead, she argues that the Department failed to prove

that she received the warnings because her signature does not appear on the "Notice Concerning Grounds to Terminate Parental Rights." I reject her argument for two reasons.

¶24 First, Julie points to no authority supporting her contention that the "Notice Concerning Grounds to Terminate Parental Rights" must be signed by her for the Department to prove that she received the warnings prescribed by WIS. STAT. § 48.356. Julie's argument finds no support in the statutes on which she relies. WISCONSIN STAT. § 48.415(2)(a)1. requires proof "[t]hat the child has been adjudged to be a child … in need of protection or services and placed … outside his or her home pursuant to one or more court orders … *containing the notice* required by s. 48.356 (2) …." (Emphasis added.) WISCONSIN STAT. § 48.356(2) requires that "any written order which places a child … outside the home … *shall notify the parent* or parents … of the information specified under sub. (1)." (Emphasis added.) The information specified under § 48.356(1) is "any grounds for termination of parental rights under s. 48.415 which may be applicable," and "the conditions necessary for the child … to be returned to the home." Consistent with these statutes, the February 2012 order warned Julie that her parental rights to Brooklyn could be terminated on the grounds of abandonment, continuing CHIPS, and failure to assume parental responsibility, and also notified Julie of the conditions for Brooklyn's return.

¶25 Julie's argument also finds no support in ***Steven H.*** That case contains no discussion regarding whether the written notice must be signed by the parent to comply with WIS. STAT. § 48.356(2). The father in ***Steven H.*** asserted that he did not receive the last written order containing the warnings prescribed by § 48.356(2). ***Steven H.***, 233 Wis. 2d 344, ¶8 n.5. The supreme court rejected this argument and noted that: the father was in court when the order was issued; the

circuit court gave the father an oral warning that his parental rights were in danger of being terminated and informed him of the conditions necessary for his daughter's return; and the written order containing the warnings was sent to the father. ***Id.***, ¶8. In sum, nothing in the legal authority cited by Julie supports her argument that proof that she received the required warnings depends on her having signed the notice containing those warnings.

¶26 Second, evidence in the record exists to support a finding that the Department did prove that Julie received the required warnings. Regardless whether Julie signed the "Notice Concerning Grounds to Terminate Parental Rights," the February 2012 order states that: Julie was in court when the order was issued; and she was orally advised of the grounds for termination of parental rights and the conditions necessary for Brooklyn's return. The order on its face provides, "Written TPR Warnings are attached," and indicates that the order was distributed to Brooklyn's parents. The circuit court admitted the February 2012 order into evidence at trial, and the jury was allowed to examine the order during deliberations. The court order is official documentary evidence, on which the jury could rely. *See* ***Steven V.***, 271 Wis. 2d 1, ¶37 (noting that court orders constitute official documentary evidence that can satisfy the burden of proof, albeit as to matters not at issue here). Based on this evidence, the jury could have found that the Department proved that Julie received the February 2012 order and notice containing the warnings prescribed by WIS. STAT. § 48.356. I therefore reject Julie's argument to the contrary.

Whether the Continuing CHIPS Ground for Termination Was Based on Conditions for Return That Were Impossible for Julie to Meet

¶27 Relying on ***Kenosha Cnty. Dep't of Human Servs. v. Jodie W.***, 2006 WI 93, 293 Wis. 2d 530, 716 N.W.2d 845, Julie contends that her

substantive due process rights were violated because the conditions imposed upon Julie for Brooklyn's return in the most recent court order were "not tailored to [Julie's] status as an incarcerated person" and were impossible for her to meet due to her incarceration. I reject Julie's argument because it overstates the ruling in ***Jodie W.***, and because Julie's case is distinguishable from ***Jodie W.***

¶28 The court in ***Jodie W.*** ruled that court-ordered conditions for return must be tailored to a parent's status as an incarcerated person "in cases where a parent is incarcerated and the only ground for parental termination is that the child continues to be in need of protection or services *solely* because of the parent's incarceration." ***Id.***, ¶51 (emphasis added). As I explain below, this ruling does not apply here because the continuing CHIPS ground for termination of Julie's parental rights was based on Julie's actual parenting activities, and not solely on her incarceration.

¶29 ***Jodie W.*** involved a TPR proceeding under WIS. STAT. § 48.415(2), continuing CHIPS. 293 Wis. 2d 530, ¶¶8, 16. The TPR petition in ***Jodie W.*** alleged that the mother had failed to meet the condition of return requiring her to "obtain, maintain and manage a suitable residence" for her child, and that there was a substantial likelihood that the mother would not meet this condition within the next twelve months because of her incarceration. ***Id.***, ¶¶7-8. The court in ***Jodie W.*** held that the mother's substantive due process rights were violated because she was deemed 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. The court explained: "[A] parent's failure to fulfill a condition of return due to his or her incarceration, *standing alone*, is not a constitutional ground for finding a parent unfit." ***Id.***, ¶49 (emphasis added). In reaching this conclusion, the court explained that: there was no indication that the mother "had

problems maintaining a home" or had "exhibited any parental deficiencies" before her incarceration; the mother was incarcerated for nonviolent offenses (fourth-offense operating while intoxicated, and fleeing an officer); her sentence was less than four years; and she had made significant progress toward meeting many of the other conditions for the return of her child. ***Id.***, ¶¶4, 53, 54.

¶30 The facts in Julie's case are distinguishable from those in ***Jodie W.*** In ***Jodie W.***, prior to the mother's incarceration there was "no evidence of previous involvement by social services." ***Id.***, ¶4. Here, by contrast, the Department was involved with Julie and Brooklyn before Julie's most recent period of incarceration, as evidenced by the testimony of the Department social workers and the series of orders introduced at trial. Two of the orders, issued in April 2010 and August 2011, in particular demonstrate the Department's involvement with Julie and Brooklyn prior to Julie's current period of incarceration.

¶31 The April 2010 order contained conditions for Brooklyn's return and outlined the services the Department planned to provide to Julie. Among other things, these services included: psychiatric and psychological services; home and financial management; AODA assessment; case management; and other needed services as identified. However, despite the services provided by the Department, Julie continued to struggle with providing safe and suitable housing for Brooklyn, which was a condition for Brooklyn's return. For example, between July 2011 and August 2011, Julie's utilities were disconnected and Julie lost her low-income housing. The Department social worker testified that the Department had money available to pay for Julie's rent and was "trying to help her maintain her housing," but Julie refused "to cooperate with W-2 and emergency assistance to get the resources she needed to maintain [her] housing."

¶32 The August 2011 order, which removed Brooklyn from Julie's home, set forth three simple conditions that the circuit court imposed upon Julie for Brooklyn's return: allow the social worker to conduct a safety assessment of her home, meet with her mental health provider, and provide a urine screen. In the approximately one month between when the order was issued in August 2011 and Julie's incarceration in September 2011, Julie made no effort to comply with these conditions. As the Department social worker testified, Julie "laughed ... and said, nice try, Judge, but no thanks."

¶33 While it is true that certain of the conditions for return in the February 2012 order were impossible for Julie to meet because of her incarceration, unlike in ***Jodie W.***, a number of the conditions in that and earlier orders had gone unmet before Julie was incarcerated. It was Julie's inability to fulfill the conditions set forth in earlier orders issued before her incarceration, not after, that provided the basis to find that grounds existed to terminate Julie's parental rights to Brooklyn.

Whether There was Sufficient Evidence Regarding Julie's Failure to Assume Parental Responsibility

¶34 Julie argues that the evidence was insufficient to support the jury's finding that grounds existed to terminate Julie's parental rights based on failure to assume parental responsibility. The parties agree that if I reject Julie's challenges to the continuing CHIPS ground, I need not decide her challenge to the sufficiency of the evidence. Julie also does not suggest any reason why there would need to be more than one valid ground for termination of her parental rights. Because I have rejected Julie's challenges to the continuing CHIPS ground, I do not decide whether the evidence was sufficient to support the jury's finding that grounds

existed to terminate Julie's parental rights based on failure to assume parental responsibility.

Whether Julie is Entitled to a New Trial in the Interest of Justice based on the Department's Closing Argument

¶35 Julie argues that certain statements made by the Department's counsel during his closing argument "so confused the issues before the jury that the real controversy was not fully tried." The Department responds that Julie forfeited this argument by failing to object to the allegedly erroneous statements at trial. Julie concedes that her trial counsel failed to object to the statements, and she therefore requests that this court exercise its discretionary authority under WIS. STAT. § 752.35 to grant her a new trial in the interest of justice. Not only did Julie's trial counsel fail to object during the Department's counsel's closing argument, but in addition, Julie's trial counsel did not seek a cautionary or curative instruction. This prevented the circuit court from having the opportunity to correct any alleged error, and in essence conceded at trial that the statements did not cross the line to such a degree that the real controversy was not fully tried. *See* ***State v. Doss***, 2008 WI 93, ¶83, 312 Wis. 2d 570, 754 N.W.2d 150; ***State v. Guzman***, 2001 WI App 54, ¶25, 241 Wis. 2d 310, 624 N.W.2d 717. I therefore conclude that Julie forfeited this argument by failing to object at trial, and I decline to grant Julie a new trial in the interest of justice on this basis.

CONCLUSION

¶36 For the reasons set forth above, I affirm the circuit court's order terminating Julie G.'s parental rights to Brooklyn K.

By the Court.—Order affirmed.

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