COURT OF APPEALS
DECISION
DATED AND FILED

April 25, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

Nos. 99-1777 & 99-1813

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO KENDALL J. AND DARRIS P., PERSONS UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

FLOYD P.,

RESPONDENT-APPELLANT.

IN RE THE TERMINATION OF PARENTAL RIGHTS TO KENDALL J. AND DARRIS P., PERSONS UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ZENA H.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: MICHAEL J. DWYER, Judge. *Affirmed.*

¶1 CURLEY, J.[1] Floyd P. and Zena H. appeal the judgment terminating their parental rights to their children, Kendall J. and Darris P. Zena argues that the trial court erred in terminating her rights to the children because: (1) the termination of her parental rights to Kendall pursuant to WIS. STAT. § 48.415(10) was unconstitutional as her equal protection and due process rights were violated; (2) applying the newly-enacted ground for termination found in § 48.415(10) subjected her to an improper *ex post facto* law; (3) § 48.415(10) was improperly applied retroactively to her; (4) with respect to the § 48.415(6)(a) ground, Zena was not warned in Darris's original dispositional order that her parental rights could be terminated under § 48.415(6)(a); and (5) § 48.415(6)(a) was improperly applied retroactively regarding Kendall because when the original dispositional order placing him outside the home occurred, this ground for termination did not exist. Floyd argues that: (1) the trial court erred when it dismissed a venireman for cause; (2) there was insufficient evidence to support the jury's verdict that he never established a substantial parental relationship with his children; and (3) the trial court erroneously exercised its discretion when, at the dispositional hearing, it terminated his rights to the children. This court affirms.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise stated.

I. BACKGROUND.

¶2 Kendall J. was born October 2, 1992, and Darris P. was born February 1, 1996. Zena H. is their mother, and Floyd P., their father. Floyd P., although not married to Zena, was adjudicated their father in 1997. Zena and Floyd have had a long-standing relationship and both have a history of drug addiction. Kendall first came to the attention of the authorities when he was born with cocaine in his system. He was found to be in need of protection and services and was taken into protective custody. He was placed with a foster mother where he has lived since he was four days old. The first dispositional order finding him to be in need of protection or services was entered on February 11, 1993. Darris was also born with cocaine in his system and was found in be in need of protection or services. He was placed in foster care when he was ten days old where he has lived since that time. The first dispositional order concerning Darris was filed July 29, 1996. Various conditions were placed on Zena for the return of Kendall and Darris, most of them dealing with her drug addiction. Zena was unable to meet these conditions. After the dates of the initial orders removing the children from Zena's care, numerous extensions of the original orders were regularly requested and granted.

¶3 During the early lives of both children, Floyd, when not incarcerated, lived with Zena. Various reports document the fact that since the children's births, both Zena and Floyd have continually used drugs. The evidence at trial disclosed that both parents failed to meet most of the conditions placed on them which would have permitted the return of the children, and that they continued to use illegal drugs, despite the frequent offers of drug counseling and drug treatment. Testimony also revealed that there was little cooperation between Zena and Floyd and the social workers for the children. For example, testimony at

trial corroborated the fact that both parents evinced an indifferent attitude towards the children's chronic medical problems which require continual care and treatment.

¶4 The original petition seeking to terminate the parental rights of both Zena and Floyd to Kendall was brought on December 18, 1997. This petition sought to terminate their rights on two grounds, that they had failed to assume parental responsibility pursuant to WIS. STAT. § 48.415(6)(a), and that the children have continually needed protection and services pursuant to WIS. STAT. § 48.415(2). WIS. STAT. § 48.415(6)(a) reads:

> **(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY.** (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.

WIS. STAT. § 48.415(2)(a)3 reads:

> 3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

The petition was later amended, and an additional ground under § 48.415(10) for the termination of Zena's parental rights to Kendall was added. This occurred after it was discovered that Zena had had her parental rights to two other children terminated earlier. WIS. STAT. § 48.415(10) reads:

> **(10) PRIOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS TO ANOTHER CHILD.** Prior involuntary termination of parental rights to another child, which shall be established by proving all of the following:
>
> (a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13 (2), (3) or (10).
>
> (b) That, within 3 years prior to the date the court adjudged the child who is the subject of the petition to be in need of protection or services as specified in par. (a), a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

¶5 The petition for the termination of Zena and Floyd's parental rights to Darris was commenced on January 21, 1998. The first two grounds for termination listed in this petition were the same as those found in the petition dealing with Kendall. Later, the two petitions were consolidated for trial. Prior to trial, the trial court directed a verdict finding that grounds existed under WIS. STAT. § 48.415(10) to terminate Zena's parental rights to Kendall. Then the jury returned a verdict finding that there were grounds under §§ 48.415(2) and § 48.415(6)(a) to terminate Zena's parental rights. The jury also found that there were grounds to terminate Floyd's parental rights under § 48.415(6)(a), but not under § 48.415(2). The trial court denied Zena's postjudgment motion asking for dismissal of the grounds under WIS. STAT. § 48.415(10) and § 48.415(6)(a), but the trial court did grant her motion to dismiss the ground found in § 48.415(2) because the trial court concluded that the State failed to comply with the warnings required by WIS. STAT. § 48.356(2).

¶6 Pursuant to WIS. STAT. § 48.426, a dispositional hearing was held on March 12, 1998. The trial court found both parents unfit as to both children. The

trial court then addressed the best interests of the children and found that it was in their best interests if both parents' rights were terminated.

II. ANALYSIS.

A. *Zena's arguments are without merit.*

¶7 Zena argues that the trial court erred in finding that grounds existed under WIS. STAT. § 48.415(10) to terminate her parental rights to Kendall. She makes multiple arguments. First, noting that this statute interferes with her fundamental right to raise her children, she observes that in order to be found constitutional, the statute must be narrowly tailored to serve a legitimate and compelling interest of the state. She contends that this statute is not narrowly drawn because it does not require an actual finding of unfitness by the fact finder. Thus, she contends that it is over-inclusive and overbroad. As a result, she claims that its application violated her right to equal protection and due process and the statute is unconstitutional. Second, she argues that since this statute was passed after the initial dispositional order concerning Kendall, it was an *ex post facto* law, and finally, she claims it was unlawfully applied retroactively to her.

¶8 Zena next argues that the trial court erred when it refused to overturn the jury's determination that grounds existed to terminate her parental rights under WIS. STAT. § 48.415(6)(a) to Darris and Kendall. She asserts that she was not properly warned in the original dispositional order concerning Darris, as required under WIS. STAT. § 48.356(2), that her parental rights could be terminated for her failure to assume parental responsibility pursuant to § 48.415(6)(a). Although she concedes that the warning was contained in later orders extending the initial placement, she submits that, in order to bring a termination of parental rights under this ground, the State was required to warn her in the initial order removing

Darris from her care and custody. She relies on the holding in ***Winnebago County DSS v. Darrell A.***, 194 Wis. 2d 627, 534 N.W.2d 907 (Ct. App. 1995), for her contention that her rights cannot be terminated on this ground because not all of the orders specifically mentioned this ground as a basis for the termination of her parental rights. As to Kendall, Zena argues that since § 48.415(6)(a) was first passed by the legislature after Kendall's first dispositional order, a termination proceeding under this ground constitutes an *ex post facto* law violation and, in any event, it was unlawful to apply it retroactively.

¶9 The State and the guardian ad litem respond that WIS. STAT. § 48.415(10) is constitutional because, while depriving Zena of a fundamental liberty, it is narrowly drawn and serves the compelling state interest of the welfare of children. Further, the State and the guardian ad litem submit that neither § 48.415(10) nor § 48.415(6)(a) violate the rule against *ex post facto* laws because these are not criminal statutes, and it is clear from the legislative history of § 48.415(10) that the legislature intended for the statute to be applied retroactively. The State and the guardian ad litem also contend that termination under § 48.415(6)(a) was proper because Zena was given the required warning in the extensions of the dispositional order, and further, it was not improper to apply it retroactively because this statute codifies the known and obvious obligations of a parent. This court agrees with the State's and the guardian ad litem's contentions.

¶10 There is a strong presumption that a statute is constitutional. *See* ***State v. Thiel***, 188 Wis. 2d 695, 706, 524 N.W.2d 641 (1994). When one challenges the constitutionality of a statute, the burden of proof falls upon that party. Whenever a party challenges the constitutionality of a statute, that party must prove the statute is unconstitutional beyond a reasonable doubt. *See* ***Darrell A.***, 194 Wis. 2d at 637.

¶11 It is clear that Zena is being deprived of a fundamental right and, as a consequence, the State must have both a compelling interest in the deprivation of the right and the State must narrowly tailor the infringement to serve the state's interest. *See* ***Reno v. Flores***, 507 U.S. 292, 301-02 (1993); *see also* ***Santosky v. Kramer***, 455 U.S. 745, 753-54 (1982). Further, this court must strictly scrutinize the statute. *See* ***K.N.K. v. Buhler***, 139 Wis. 2d 190, 21, 407 N.W.2d 281 (Ct. App. 1987) ("When certain fundamental rights are affected by governmental action, a strict judicial scrutiny is required."). The care and protection of children is of compelling interest to the state. A review of Chapter 48 of the Wisconsin Statutes confirms that its paramount goal is to protect children. See WIS. STAT. § 48.01(1)(a). The need to protect the health and welfare of children is a compelling interest that would permit the deprivation of a fundamental right. *See* ***R.D.K. v. Sheboygan County Soc. Servs. Dep't.***, 105 Wis. 2d 91, 110, 312 N.W.2d 840 (Ct. App. 1981). Thus, the first prong of the analysis is met.

¶12 With regard to the second prong, WIS. STAT. § 48.415(10) establishes that a parent's rights to a child can be terminated if there is currently a CHIPS petition for that child, and three years before this CHIPS proceeding was commenced, the parent's rights to another child were terminated. Zena does not contest the fact that her parental rights to two other children, Kena and Kenneth, were terminated in March 1992. Nor does she dispute that the CHIPS proceedings for Kendall were commenced within the three-year time period following the earlier termination. Rather, Zena argues that since the statute "automatically" finds actual unfitness without a determination by the fact finder that weighs the seriousness or egregiousness of her conduct which resulted in the new CHIPS order, it is unconstitutional because it is overbroad and over-inclusive. She also argues that since it was not in existence when her parental rights to her two other

children were terminated, it is also unfair to apply this ground to her. This court is not persuaded.

¶13 In reviewing WIS. STAT. § 48.415(10), it is readily apparent that the statute was designed to streamline parental termination proceedings when a parent was previously found to be unfit, resulting in the loss of that parent's rights to a child, and a new CHIPS petition raises concerns about the parent's ability to properly care for another child. Thus, the statute's intent is to protect other children from parents who have previously been adjudged unfit. The statute affects only those parents who meet the short timeline set forth in the statute, as it requires that the two conditions precedent take place within three years. Thus, it is this court's conclusion that the statute is narrowly tailored because it only applies under certain drastic conditions, and then only if they occurred within the last three years. But regardless, another safeguard is also in place which saves this statute from a finding of unconstitutionality. As noted in the holding in ***B.L.J. v. Polk County DSS***, 163 Wis. 2d 90, 470 N.W.2d 914 (1991), the existence of WIS. STAT. § 48.427 defeats any constitutional challenge alleging due process violations to WIS. STAT. § 48.415.

¶14 In ***B.L.J.***, the supreme court held that since § 48.427 requires the trial court to exercise discretion after grounds are established to terminate a person's parental rights, including the option of dismissing the petition if the trial court determines that it is not in the best interest of the child to proceed, the procedure for termination proceedings did not violate due process and equal protection rights. *See* ***id.*** at 103-06 & 115. The holding in ***State v. Allen M.***, 214 Wis. 2d 302, 571 N.W.2d 872 (Ct. App.1997), also acknowledges that this statutory scheme that directs the trial court to exercise its discretion even after the fact finder has found sufficient grounds to terminate a parent's rights to a child is a

sufficient safeguard to comport with constitutional requirements. *See* ***id.*** at 315-16 & 321-23. In applying the holdings of these cases to WIS. STAT. § 48.415(10), this court concludes that WIS. STAT. § 48.427 provides sufficient safeguards to protect § 48.415(10) from a constitutional challenge. As a consequence, this court determines that § 48.415(10), when read with § 48.427, is narrowly tailored and serves the legitimate and compelling interests of the state in protecting the welfare of children.

¶15 Zena next argues that she is thus being unfairly subjected to an *ex post facto* law by the application of WIS. STAT. § 48.415(10). Case law would suggest otherwise. In ***Darrell A.***, a similar argument was made to a termination of parental rights order based upon a finding that the father had murdered the children's mother. *See* 194 Wis. 2d at 636. There, the law amended the grounds for termination to include the intentional homicide of the child's parent several years after Darrell A. had been convicted of murdering Amanda's mother. In concluding that the application of the amended statute to Darrell A. was proper, the court held "that sec 48.415(8), STATS., does not constitute an ex post facto law." ***Id.*** at 633-34. This was so, the court declared, because the passage of an amendment to § 48.415 was not done with a punitive intent, and thus, the statute could not be an *ex post facto* violation. *See* ***id.*** at 638. Extrapolating from the holding in ***Darrell A.***, this court concludes that the § 48.415 amendment, including as a ground for termination the fact that a parent has had a prior termination of parental rights within the last three years of a new CHIPS proceeding, is not punitive. Rather, the statute's intent is "to aid children" and, as the trial court noted, to protect them from "two-time losers." Thus, its application here was not an *ex post facto* violation.

¶16 Finally, Zena submits that even if the statute is constitutional and not an *ex post facto* violation, it should not have been retroactively applied to her. Although, as a general rule, a statue operates prospectively, a review of WIS. STAT. § 48.415(10)'s legislative history belies Zena's argument. The legislative history directs that:

> The treatment of section 48.415(10) of the statutes first applies to petitions for termination of parental rights under section 48.42 (1) of the statutes filed on the effective date [July 1, 1996] of this paragraph but does not preclude consideration of prior orders of a court terminating parental rights with respect to a child who is not the subject of the petition in determining whether to terminate, or to find grounds to terminate, the parental rights of a person under section 48.415 (10) of the statutes, as created by this act.

1995 Act 275 § 9310(5)(g). Thus, by passing the amendment to § 48.415(10), the legislature clearly meant it to apply to the facts present here.

¶17 Zena's next argument is based upon her belief that she must be warned of every possible ground for the termination of parental rights in the original dispositional order to satisfy the requirements of WIS. STAT. § 48.356(2). Inasmuch as the original dispositional order placing Darris outside her home contained no warning that there was a possibility that her parental rights could be terminated under WIS. STAT. § 48.415(6)(a), she asserts the trial court was obligated to dismiss this allegation. Recent case law does not support Zena's position. In ***In re the Termination of Parental Rights of Brittany Ann H.***, 2000 WI 28 (decided on March 24, 2000, slip op. 98-3033), the supreme court held that the notice provisions of statutes governing termination of parental rights are satisfied where the last order affecting placement issued at least six months before filing of termination petition contains the required notice. *See* ***id.*** at ¶3. Although the facts in ***Brittany*** concerned the termination of a father's parental rights

pursuant to § 48.415(2), the holding applies with equal strength to the grounds for termination sought here. Zena concedes that she was warned, albeit belatedly, that her parental rights could be terminated under the grounds listed in § 48.415 (6)(a). Thus, under ***Brittany***, she has been properly warned. Further, this court disagrees with Zena's argument that it was unlawful to apply the ground retroactively. Section 48.415(6)(a) states the obvious. A parent must act like a parent. It directs that if a parent fails to exercise significant responsibility for the child, the parent's rights could be terminated. These obligations include supporting, caring and looking out for the well-being of the child. Zena's parental obligations predated the statute, and applying the codification of these obligations to her is hardly unfair.

B. *Floyd's arguments are not persuasive*.

¶18 Floyd first argues that the trial court erroneously exercised its discretion in striking a member of the jury pool who knew his attorney. During *voir dire*, the juror was asked if he knew any of the parties and he replied that he knew "Jodi," Floyd's trial attorney. The assistant district attorney requested that this juror be removed for cause. Floyd's attorney objected. The trial court struck the juror for cause and, in doing so, commented that there were plenty of other jurors available to serve. Floyd asserts that the trial court improperly struck this juror because its reason for striking the juror was because additional jurors were available. Floyd cites ***State v. Ferron***, 219 Wis. 2d 481, 579 N.W.2d 654 (1998), for his contention that because the trial court's ruling was based on an error of law, it constitutes an erroneous exercise of discretion. Further, Floyd submits that under the holding in ***State v. Ramos***, 211 Wis. 2d 12, 564 N.W.2d 328 (1997), the error was not harmless. This court disagrees.

¶19 Contrary to Floyd's assertion, the trial court did not strike the juror simply because there was an ample number of available jurors. Rather, the trial court, in addressing Floyd's attorney's objection to striking the juror, stated: "certainly the fact that jurors know people themselves doesn't make them biased, but that this man is married to a high school friend of yours certainly raises a question and in light of the fact that we have quite a competent jury pool and plenty of jurors as far as I can tell, I think that it's best to error on the side of caution and strike [the juror] for that reason." The clear implication of the trial court's comments is that the trial court was concerned that this juror's response establishing that he knew Floyd's attorney well enough to address her by her first name, and apparently had known her for many years, could lead a reasonable person to believe he would be biased in her favor. As noted in ***State v. Mendoza***, 227 Wis. 2d 838, 596 N.W.2d 736 (1999): "An appellate court will not reverse a circuit court's conclusion [to strike a juror] unless as a matter of law a reasonable judge could not have reached such a conclusion." ***Id.*** at 850. Under the uncontroverted facts presented here, the trial court's conclusion was reasonable. The juror appeared to know Floyd's attorney quite well and for some length of time. The trial court could reasonably surmise that this fact gave the appearance of bias in favor of Floyd and required the juror to be struck.

¶20 Next, Floyd submits that there was insufficient proof to support the jury's finding that he failed to assume parental responsibility for his children. As support for this claim, he argues that since the jury found that "the fact that [he] had not had the opportunity to supervise his children on a daily basis cannot be grounds for termination of parental rights because the jury concluded that [he] was likely to meet his conditions of return in the next twelve months." Further, he asserts that his failure to pay little in child support was the result of his poverty

and not due to his refusal to pay or his neglect, and thus, it is unlawful to base the termination of his parental rights on this basis. This court does not agree with his underlying assertions.

¶21 When reviewing a jury verdict, this court will not upset the jury verdict if any credible evidence supports it. *See* ***Ferraro v. Koelsch***, 119 Wis. 2d 407, 410, 350 N.W.2d 735 (Ct. App. 1984). Here, the jury found that the petition seeking to terminate Floyd's parental rights to the children should be terminated on one ground—that Floyd had failed to assume parental responsibility for the children pursuant to WIS. STAT. § 48.415(6)(a). This statute reads:

> **(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY.** (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.

Substantial parental relationship is defined in § 48.415(6)(b) as:

> (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.

While evidence was presented that Floyd occasionally visited his children and they knew who he was, nevertheless, during their entire lives they never lived with either Floyd or Zena. Floyd argues that he "cannot fairly be criticized for not

providing daily support and supervision over the children" because they were in an out-of-home placement. This court disagrees.

¶22 Floyd glosses over the reality that the children were in an out-of-home placement because Floyd was unwilling and unable to care for them. Floyd regularly failed to meet the conditions which would have permitted him to have custody of his children. The primary reason for Floyd's inability to parent his children was a result of his drug addiction, but Floyd was also prevented from exercising significant responsibility for the daily supervision, education, protection and care of the children because of his attitude and his corresponding lifestyle. As an example, Floyd could not provide suitable housing for them, nor was he knowledgeable about their special medical needs and treatment.

¶23 Further, Floyd's argument that he is being unfairly punished because of his poverty is not supported by the record. Although true that he made no voluntary support payments, the State did not rely heavily on this fact. The State concentrated on evidence that pointed to Floyd's drug use and his refusal to enter drug treatment as leading reasons for his lack of financial support for the children. Thus, contrary to Floyd's assertion, the jury did not punish him for his poverty in its finding that he had failed to assume parental responsibility. Given the evidence, there were ample reasons for finding that Floyd did not have a "substantial relationship" with his children.

¶24 Finally, Floyd submits that the trial court erroneously exercised its discretion by terminating his parental rights because the jury's refusal to find grounds for termination under WIS. STAT. § 48.415(2) supported his position that it was not in the best interest of the children to have his parental rights terminated.

Floyd relies on the following answers given by the jury to these questions in the special verdict:

> Question 10: Has Floyd [P.] failed to demonstrate substantial progress toward meeting the conditions established for the return of Kendall [J.] to his home?
>
> Answer: Yes.
>
> Question 11: Is there a substantial likelihood that Floyd [P.] will not meet these conditions within the twelve-month period following the conclusion of this hearing?
>
> Answer: No.

(Questions 17 and 18 asked the identical questions with respect to Darris, and the jury gave the identical answers.) Floyd reasons that these answers suggest that the jury believed he would correct the circumstances which prevented him from having custody of his children within a year and thus, the trial court erroneously exercised its discretion in terminating his parental rights. This court is not persuaded by his argument.

¶25 First, Floyd misconstrues the jury's answers. As noted in the guardian ad litem's brief, the jury did not find that it was likely that Floyd would meet the conditions within the ensuing twelve months. The jury was simply unable to state that there was a "substantial likelihood" that within twelve months he would *not* meet those conditions. At the dispositional hearing mandated by WIS. STAT. § 48.427, the trial court was required to consider the "best interests of the child" in exercising its discretion. *See* WIS. STAT. § 48.426(2). The factors that the trial court considered in making its "best interests of the child" determination are found in WIS. STAT. § 48.426(3). They are:

> **(3) FACTORS.** In considering the best interests of the child under this section the court shall consider but not be limited to the following:
>
> (a) The likelihood of the child's adoption after termination.
>
> (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
>
> (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
>
> (d) The wishes of the child.
>
> (e) The duration of the separation of the parent from the child.
>
> (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

At the hearing, the trial court recounted that, at the time of the dispositional hearing, the children were nearly seven and three years of age, and Floyd had been given sufficient time to correct the conditions which prevented him from having the care of his children and assuming his parental duties. As the trial court noted, Floyd had done "almost nothing" in regard to his children's care and custody, and the trial court observed that Floyd "doesn't have a clue what it takes to accept responsibility for a child." The trial court observed that Floyd decided to "in effect[,] do the minimum that's required of him." In light of those findings, and given the likelihood that the children could be adopted by their present caretakers, the trial court determined that it was in the children's best interests to terminate Floyd's parental rights. Under the facts presented, the trial court properly exercised its rights in making the decision it did. Accordingly, we affirm the orders of the trial court.

By the Court.—Orders affirmed.

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