COURT OF APPEALS
DECISION
DATED AND FILED

January 13, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1529 **Cir. Ct. No. 2015TP2**

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

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

BARRON COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

J. H.,

RESPONDENT-APPELLANT,

T. T.,

RESPONDENT.

APPEAL from an order of the circuit court for Barron County: JAMES C. BABLER, Judge. *Affirmed*.

¶1 SEIDL, J.[1] J.H. appeals an order terminating her parental rights to E.H. J.H. argues her trial counsel was ineffective, and asks this court to reverse the circuit court's order and grant her a new trial. We affirm the order.

BACKGROUND

¶2 J.H. gave birth to E.H. on May 4, 2011. In June 2012, J.H. was having a difficult time parenting E.H. and contacted the Barron County Department of Health and Human Services (County) to voluntarily place E.H. in foster care. In August 2012, a dispositional order was entered finding E.H. to be a child in need of protection or services based on neglect. The order continued E.H.'s placement in foster care and provided conditions for J.H. to complete before E.H. could return home. As one of those conditions, J.H. underwent a competency evaluation, which revealed she is developmentally disabled with a full-scale IQ of 70. J.H. made considerable progress in meeting the conditions for E.H.'s return home, and on November 1, 2013, E.H. was placed back in J.H.'s care.

¶3 The County continued to provide services to J.H. following E.H.'s return home. Despite these services, J.H. became overwhelmed with caring for E.H. In mid-January 2014, J.H. began to make repeated statements that she was unable to care for E.H. full time. On July 17, 2014, J.H. became extremely upset and threatened to kill herself. J.H. was unable to deescalate during this incident, and as a result, E.H. was placed in respite care. During the next week, J.H. continued to struggle and missed a visit with E.H. At that point, the County filed a

[1] This appeal is decided by one judge pursuant to Wis. Stat. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

temporary physical custody request with the circuit court to return E.H. to foster care. The court granted the County's request and later entered a revised dispositional order setting forth new conditions for J.H. to meet before E.H. could return home.

¶4 On February 13, 2015, the County filed a petition seeking to terminate the parental rights of J.H. and T.T., E.H.'s father. As to J.H., the County alleged a continuing need for protection and services under WIS. STAT. § 48.415(2)(a) as the grounds for termination. J.H. and T.T. requested a jury trial. After the jury had been selected, and outside the presence of the jury but with all the parties present, the court engaged in the following dialogue with T.T.'s counsel:

> [Court:] When we had our in-chambers conference, ... you told me that your client was not really contesting this, but really the petition is all about the mother. Because I think if mother's rights are terminated your client would intend to voluntarily terminate; is that accurate ...?
>
> [T.T.'s counsel:] Yes.
>
> [Court:] So you're here and you may or may not ask questions, but you're here to assist [T.T.] in understanding what's going on; is that accurate?
>
> [T.T.'s counsel:] Absolutely.

¶5 The County presented testimony from John Lapcewich, a licensed psychologist, who completed J.H.'s competency evaluation; Amanda DeLawyer, J.H.'s ongoing caseworker; and five other professionals, who had worked directly with J.H. At one point, DeLawyer testified regarding J.H.'s inability to change. J.H.'s trial counsel did not object to this testimony.

¶6 J.H. testified on her own behalf. She did not call any other witnesses. During the jury instruction conference, the circuit court asked T.T.'s

counsel whether he would be giving a closing argument.[2] T.T.'s counsel indicated he planned to give a "very, very brief" one. T.T.'s counsel's closing argument aligned with that of the County and the Guardian ad Litem (GAL). J.H.'s trial counsel did not object to T.T.'s counsel giving a closing argument.

¶7 The County made the following statements during its closing argument:

> I'm going to talk about each of [the verdict form] questions here in a little bit more detail. Before I do that, we heard a lot of evidence and testimony yesterday about the services provided by the [County], about [J.H.] and [J.H.'s] performance in meeting those conditions for return and in being compliant or non-compliant with those services. As you evaluate all that, I want you to remember something very important, and that's the name of this case. This case is not State of Wisconsin versus [J.H.]. This case is not Barron County Department of Health and Human Services [versus J.H.]. This case is In the Interest of [E.H.]. This case is about the child. So I want you to consider that when you think about all of the services that the [County] provided. They were to ensure the welfare and safety of this child.
>
> When you think about what ... [J.H.] had to do to meet those services, those services were ordered that she submit to [sic] for the purpose of having [E.H.] reunited with her mother in her home. This is about the child. And when you evaluate the likelihood whether or not [J.H.] will meet those conditions, you need to look at that in the context of what this case is really about, which is the child.

J.H.'s trial counsel did not object to these statements.

¶8 At the conclusion of the trial, the jury, in a unanimous verdict, found the County had proven the continuing-need-for-protection-or-services ground for

[2] Up to this point, T.T.'s counsel's participation had been limited. T.T.'s counsel cross-examined one of the County's witnesses, and he did not give an opening statement.

termination against J.H.[3] A dispositional hearing was held on May 13, 2015, after which the circuit court concluded termination of J.H.'s parental rights was in E.H.'s best interest. The court entered an order terminating J.H.'s parental rights.

¶9 J.H. filed a postdisposition motion with the circuit court, arguing her trial counsel was ineffective and requesting a new trial. J.H. identified four instances in which her trial counsel's performance was deficient. J.H. further argued these deficiencies, individually and collectively, prejudiced her case and deprived her of a fair trial.

¶10 Following a postdisposition hearing, the circuit court concluded J.H.'s trial counsel was not ineffective and denied J.H.'s motion for a new trial. J.H. now appeals.

DISCUSSION

¶11 On appeal, J.H. renews her ineffective assistance of counsel claims. The statutory right to counsel in a termination of parental rights (TPR) proceeding includes the right to effective assistance of counsel. ***A.S. v. State***, 168 Wis. 2d 995, 1004-05, 485 N.W.2d 52 (1992). The analysis set forth in ***Strickland v. Washington***, 466 U.S. 668 (1984), for determining whether trial counsel provided ineffective assistance applies equally to involuntary TPR proceedings. ***A.S.***, 168 Wis. 2d at 1005. To prevail in her ineffective assistance claim, J.H. must show both that her trial counsel's performance was deficient and that the deficient performance resulted in prejudice. *See* ***Strickland***, 466 U.S. at 687. Counsel's

[3] After the jury returned its verdict, T.T. voluntarily agreed to terminate his parental rights to E.H. The termination of T.T.'s parental rights is not at issue in this appeal.

performance is deficient if it falls below an objective standard of reasonableness. ***State v. Thiel***, 2003 WI 111, ¶19, 264 Wis. 2d 571, 665 N.W.2d 305 (citing ***Strickland***, 466 U.S. at 688). Deficient performance results in prejudice when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Strickland***, 466 U.S. at 694. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." ***Id.*** When multiple deficiencies are alleged, we assess prejudice based on the cumulative effect of those deficiencies. ***Thiel***, 264 Wis. 2d 571, ¶59.

¶12 An ineffective assistance of counsel claim presents a mixed question of law and fact. ***Id.***, ¶21. We uphold the circuit court's finding of fact unless they are clearly erroneous, but we review de novo whether trial counsel's performance satisfied the constitutional standard for ineffective assistance of counsel. ***Id.***

¶13 First, J.H. argues her trial counsel was deficient for failing to request a modification to the special verdict form that would have required the jury to separately answer whether the services the County provided took into account J.H.'s characteristics, "specifically her learning disability," before it answered whether the County had made a reasonable effort to provide J.H. the necessary services.[4] We disagree that her trial counsel was deficient for failing to do so. When reviewing trial counsel's performance, we are "highly deferential" and

[4] The verdict form submitted to the jury contained the following questions: (1) "Has [E.H.] been adjudged to be in need of protection or services and placed outside the home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law?"; (2) "Did the [County] make a reasonable effort to provide the services ordered by the court?"; (3) "Has [J.H.] failed to meet the conditions established for the safe return of [E.H.] to her home?"; and (4) "Is there a substantial likelihood that [J.H.] will not meet these conditions within the nine-month period following the conclusion of this hearing?" The circuit court answered the first question in the affirmative for the jury.

"indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." ***Strickland***, 466 U.S. at 689.

¶14 The special verdict form asked the jury whether the County made a reasonable effort to provide the services ordered by the court. The circuit court instructed the jury that a reasonable effort means "an earnest and conscientious effort to take good faith steps to provide those services, *taking in consideration the characteristics of the parent* or child, the level of cooperation of the parent, and other relevant circumstances of the case." (Emphasis added.) When J.H.'s trial counsel was asked during the postdisposition hearing whether he had a strategic reason for not proposing the modification to the special verdict form or requesting an additional jury instruction, he explained it was his recollection that the jury instructions "talk[ed] about taking into consideration overall factors." He believed his line of questioning "hammered it that way." He further indicated, "I suppose you could have attempted to do a specific jury instruction, but I think I did that during my questioning and during my closing."[5]

[5] During his closing argument, J.H.'s trial counsel directed the jury's attention to the issue of whether the County had considered J.H.'s developmental disability, arguing in part:

> You've got other questions you're going to be asked. ... But it's Question Number 2 on the list, I think you'd have to say no. I think, under the circumstances of this case, the special needs requirements, characteristics of [J.H.], were not taken in consideration. In fact, if anything, they were basically ignored, except for lip service. And that just ain't right.
>
> Whether or not you think that under the current circumstances she could do it and change within the next nine months? I'm not sure. I don't know if you can—if you can say no, no on that or not, because I don't think she's been getting the line of services that she needs to be able to make a bona fide attempt ....

¶15 J.H.'s trial counsel was permitted under WIS. STAT. § 805.13(3) to request a modification to the verdict form, *see* ***Waukesha Dep't of Soc. Servs. v. C.E.W.***, 124 Wis. 2d 47, 53-54, 368 N.W.2d 47 (1985); however, we conclude his failure to do so did not fall below an objective standard of reasonableness considering the circumstances, *see* ***Strickland***, 466 U.S. at 687-88. Modification of the verdict form to require the jury to separately answer whether the services the County provided took into account J.H.'s characteristics was not legally required, and was unnecessary given the circuit court's instruction to the jury and her trial counsel's closing argument and questioning on the issue. J.H.'s trial counsel was not deficient for failing to request a modified verdict form.

¶16 Because we conclude J.H.'s trial counsel was not deficient in failing to request a modified verdict form, we do not need to consider whether J.H. was prejudiced as a result of his failure to make that request. *See* ***id.*** at 702 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."). However, given the court's instruction, the jury was aware that it had to determine whether the County considered J.H.'s characteristics in providing services. There is not a reasonable probability that had the verdict form been modified to include that question, the results of the proceeding would have been different.

¶17 J.H. also argues her trial counsel was ineffective in three other respects. First, J.H. argues her trial counsel was deficient in failing to object when the County told the jury that this case was about the child and advised the jury to view whether J.H. fulfilled her conditions of return "in the context of what this case is really about, which is the child" during its closing argument. In the alternative, J.H. argues her trial counsel should have "at least" moved the circuit court to instruct the jurors not to consider those statements during their

deliberations. J.H. argues these statements were improper and prejudicial to J.H. because they misstated the law and "inappropriately invited the jurors to consider the child's best interest." According to J.H., had the jury not been told by the County to focus on the child, the jury could have concluded the County did not prove one of the four required elements to find grounds for termination.

¶18 Second, J.H. argues her trial counsel was deficient in failing to bring a ***Daubert***[6] motion challenging Amanda DeLawyer's opinion testimony regarding J.H.'s cognitive state, the nature of J.H.'s learning disability, J.H.'s ability to change, and J.H.'s ability to meet the conditions for E.H's return. J.H.'s argument appears to relate to DeLawyer's following testimony on direct examination:

> [County:] Based upon all of your discussions with [J.H.], the coordinated service team meetings that you've attended for her, and the various other interactions that you've just articulated, do you have any opinion as to whether or not she will be able to meet the conditions for safe return within the next nine months?
>
> [DeLawyer:] I do not believe she can.
>
> [County:] What brings you to that opinion?
>
> [DeLawyer:] A couple different things. *Due to her evaluation and—by Mr. Lapcewich, the fact that she does have a learning disability, that she's, unfortunately, was—was likely born this way, and that can't change*. Because she's been able to demonstrate the same inconsistency in her behaviors for the past three plus years is another reason I don't believe she's able to change.
>
> *She is able to make changes for a very short period of time. However, unfortunately, she's not able to maintain that consistency throughout.* So between her behaviors that she's demonstrated and the evaluation, I do not believe she's able to change.

[6] Referring to ***Daubert v. Merrell Dow Pharm., Inc.***, 509 U.S. 579 (1993).

(Emphasis added.) In her reply brief, J.H. clarified that she does not take issue with DeLawyer's testimony regarding her experiences with J.H. or as a social worker, or with her testimony regarding J.H.'s inability to meet the conditions for E.H.'s return, but rather J.H. takes issue with DeLawyer's testimony regarding J.H.'s "ability to learn and change." According to J.H., DeLawyer appears to have no background in psychology or psychiatry, or other specialized training that would allow her to testify with respect to J.H.'s learning disability. As such, J.H. explains, DeLawyer's testimony on J.H.'s ability to change, and "the science on which it was based[,] was not reliable." J.H. also argues she was prejudiced by this alleged error.

¶19 Third, J.H. argues her trial counsel was deficient in failing to object to T.T.'s counsel's closing argument. According to J.H., "[t]here was no conceivable reason for allowing T.T.'s counsel to argue this case to the jury." J.H. does not dispute that parents in TPR proceedings have a right to counsel and that counsel should be allowed to participate. Rather, J.H. argues that, under WIS. STAT. § 805.10, which governs summation, no more than two attorneys on each side shall sum up for the jury unless otherwise ordered by the court;[7] here, T.T., the GAL, and the County were all aligned. Because the court did not order otherwise, J.H. claims "having three attorneys sum up on behalf of the County plainly violated the statute." J.H. further argues this error prejudiced her case because the closing arguments were "overwhelmingly unbalanced" in favor of the

[7] WISCONSIN STAT. § 805.10 in relevant part states, "Unless the judge otherwise orders, not more than one attorney for each side shall examine or cross-examine a witness and not more than 2 attorneys on each side shall sum up to the jury." Section 805.10 is applicable in TPR proceedings. *See* ***Waukesha Dep't of Soc. Servs. v. C.E.W.***, 124 Wis. 2d 47, 69, 368 N.W.2d 47 (1985).

County's position, and had the jury not been so overwhelmed, "it may have reached a different verdict."

¶20 We need not decide whether J.H.'s trial counsel was deficient in these three instances, because we conclude the alleged errors did not individually or cumulatively result in prejudice to J.H. *See* ***Strickland***, 466 U.S. at 697 (a court need not decide both components of an ineffective assistance of counsel claim if an insufficient showing is made on one). To demonstrate prejudice, it is not enough for J.H. to show that her trial counsel's errors had "some conceivable effect" on the outcome of the trial. *See* ***id.*** at 693. Rather, J.H. must demonstrate there is a reasonable probability that, but for the alleged errors, the results of the proceeding would have been different. *See* ***id.*** at 694.

¶21 Here, the County had to prove by clear and convincing evidence to the jury that it made a reasonable effort to provide the services ordered by the court; J.H. failed to meet the conditions established for E.H.'s safe return home; and there was a substantial likelihood that J.H. would not meet those conditions within the nine-month period after the trial.[8] *See* WIS. STAT. §§ 48.31(1);

[8] DeLawyer testified the conditions for E.H.'s return home in the initial dispositional order were "based on a lot of assessments, a lot of testing, [and] observations with the supervised visits." However, she testified those conditions were a little broad and were not addressing E.H.'s safety. She further explained the revised dispositional order, "tried to break it down a little bit more" for J.H. as to what it was "really looking at in regards to what was safe and what was unsafe." The conditions for E.H.'s return in the Order for Revision of Dispositional Order were broken down into objectives and goals. The objectives consisted of the following: (1) "[J.H.] shall gain the parenting knowledge and skills necessary to assure [E.H.]'s basic needs are met"; (2) "[J.H.] shall perform parental duties and responsibilities to assure [E.H.]'s safety"; and (3) "[J.H.] shall gain an understanding of how her impulsiveness and out of control behaviors play a rol[e] in her daughter[']s life."

(continued)

48.415(2)(a); *see also supra* ¶13, n.4. Given the overwhelming evidence presented at trial supporting the grounds for termination, we are unpersuaded there is a reasonable probability that, absent these alleged errors, the results of the trial would have been different.

¶22 Regarding the services the County provided, DeLawyer testified the County provided J.H. with "numerous services," including parenting education, play groups, respite care, and parenting retraining. DeLawyer additionally explained that when E.H. was returned to J.H.'s care, two contracted service providers checked in daily with J.H. to make sure "things were going okay" and she did not have any questions or concerns. Charity Moe, one of the providers, testified she checked in with J.H. multiple times per day on approximately 158 days and the visits would last anywhere from five minutes to an hour. After E.H.'s removal, supervised visits were conducted between J.H. and E.H. three days per week.

¶23 As to whether the services took J.H.'s developmental disability into account, DeLawyer testified the competency evaluation was required for the purpose of "[t]rying to understand what [J.H.]'s ability is for change, to gain an understanding of what her IQ is and different ways that we could work with

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The goals included: (1) "[J.H.] shall display understanding of basic parenting skills she has learned over time to ensure [E.H.]'s safe and stable growth and development"; (2) "Skills learned shall demonstrate that she is able to transfer skills from one safety situation to another (e.g. the stove is hot; don't touch, if it is a fireplace the same principles would apply)"; (3) "[J.H.] shall be able to demonstrate the ability [to] problem solve to find adequate ways to deal with unplanned and/or complex issues outside of her formal support team"; (4) "[J.H.] will be able to adjust her parenting style based on [E.H.]'s level of development to discipline her with age appropriate consequences"; (5) "[J.H.] shall demonstrate the ability to appropriately discipline [E.H.] based on her age and development"; and (6) "[J.H.] shall demonstrate she is able to identify [E.H.]'s intent behind her behaviors[,] i.e. [E.H.]'s behaviors being purposeful [versus] accidental."

[J.H.]." DeLawyer also indicated that after the evaluation, "service providers were required to talk with [J.H.] through each ... step of whatever they were doing with her." According to DeLawyer, the amount of services provided to J.H. also was more extensive than those provided to individuals without developmental disabilities. Laurie White, who provided parenting education and conducted supervised visits between J.H. and E.H. after E.H.'s July 2014 removal, testified she noticed J.H. struggled with learning from videos, so she used a workbook and storytelling instead, to which J.H. was more responsive.

¶24 Kimberly Robbins, J.H.'s social worker, testified regarding the services she provides to J.H. independent of those services provided by the County. Robbins explained that she and a registered nurse operate as J.H.'s assigned care team. She also provides case management with and for J.H., which includes providing one-to-one support, telephone support, and drop-in visits, as well as coordinating the care J.H. needs related to her disability.

¶25 Regarding the remaining two elements to find grounds for termination, the jurors were instructed:

> In determining whether [J.H.] failed to meet the conditions established for the safe return of [E.H.] to the home, or whether there is a substantial likelihood that [J.H.] will not meet the conditions for the safe return of [E.H.] within the nine-month period following the conclusion of this hearing, you may consider the following: the length of time [E.H.] has been in placement outside the home; the number of times [E.H.] has been removed from the home; the parent's performance in meeting the conditions for return of the child; the parent's cooperation with the social service agency; parental conduct during periods in which [E.H.] had contact with [J.H.]; and all other evidence presented during this hearing which assists you in making these determinations.

It was undisputed that E.H. had been placed outside J.H.'s home for an aggregate of twenty-one to twenty-two months. Laurie White testified that despite modifying her approach to teaching J.H., J.H. was unable to transfer and demonstrate the skills that she had learned. White described one incident, in January 2015, when J.H. had asked whether razors should be kept out of E.H.'s reach; J.H. indicated that she thought they should be because E.H. had cut herself on one, but she was not sure. White stated when she tried to correct J.H. or point out safety concerns, J.H. would become very upset, slam things around, stomp around, and complain.

¶26 White also explained J.H. struggled to make it through the last hour of the five-hour visits.[9] J.H. would watch the clock, pace, and complain that it seemed like a long day. Additionally, White testified she heard J.H. talk numerous times about killing herself. White did not believe J.H. had the ability to complete the conditions for E.H.'s safe return home.

¶27 Patricia Fedie, a licensed psychotherapist, testified that she conducted a parenting retraining program with J.H. over the course of twelve sessions between June 17, 2013, and April 8, 2014. Fedie described parenting retraining as working one on one with clients in building parenting skills. According to Fedie, J.H. did not have a full understanding of attachment and how E.H. could be negatively impacted as a result of being separated from her mother for extended periods of time. J.H. also struggled with consistency and following

[9] White conducted supervised visits between J.H. and E.H. after E.H.'s July 2014 removal from the home. Initially, the supervised visits took place three days a week, four hours each day. However, once E.H. went to school, the visits were changed to three days a week, two hours on two of the days and five hours on the remaining day.

through on the disciplinary techniques that had been taught. Fedie further indicated that over the course of the twelve sessions, J.H. did not make any progress on the different skills she tried to address with her.

¶28 John Lapcewich testified regarding the results of the competency exam. It was his opinion that J.H. is "developmentally disabled and clinically incompetent and ... a vulnerable adult." He explained "clinically incompetent" means J.H. "was going to have a great deal of difficulty functioning independently in her environment." He further testified J.H.'s disability was likely to be permanent, and, at the time of his evaluation, he recommended pursuing guardianship for J.H.

¶29 Charity Moe, who conducted the 158 days of check-in visits, testified that on several instances, J.H. would be agitated and state she did not want E.H. in her home anymore. J.H. would make those statements in front of E.H. On one occasion, J.H. told Moe she wanted to throw E.H. against a wall.

¶30 DeLawyer testified that she received a report from law enforcement in February 2014 because they were concerned J.H. needed more supervision with E.H. J.H. had taken E.H. for a walk in a wagon when it was "about 20 below outside." The law enforcement officers ended up giving E.H. and J.H. a ride home because it was too cold to be outside. DeLawyer also testified that on a regular basis she has observed J.H. make threats and act impatiently and impulsively. DeLawyer indicated J.H. will state in front of E.H. that she should have never had E.H. J.H. also threatened to kill DeLawyer on two occasions. DeLawyer further testified J.H. had created a list of the pros and cons of keeping E.H. In the list, J.H. expressed concern that she would kill or harm E.H. if she kept her.

¶31 J.H. admitted, during her testimony, that she sometimes struggled with controlling her anger, and had threatened DeLawyer and other individuals. When J.H. was asked whether she would actually harm DeLawyer, J.H. stated, "No. She's got three kids of her own to take care of. I [sic] spare her life this time." J.H. later added, "I'll spare it this time, yeah. But I'm not going to kill her myself." J.H. also acknowledged that a few times she had expressed fear that she may harm E.H. However, she explained she made those statements out of frustration and did not mean "to really hurt her." Based on the overwhelming evidence presented at trial, we disagree there is a reasonable probability that, absent the claimed errors J.H. raises, the jury would have reached a different verdict.

¶32 We further disagree that J.H.'s trial counsel's failure to object to T.T.'s counsel's closing argument resulted in prejudice based on WIS. STAT. § 805.10. Section 805.10 provides "[*u*]*nless the judge otherwise orders, ...* not more than 2 attorneys on each side shall sum up to the jury." (Emphasis added.) Here, the circuit court in this case allowed more than two attorneys on the same side to participate in closing arguments, which it was permitted to do. *See* § 805.10; *see also* ***C.E.W.***, 124 Wis. 2d at 69 n.13 (the circuit court has the power to allow more than two attorneys per side to sum up to the jury). As J.H. points out, the court did not make an explicit order. However, in finding that J.H.'s trial counsel was not ineffective for failing to object to T.T.'s counsel giving a closing argument, the circuit court indicated: "Had it been objected to, I would have ordered it. I mean, there's just no doubt in my mind." We therefore fail to see how the results of the trial would have been different if J.H.'s trial counsel had objected.

¶33 We also further disagree that the County's statements during its closing argument that the case was about the child and that the jury should evaluate the likelihood of whether J.H. will meet the conditions of return "in the context of what this case is really about, which is the child" resulted in prejudice based on the circuit court's instructions to the jury. Before closing arguments, the court gave the jurors the following instruction:

> Your role is to answer those questions which, according to the evidence and my instructions, become necessary for you to answer to arrive at a completed verdict. It then becomes my duty to direct judgment according to the law and according to the facts as you have found them.
>
> You are to answer the questions solely upon the evidence received in this hearing. You are to be guided by my instructions and your own sound judgment in considering the evidence and in answering these questions.
>
> You should not concern yourselves about whether your answers will be favorable to one party or to the other, or with what the final result of this case may be.
>
> You should consider carefully the closing arguments of the attorneys. But their arguments, conclusions, and opinions are not evidence. Draw your own conclusions and your own inferences from the evidence, and answer the questions in the verdict according to the evidence and my instructions on the law.

In determining whether a specified error resulted in prejudice, we generally presume that the jury acted according to the law. ***Strickland***, 466 U.S. at 694. We therefore presume in this case that the jury followed the court's instructions on the law and not the statements of J.H.'s trial counsel.

¶34 In summary, we conclude J.H.'s trial counsel did not provide ineffective assistance. J.H. was not deficient in failing to request a modification to the special verdict, and J.H.'s case was not prejudiced by her trial counsel's failure to object to T.T.'s counsel's closing argument and the County's statements during

its closing argument, and failure to challenge DeLawyer's opinion testimony regarding J.H.'s ability to change.

By the Court.—Order affirmed.

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