

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 29, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-2713

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

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

STATE OF WISCONSIN,

**PETITIONER-
RESPONDENT,**

v.

RONNIE G.,

**RESPONDENT-
APPELLANT.**

APPEAL from an order of the circuit court for Kenosha County:
WILBUR W. WARREN, Judge. *Affirmed.*

¶1 BROWN, P.J. Ronnie G. appeals an order terminating his parental rights to Deanna M.G. Ronnie points out that the statute allowing trial courts to

consider the commission of a felony against one's own child as a ground for termination, § 48.415(9m), STATS., applies only to offenses occurring after July 1, 1996. The felony conviction for Ronnie's physical abuse of Deanna occurred in November 1995. Ronnie contends that the trial court nonetheless considered his conviction and therefore erred. The problem with Ronnie's argument is that the statute cited by him was not used as a *ground* for termination in his case. Rather, the ground used for termination was found under § 48.415(2) (continuing need of protection or services). It is true that the trial court did refer to Ronnie's past abuse of his child at the *dispositional* stage. But we hold that this is not error either and affirm.

¶2 As we stated above, grounds for terminating were found by the trial court after finding that Deanna was in continuing need of protection or services and that the father and mother were unfit parents. The trial court then scheduled the case for a dispositional hearing. At the conclusion of this hearing, the trial court considered the fact that the child, now five, was only four months old when she last saw Ronnie. It observed that the separation which occurred was therefore of "considerable length." The trial court believed that "some stability, some continuity, some consistency in her life can be gained in an adoptive situation." The court was satisfied that "a more permanent and stable family relationship" could be gained by granting the State's petition. The court determined that this result was in Deanna's best interests.

¶3 As we pointed out in the opening paragraph of this opinion, the statute that Ronnie refers to allows the trial court to find that grounds exist for termination solely because that parent has been convicted of a felony against his or her own child. Here, the trial court did not use the statute at the "grounds for termination" stage. In fact, the trial court dismissed that as a possible ground.

¶4 We acknowledge that while not using the fact of conviction against him as a ground for termination, the trial court did allude to the factual circumstances behind the conviction at the dispositional stage. If this is what Ronnie is complaining about, it is without merit. Section 48.426, STATS., details the factors a court may consider at the dispositional stage. While none of the factors listed specifically allow a court to consider past acts by a parent against a child, the statute does say that the “prevailing” factor to be considered by the trial court is the child’s best interests. Section 48.426(2). Surely, the fact that the father committed acts of grave physical abuse toward his child may be considered by the court as part of the best interests analysis. Further, the listed factors are not all inclusive. The legislature specifically informs that the court “shall consider but [is] not limited to” considering the listed factors. Section 48.426(3).

¶5 Moreover, our reading of the trial court’s decision is that Ronnie’s past abuse of the child was not the singular consideration made by the trial court. Rather, the trial court considered it as only one factor and weighed it against all other factors, including those favorable to Ronnie. Referring to the fact that Ronnie had kept in touch with Deanna’s social worker and was interested in her development, the trial court allowed that “were it not for the length of the sentence and the initial injuries that were sustained, the underlying charge, would make him a suitable person to continue.” This reference shows that the mere fact of conviction was not considered by the trial court to be of all-consuming weight. It was a combination of the time away from his daughter, the harm inflicted by him upon her and the overall separation that had existed for so long which augured for termination. This is what the proper use of discretion is all about. We affirm.

By the Court.—Order affirmed.

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

