

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 11, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-0096
00-0097
00-0098
00-0099**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

No. 00-0096

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
VICTORIA R.S., A PERSON UNDER THE AGE OF 18:**

WAUSHARA COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

JACOB A.S.,

RESPONDENT-APPELLANT,

PATRICIA S.,

RESPONDENT.

No. 00-0097

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
DUSTIN J.S., A PERSON UNDER THE AGE OF 18:**

WAUSHARA COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

JACOB A.S.,

RESPONDENT-APPELLANT,

PATRICIA S.,

RESPONDENT.

No. 00-0098

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
CHRISTOPHER J.S., A PERSON UNDER THE AGE OF 18:**

WAUSHARA COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

JACOB A.S.,

RESPONDENT-APPELLANT,

PATRICIA S.,

RESPONDENT.

No. 00-0099

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO
ALEX J.S., A PERSON UNDER THE AGE OF 18:**

WAUSHARA COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

JACOB A.S.,

RESPONDENT-APPELLANT,

PATRICIA S.,

RESPONDENT.

APPEAL from orders of the circuit court for Waushara County:
LEWIS MURACH, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

¶1 PER CURIAM. Jacob A.S. appeals orders terminating his parental rights to his four children. He claims the statute which allows termination of parental rights to one child based upon the commission of a serious felony against another child violates due process, and he further challenges the trial court's determination that the termination of his parental rights would be in the best interests of the children. We conclude that Jacob has waived the right to challenge the grounds upon which the termination of his parental rights were based, and that

the trial court properly exercised its discretion when it determined that the termination would be in the best interests of the children. We therefore affirm.

BACKGROUND

¶2 Waushara County petitioned to terminate Jacob's parental rights to his four children, Victoria, Dustin, Christopher, and Alex, based on Jacob's conviction for first-degree sexual assault of Victoria. Jacob stipulated that grounds for termination of his parental rights existed, but requested a contested hearing on the dispositional phase of the proceedings.

¶3 At the hearing, the County presented testimony from two witnesses who had interacted with Jacob and the family. Brenda Passarelli provided weekly, in-home parenting services to Jacob and his wife for about a year. She testified that Jacob's participation in the meetings had vacillated, and that he had failed to follow through on recommendations. She indicated that she had continuing concerns about the children's safety while they were living with their parents because the children's nutritional needs were not being met, Jacob left sharp tools laying about the house, the children were allowed to wander about the trailer park unsupervised, and the children reported inappropriate methods of discipline.

¶4 Howard Harrington, the program manager for the Waushara County Department of Social Services, had supervised two social workers who dealt with the family. Harrington testified that Victoria had some problems with social adjustment at school and that she would likely need lifelong counseling to deal with Jacob's sexual abuse, but that her level of agitation had settled down following her placement in foster care. He said Dustin was undersized and underweight when the Department of Social Services first became involved with

the family and that he was in special education classes due to developmental disabilities. Dustin demonstrated aggressive and inappropriate sexual behavior which had significantly decreased following placement in foster care. Christopher was even more violent and destructive than Dustin at a younger age. His behavior had also improved in foster care. Finally, the infant Alex had been too young to demonstrate behavioral problems, and seemed to be doing well living with his mother and grandmother.

¶5 Jacob took the stand and denied that he had sexually abused Victoria and that the children had any nutritional or behavioral problems. He blamed the neighbors for reporting the family to the Department, and felt that the family would have been better off without intervention. The trial court found that termination of parental rights would be in the best interests of all four children, and terminated Jacob's parental rights.

STANDARD OF REVIEW

¶6 For any issue other than the sufficiency of the evidence to be raised as a matter of right on appeal, it must first be preserved in the trial court by a timely objection or motion. *See State v. Hayes*, 167 Wis. 2d 423, 425-26, 481 N.W.2d 699 (Ct. App. 1992). Here, Jacob stipulated that grounds to terminate his parental rights existed, and never asked the trial court to consider whether WIS. STAT. § 48.415(9m) (1997-98)¹ was unconstitutional as applied to his situation. We therefore deem any objection to the grounds for terminating his parental rights to have been waived.

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶7 We will review the trial court's determination of the best interests of the child under the erroneous exercise of discretion standard. *See Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 149-50, 507 N.W.2d 94 (1993). A court properly exercises discretion when it considers the facts of record under the proper legal standard and reasons its way to a rational conclusion. *See Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991).

ANALYSIS

¶8 In considering the best interests of the child under WIS. STAT. § 48.426, the trial court should take into account the age and health of the child at the time of removal and at disposition, whether the child would be harmed by severing a substantial relationship with the parent, the wishes of the child, the duration of the separation of the parent from the child, and whether the child would be able to enter a more stable family environment as a result of termination, either through adoption or other placement. The record shows that the trial court weighed each of the applicable factors for each child.

¶9 The trial court discussed the children's improved behavior following their placement in foster care, although noting that it was uncertain whether the children would ultimately be adopted or returned to their mother. It characterized the impact of the sexual assault as destructive almost beyond description. The trial court also emphasized that Jacob seemed to lack a basic understanding of the children's needs and how his conduct was dangerous to their well-being. Given that Jacob would be incarcerated for many years to come, and that the older children had not asked about him after their placement in foster care, the trial court concluded that termination would not cause harm to the children by severing a

substantial relationship. The trial court's comments indicate a proper exercise of discretion.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

