

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 15, 2026**

Samuel A. Christensen  
Clerk of Court of Appeals

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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.

**Appeal Nos. 2026AP1628  
2026AP1629  
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2024TP26  
2024TP46**

**IN COURT OF APPEALS  
DISTRICT IV**

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**No. 2026AP1628**

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

**ROCK COUNTY HUMAN SERVICES DEPARTMENT,**

**PETITIONER-RESPONDENT,**

**V.**

**T.S.,**

**RESPONDENT-APPELLANT.**

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**V.**

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APPEALS from orders of the circuit court for Rock County:  
MICHAEL A. HAAKENSEN, Judge. *Affirmed.*

¶1 NASHOLD, J.<sup>1</sup> T.S. appeals the termination of his parental rights to his two children. He raises three issues. He argues that the circuit court was objectively biased against him due to the court’s representation of T.S. in a criminal case approximately 13 years prior to the termination of parental rights (“TPR”) trial. T.S. further contends that, during the grounds phase, the court erred by permitting testimony about T.S.’s emergency detention under WIS. STAT. ch. 51 approximately seven years before the TPR trial. Finally, T.S. asserts that the court should have declared a mistrial after the jury heard a reference to a prior TPR proceeding against him; the court instead ordered the testimony stricken and instructed the jury to disregard it. Because I conclude that none of the claimed errors merit reversal, I affirm.

### **BACKGROUND**

¶2 The County removed T.S.’s children from his care in March 2017. In July of that year, the circuit court entered orders that the children were in need

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<sup>1</sup> These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

These appeals were consolidated for briefing and disposition by an order dated July 23, 2026. *See* WIS. STAT. RULE 809.10(3).

of protection and services (“CHIPS” orders). Both children remained placed outside of T.S.’s home through the pendency of these cases.

¶3 In July and November 2024, Rock County filed petitions to terminate T.S.’s rights to the children. As pertinent here, the petitions alleged two grounds as to each child: continuing CHIPS under WIS. STAT. § 48.415(2) and failure to assume parental responsibility under § 48.415(6).<sup>2</sup>

¶4 Trial was set for August 2025. A few months before the scheduled trial, the County filed a document stating that it had learned that in 2012, the circuit court represented T.S. in a criminal case. The County requested a hearing to address the matter.

¶5 At the resulting hearing, the circuit court stated for the record that it was looking at Wisconsin’s Consolidated Court Automation Programs (“CCAP”) record for the criminal case, and that CCAP confirmed that the court had represented T.S. The court stated that it had not been aware of the previous representation when these TPR cases had been assigned to the court. The criminal case had been charged as two counts of child abuse intentionally causing bodily harm. During the court’s representation of T.S., T.S. pleaded to reduced charges: one count of misdemeanor battery and one count of disorderly conduct. Looking at the criminal complaint, the court said that it did not know if the victim in the criminal case, who was referred to by initials, was one of the children subject to

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<sup>2</sup> A third ground was also alleged as to each child—continuing parental disability under WIS. STAT. § 48.415(3)—but that ground was dismissed before trial and is therefore not discussed further here.

the TPR cases. The County informed the court that the victim was a different child who had since become an adult.

¶6 T.S. requested that the circuit court recuse itself, noting that the County intended to introduce evidence related to the criminal case. Questioned about this, the County said that this was “no longer true” and that it “[would] not introduce anything from that 2011 case.”

¶7 The circuit court denied the recusal request. It cited WIS. STAT. § 757.19, which governs disqualification of judges. Noting that it had none of the interests or relationships listed in the statute as requiring disqualification, the court focused on § 757.19(2)(g), which disqualifies a judge when the “judge determines that, for any reason, [the judge] cannot, or it appears [the judge] cannot, act in an impartial manner.” The court stated that it believed it could act impartially and that its presiding over the cases would not create an appearance of bias. The court stated that it had presided over CHIPS cases involving T.S. and T.S.’s children in the years since the criminal representation, and that these cases were the reason it was familiar with T.S. It stated, “I have no recollection of representing [T.S.] in the felony case. CCAP indicated I did, but I have no recollection as to what the charges were, what the allegations were, it is a surprise for me.”

¶8 On the morning of the first day of trial, the circuit court revisited the issue. In addition to WIS. STAT. § 757.19, the court discussed the commentary to Supreme Court Rule 60.04, which requires recusal “when reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge’s ability to be impartial.” SCR 60.04(4). The court observed that it had represented T.S. beginning in

February 2012 and concluding in June 2012. The court reiterated that it had “no recollection of my prior representation of [T.S].” The court said that, because of its prior criminal defense work, it had routinely performed checks for conflicts in criminal cases it was assigned, but had not done so in the CHIPS cases involving T.S. and his children, over which it had presided since 2018. Despite the CHIPS cases having involved “pretty intensive hearings,” the court said that it had not, during its involvement in those cases, ever realized that it had previously represented T.S. The court stated that, other than checking CCAP so that it could accurately understand its prior representation, it had not looked at any files related to the prior criminal case. The court reiterated its conclusion that it could be fair and impartial and that it would therefore remain on the cases.

¶9 On the first day of trial, the County called a former employee of the corporate guardian assigned to T.S., who has been under guardianship and protective placement orders since 2018. This opinion will refer to the employee as T.S.’s “guardian.” The guardian testified that the guardianship was established for T.S. “due to a neurodegenerative disorder as well as some mental health issues.”

¶10 The guardian testified as follows about her interactions with and observations of T.S. from 2018 to 2024, when she left her position with the corporate guardian. She first met T.S. in July 2018, when T.S. was living in a facility the guardian described as a “stabilization unit that’s often used for individuals who are coming out of higher level inpatient psych units or having some psychiatric instability in the community.” T.S. left this facility against medical advice, and within a day was admitted to a local hospital.

¶11 Within a day of leaving the hospital, T.S. was detained on an emergency basis under WIS. STAT. ch. 51. The guardian had been present at the

emergency detention hearing held under WIS. STAT. §§ 51.15 and 51.20(7). Asked about the nature of the hearing, the guardian testified that such hearings are conducted “[w]hen somebody is either determined to be a risk to themselves, to someone else, or completely incapable of taking care of themselves.” T.S. objected that testimony about the ch. 51 proceeding was “other act[s]” evidence that had not been included in the County’s pretrial filing describing any such acts it intended to offer, and also that the proceeding had not been mentioned in the County’s response to interrogatories about the subject of each witness’s proposed testimony. Later, T.S. also argued that the guardian’s testimony about the court proceeding would be hearsay.

¶12 The circuit court sustained T.S.’s objections in part, determining that the guardian could testify about the fact that the hearing had occurred and about its result, but “I don’t want to hear you say this is what the officer said or anything like that.” The guardian then testified as follows. An emergency detention hearing “is held within 72 hours of someone being detained for their safety, or someone else’s safety, to determine if the grounds exist for them to have to continue to be detained or they have to be discharged.” The result of T.S.’s hearing was that the WIS. STAT. ch. 51 proceeding had been converted to a guardianship and protective placement hearing. See WIS. STAT. § 51.67 (authorizing such conversions). This “means they felt that it was not necessarily related to a severe and persistent mental illness, but that it was more appropriately related to a diagnosis that would be better served under a guardianship such as a neurodegenerative disorder.”

¶13 The guardian understood a protective placement to mean “that somebody has a primary need for residential care and custody and is best served by a supervised setting.” As a result of the protective placement proceedings, T.S.

was placed in a group home. While at that home, T.S. would “intermittently” refuse any prescribed medications, including insulin for his diabetes. T.S. moved to an assisted living facility in 2021, and while T.S. was in this facility, the guardian could recall three occasions when T.S. was intoxicated while the guardian was present. The guardian could smell alcohol on T.S.’s breath, and T.S. had marijuana in his room. Eventually, the assisted living facility gave notice that it could no longer meet T.S.’s needs, and he had to be placed elsewhere.

¶14 The County also called a former case manager for T.S. The case manager’s testimony included a description of a period during the COVID-19 pandemic when the children at issue in these cases were living with a foster family in Virginia. She testified that the County had decided to have the case manager “continue working with the family so that I could continue trying to support the placement and maintain their placement in Virginia because at that time there was a pending trial coming up for the children -- termination of parental rights [for T.S.]” T.S.’s counsel requested a sidebar or to remove the jury from the courtroom; counsel for the County stated that she was “fine with moving on.” The following exchange between the court and T.S.’s counsel then occurred with the jury still present:

[COUNSEL]: Well, then I’d ask to strike the last comment.

THE COURT: I’ll strike the last comment regarding --

[COUNSEL]: The TPR trial.

THE COURT: TPR trial. All right. I’ll strike that comment.

¶15 Later, when the jury had left the courtroom for a break, T.S. moved for a mistrial. Counsel for T.S. noted that, although he had tried to avoid drawing

attention to the case manager’s mention of a previous TPR proceeding, the subsequent conversation had resulted in the jury hearing multiple references to a prior TPR case or trial. T.S. argued that the potential for unfair prejudice was high and was unlikely to be cured by a jury instruction, saying the mention of the prior TPR proceeding “might be a bell that can’t be unrung.” Counsel for T.S. also stated that he had seen several jurors writing notes immediately after the prior TPR proceeding was mentioned. The circuit court determined that any unfair prejudice would be cured by giving the jury the standard instruction to disregard stricken testimony. The jury was ultimately given this instruction.

¶16 The jury found both TPR grounds proved as to each child. After a dispositional hearing, the circuit court terminated T.S.’s parental rights to both children. T.S. appeals.

## DISCUSSION

¶17 In Wisconsin, there is a “two-part statutory procedure” for a TPR proceeding. *Steven V. v. Kelley H.*, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. In the first phase, which is the factfinding or “grounds” phase, the petitioner (here, the County) must prove the existence of “one or more of the statutorily enumerated grounds for termination of parental rights” by clear and convincing evidence. *Id.*; WIS. STAT. § 48.31(1). If such grounds are found to exist, the circuit court then proceeds to the second phase, the “dispositional” phase, in which the court decides whether it is in the best interests of the child or children that the parent’s rights be terminated. *Steven V.*, 271 Wis. 2d 1, ¶27; WIS. STAT. § 48.426(2). Two of T.S.’s three claims relate only to the grounds phase. His judicial bias claim implicates both phases, because the circuit court both presided over the jury trial at the grounds phase and served as the decisionmaker in the

dispositional phase; however, T.S.’s argument on this claim focuses on the grounds phase as well. This opinion will address each claim in the order T.S. has presented them.

### **I. Judicial bias**

¶18 T.S. argues that the circuit court judge was obligated to recuse himself because of his previous representation of T.S. in a criminal case. An impartial judge is a fundamental component of due process, and if a party is able to demonstrate bias, the error is structural and thus not subject to a harmless error analysis. *Miller v. Carroll*, 2020 WI 56, ¶¶15-16, 392 Wis. 2d 49, 944 N.W.2d 542. Judges are presumed to act impartially, and the party asserting bias must overcome this presumption by a preponderance of the evidence. *Id.*, ¶16.

¶19 Wisconsin courts take both a subjective and an objective approach in evaluating whether a judge is biased. *Id.*, ¶21. While subjective bias “is not at issue” if the court believes itself to be fair and impartial, objective bias—actual bias or a serious risk of actual bias or prejudgment—depends on the perception of an objective and reasonable observer. *Id.*, ¶21-22. Here, the circuit court judge determined that he was able to remain impartial, and T.S. does not raise a claim of subjective bias. Rather, T.S. argues that the circumstances demonstrate objective bias.

¶20 To assess whether the probability of bias rises to the level of a due process violation, Wisconsin courts apply the standard from *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884 (2009). *Miller*, 392 Wis. 2d 49, ¶24. That is whether there is “a serious risk of actual bias—based on objective and reasonable perceptions.” *Caperton*, 556 U.S. at 884. “Due process requires an objective inquiry” into whether the circumstances ““would offer a possible temptation to the

average ... judge to ... lead [the judge] not to hold the balance nice, clear and true.” *Id.* at 885 (omissions in original) (quoting *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)). It is the exceptional case with “extreme facts” that rises to the level of a “serious risk of actual bias.” *Id.* at 884, 886-87. “[M]ost matters relating to judicial disqualification [do] not rise to a constitutional level.” *Id.* at 876 (second alteration in original; quoted source omitted).

¶21 T.S. argues that here, the circuit court judge “possessed confidential information related to [T.S.]’s character and fitness as a parent such that it created the appearance of bias.” T.S. observes that in representing a client charged with physical abuse of a child, and in negotiating a plea to lesser charges, an attorney will learn information from and about the client that is confidential. T.S. implies that information the judge gathered about T.S. during the representation may have included information that would make it unacceptably likely that the judge could not be impartial toward T.S.

¶22 A fundamental problem with this argument is that the circuit court consistently asserted that it had no recollection of representing T.S., nor of the case in which it represented him. This is a finding of fact, and this court must sustain it if it is not clearly erroneous. *Dickman v. Vollmer*, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202. Although T.S. suggests that the court’s viewing of the criminal complaint and CCAP docket must have jogged the court’s memory, the court stated otherwise. T.S. points to no evidence gainsaying the court’s finding that it lacked recollection of briefly representing T.S. 13 years earlier. This defeats T.S.’s argument that the court “possessed confidential information related to [T.S.]’s character and fitness as a parent”—the court found that it had no such information.

¶23 T.S. anticipates this problem, arguing that the circuit court’s own assessment of objective bias is not entitled to deference. This is true in the sense that the ultimate question of objective bias is subject to de novo review. *Miller*, 392 Wis. 2d 49, ¶15. But T.S. cites no authority for the proposition he advances: that a circuit court’s determination of the underlying facts relevant to an objective-bias claim—in this case, the court’s determination that it did not remember anything about its representation of T.S.—is also subject to de novo review.

¶24 T.S. next seeks to support his judicial bias claim by analogizing to the Rules of Professional Conduct for Attorneys. He cites the rule forbidding an attorney from representing a party with interests materially adverse to those of a former client in “the same or a substantially related matter” that the attorney represented the former client. See SCR 20:1.9(a). T.S. argues that the criminal case in which the circuit court judge previously represented him is “substantially related” to these TPR cases because the child-abuse charges, although they concerned a different child, resulted in the removal from T.S.’s home of the children at issue here. T.S. notes as well that, although the County did not introduce evidence about the criminal case, it did elicit testimony referring to the underlying facts of that case; that is, the County elicited testimony that the 2011 removal of the children at issue in these cases was precipitated by concerns about physical abuse of a different child.

¶25 T.S. argues that the reasoning adopted in cases about adverse-party representation should logically apply when a court presides over a case involving a former client. See, e.g., *Berg v. Marine Tr. Co., N.A.*, 141 Wis. 2d 878, 889-90, 416 N.W.2d 643 (Ct. App. 1987) (discussing what it means for matters to be “substantially related”).

¶26 Leaving aside the merits of T.S.’s argument about what the law should be, this court is not free to depart from the analysis for judicial bias laid out in *Miller* and *Caperton*. This analysis, described above, does not incorporate the rubric for assessing an attorney’s responsibility to former clients. Further, even ignoring that the professional rule T.S. cites governs an attorney’s representation of clients rather than a judge’s presiding over a case, *Caperton* expressly states that judicial bias, in a due-process sense, is not controlled by legislative judicial disqualification rules. *Caperton*, 556 U.S. at 876 (“most matters relating to judicial disqualification do not rise to a constitutional level,” and “matters of kinship, personal bias, state policy, [and] remoteness of interest[] would seem generally to be matters merely of legislative discretion” (first alteration in original, quoted sources omitted)). Still less, then, would the due process inquiry be controlled by attorney disqualification rules.

¶27 T.S. also argues that the circuit court itself “acknowledged the appearance of bias.” This argument, though, relies on taking a single statement by the court out of context. At the hearing held in response to the County’s alerting the court of its prior representation of T.S., the court began its discussion of the potential appearance of bias by saying, “I can certainly understand why somebody might be concerned about it.” But the court then went on to say that, considering the court’s entire history with T.S., “if people took that into account,” they would not think the court was biased. As the court elsewhere noted, its history with T.S. included a 13-year gap between the representation and the TPR trial, and its extensive involvement with T.S.’s CHIPS cases over the course of many years, which never caused the court to recall the representation.

¶28 In sum, I conclude that T.S. has not demonstrated that the court was objectively biased in contravention of due process.

## **II. Evidence about the 2018 emergency detention hearing**

¶29 T.S. argues that the guardian’s testimony about the 2018 emergency detention hearing under WIS. STAT. ch. 51—which resulted in a conversion to a guardianship and protective placement case—was erroneously admitted and prejudicial to him. As he did in the circuit court, T.S. contends on appeal that this testimony was inadmissible hearsay, and further that the County violated the court’s pretrial orders by failing to include the 2018 hearing, either in response to interrogatories about the subject of each witness’s proposed testimony or in its filing detailing any “other acts” evidence it intended to present. I conclude that the testimony was not hearsay or “other acts” evidence, and further conclude that if it was (or if, as I assume without deciding, that it was elicited contrary to pretrial orders), any error in admitting this testimony was harmless.

¶30 On the first point, T.S. does not offer any argument that the guardian’s testimony was hearsay; he simply asserts that it “undoubtedly” was. I could reject T.S.’s contention for the lack of a developed argument alone, but it is worth observing that, to be hearsay, evidence must comprise a “statement” not made by the declarant while testifying that is offered “to prove the truth of the matter asserted.” WIS. STAT. § 908.01(3). It is not clear what out-of-court statements T.S. believes the guardian’s testimony communicated, nor whether those statements were offered for their truth. The guardian’s descriptions of what an emergency detention hearing is, or her report that T.S.’s hearing resulted in conversion to a guardianship and protective placement case, or her description of what those terms implicate, do not necessarily communicate any out-of-court statements offered for their truth. As appellant, it is T.S.’s obligation to show that the circuit court erroneously exercised its discretion in permitting the guardian to testify to these matters; for example, by applying an incorrect view of the law. *See*

***State v. Tarlo***, 2016 WI App 81, ¶6, 372 Wis. 2d 333, 887 N.W.2d 898. In the absence of any identified out-of-court statements relayed to the jury, or any argument that these statements were offered for their truth and thus potentially hearsay, I conclude that T.S. has not demonstrated an erroneous exercise of discretion.

¶31 Regarding his assertion that the County should have identified the testimony about the 2018 hearing as “other acts” evidence, again, T.S. does not contend with the meaning of that phrase. What is sometimes called “other acts” evidence is defined as “evidence of other crimes, wrongs, or acts” and is generally “not admissible to prove the character of a person in order to show that the person acted in conformity therewith.” WIS. STAT. § 904.04(2)(a). T.S. identifies no “crimes, wrongs, or acts” that the guardian’s testimony attributed to him regarding the 2018 hearing. It is true that the events leading up to and bringing about the 2018 hearing included acts by T.S., such as leaving the stabilization unit against medical advice and also leaving the hospital. But T.S. has not challenged on appeal the guardian’s testimony about these events, or the circuit court’s rulings allowing the testimony. Once again, it is T.S.’s burden to show that the court’s evidentiary rulings fell outside the range of reasonable discretionary decisions. See ***Kennedy v. WEC***, 2024 WI 37, 413 Wis. 2d 509, 11 N.W.3d 786. Without showing how the emergency detention hearing plausibly constituted a crime, wrong, or act by T.S., or how evidence about that hearing was used to prove his character in order to show that he acted in conformity with that character, T.S. cannot show that the court erroneously exercised its discretion in admitting the evidence.

¶32 Finally, regarding the argument that the County ought to have identified the 2018 hearing as a subject of the guardian’s testimony in response to

interrogatories, I will assume without deciding that T.S. is correct, and further that the circuit court should have excluded the testimony on this basis. With these assumptions, I nevertheless conclude that the introduction of this evidence—which, again, was evidence not about anything T.S. did, but about the resultant court proceedings—was harmless beyond a reasonable doubt under WIS. STAT. § 805.18.

¶33 T.S. contends that he was prejudiced by the guardian’s testimony because it undermined his theory of defense: that the County failed to provide him the services that would permit him to parent his children appropriately. He argues that the testimony about the 2018 hearing undermined this defense by portraying him as too dangerous to parent. But the jury was repeatedly informed, without objection, that T.S. was subject to both the guardianship and protective placement orders that resulted from the 2018 proceeding, and was also told the facts about T.S.’s condition that supplied the basis for those orders. What is more, T.S. stipulated to the jury hearing about a second emergency detention proceeding under WIS. STAT. ch. 51. This occurred in 2022, and was a response to T.S.’s threatening to stab a caregiver and overdose on his medication. In light of the jury’s unchallenged exposure to substantial evidence about T.S.’s neurocognitive condition, as well as his more recent ch. 51 proceedings, I conclude there is no reasonable probability that the guardian’s testimony about the bare procedural facts of the 2018 hearing influenced the jury verdicts. See *State v. Kleser*, 2010 WI 88, ¶94, 328 Wis. 2d 42, 786 N.W.2d 144 (error is harmless if there is no reasonable probability of a different outcome absent the error).

### III. The reference to a previous TPR proceeding

¶34 T.S. argues that the circuit court should have granted his motion for mistrial after the County case manager mentioned that there had been, during the COVID-19 pandemic, a “pending trial coming up for the children -- termination of parental rights.” He argues that this testimony was both irrelevant and prejudicial.

¶35 The decision whether to grant a motion for a mistrial lies within the sound discretion of the circuit court. *State v. Pankow*, 144 Wis. 2d 23, 47, 422 N.W.2d 913 (Ct. App. 1988). That court must determine, in light of the whole proceeding, whether the basis for the mistrial request is sufficiently prejudicial to warrant a new trial. *Id.* “[N]ot all errors warrant a mistrial and ‘the law prefers less drastic alternatives, if available and practical.’” *State v. Givens*, 217 Wis. 2d 180, 191, 580 N.W.2d 340 (Ct. App. 1998) (quoted source omitted). An appellate court must give the circuit court’s decision on this question “great deference.” *State v. Williams*, 2004 WI App 56, ¶28, 270 Wis. 2d 761, 677 N.W.2d 691.

¶36 When T.S. moved for mistrial, the circuit court recited the correct standard for a mistrial just noted. It remarked that the comment about the prior TPR proceeding “could certainly be viewed as prejudicial,” though in the court’s view, it was not clear who would be prejudiced: T.S. because the jury might conclude there had been reason to terminate his rights previously, or the County because the jury might conclude that “the [County] didn’t do what they needed to do the first time; they’re still not doing what they need to do,” which would be consistent with T.S.’s theory of defense. The court stated that it had considered allowing further questioning or a stipulation to develop more facts about the prior case in order to give the jury an accurate understanding of what had occurred, but rejected those options as unlikely to be “effective.” It noted T.S.’s concern that

jurors had taken notes after the case worker's answer, but it observed that the jury had not, at that point, been instructed about stricken testimony, and thus might not have known as they were taking notes that they were not to consider the answer in their deliberations. The court stated that with the possible exception of one juror, the jury had been attentive, and that based upon its interactions during the trial and voir dire, it thought the jury was "taking this very seriously, and I think they will take the instructions seriously as well."

¶37 The circuit court described the reference to an earlier TPR proceeding as "minimal in the sense of the entirety of the testimony that we've heard. It was a brief comment." The court noted that the case manager's comment had not been a direct response to the County's question, but rather had "flowed out." The court determined that the instruction on stricken testimony would be sufficient to cure any potential prejudice and denied the mistrial motion.

¶38 T.S. urges that these cases are similar to *State v. Castillo*, No. 2020AP983-CR, unpublished slip op. (WI App June 29, 2021), in which this court reversed a circuit court determination that a jury instruction, rather than a mistrial, would remedy a witness's volunteering of inadmissible testimony. This court concluded that the testimony in *Castillo* was an "evidentiary bell" that "could not be unrung." *Id.*, ¶3. This "bell" consisted of a statement by the eight-year-old victim of Castillo's alleged sexual assault who volunteered that "[h]e did it to three other little girls," and another witness's answer that suggested that Castillo was already incarcerated for a sexual assault. *Id.*, ¶¶45-46.

¶39 The case worker's mention of a prior TPR proceeding is not comparable, in terms of prejudice, to the statements in *Castillo*. That case amounted to a credibility contest between Castillo and the alleged victim about

whether the assault had occurred; the allegation that he had assaulted three other little girls, and the implication that he was imprisoned for these crimes, were shocking and obviously bolstered the credibility of the accusations. *Id.*, ¶¶56-58. In contrast, the fact that the County had once before initiated TPR proceedings against T.S. involving these same children, while potentially prejudicial, does not carry nearly the same impact. Given that the jury was assembled to decide a TPR case also involving T.S. and the same children, it was clear that T.S.’s parental rights had not, in fact, been terminated in that earlier proceeding. Although there could have been many reasons for this outcome, there is nothing about the County’s earlier failed or abandoned attempt to terminate T.S.’s parental rights that is nearly as inflammatory as the little girl’s accusation about other victims, apparently confirmed by the implication of incarceration, that this court addressed in *Castillo*.

¶40 T.S. does not argue that the circuit court’s explanation of its decision failed to consider the relevant facts or apply the proper law, or that it was otherwise not a proper exercise of discretion. *See Tarlo*, 372 Wis. 2d 333, ¶6. His only other argument is that, given the number of times the court ordered testimony stricken over the course of the trial, and the ambiguity of some of those instances, the jury could not be trusted to recall, or perhaps to understand, that it was required to disregard this particular testimony. While this argument is not without some force, this court is obligated to presume that the jury followed the instructions it was given. *State v. Truax*, 151 Wis. 2d 354, 362, 444 N.W.2d 432 (Ct. App. 1989). T.S. has not persuaded me that the surrounding context of the rest of the trial is sufficient to overcome this presumption. Given the “great deference” this court owes to a circuit court’s mistrial decisions, I conclude that

T.S. has not shown that the court erroneously exercised its discretion in denying T.S.'s motion for a mistrial.

### CONCLUSION

¶41 The orders terminating T.S.'s parental rights are affirmed.

*By the Court.*—Orders affirmed.

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

