

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 2, 2014

Diane M. Fremgen
Clerk of Court of Appeals

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.

**Appeal Nos. 2014AP2035
2014AP2036
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2012TP245
2012TP246**

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

FAIZEL K.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

FAIZEL K.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County:
JOHN J. DIMOTTO, Judge. *Affirmed.*

¶1 CURLEY, P.J.¹ Faizel K.² appeals the orders terminating his parental rights to his sons Mohammed K. and Robeul K. He argues that there was insufficient evidence at trial to support the trial court's determination that he was unfit. This court disagrees and affirms.

BACKGROUND

¶2 Faizel K., born January 1, 1964, is a Burmese immigrant who has lived in the United States since 2008. In early 2010, he moved to Milwaukee with his wife, Shu Dah B., and began working as a meat processor.³

¶3 Faizel K.'s son Mohammed K. was born on November 3, 2010, and suffered a severe head injury when was about three months old. According to Faizel K., the injury occurred on January 24, 2011, four days before he brought Mohammed K. to the hospital, when Mohammed K.'s half-brother Nini H.⁴ dropped Mohammed on his head. Faizel K. claimed he was not at home when the injury occurred; he also claimed that he and Shu Dah B. waited four days to seek

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12).

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² In many places Faizel K.'s brief spells his name "Faziel." This court has used the "Faizel" spelling, even when quoting portions of the brief that use an alternate spelling, for consistency.

³ Shu Dah B. is the mother of Mohammed K. and Robeul K. Her parental rights to her sons were terminated as well, but are not at issue in this appeal.

⁴ Nini H. is Shu Dah B.'s child from a previous relationship.

medical attention because they did not think that anything was wrong with Mohammed K. In reality, Mohammed K. had suffered, among other things, subdural bleeding and a fractured tibia. A pediatric child-abuse specialist opined that, based on the presence of subdural hemorrhaging, retinal hemorrhaging, and the fracture—which was more than ten days old—Mohammed K. had been abused.

¶4 Around the time that Mohammed K. was admitted to the hospital for treatment, the Bureau for Milwaukee Child Welfare (hereafter “the Bureau”) received an anonymous letter from three individuals indicating that Faizel K. physically abused Mohammed K. and Nini H. The letter further warned that the children would be in danger if they remained in Faizel K.’s care.

¶5 In addition, Ja La and La Aung, members of the Burmese community who knew Faizel K., met with the Milwaukee County District Attorney’s Office and reported that Faizel K., frustrated by Mohammed K.’s crying and eager to get some rest after work, would grab Mohammed K. by the head, shake him, and pull him by the legs.

¶6 Because of the nature of Mohammed K.’s injuries, he was taken into temporary physical custody on February 7, 2011, and has remained in foster care since that time. The State filed a CHIPS petition, and on April 7, 2011, the trial court found Mohammed K. to be a child in need of protection of services pursuant to WIS. STAT. § 48.13(3) and (3m).

¶7 Robeul K. was born on October 6, 2011 and never lived with his parents. Robeul K. has had special medical needs since birth, including acid reflux, an abnormal urethra, and abnormal tightness in his torso and legs. Robeul K. was also underweight. Robeul K. required special care, including how

he was held, fed, and burped after eating, rehabilitation exercises for his torso and legs, and surgery for his urethra, followed by monitoring of his urine output. He later required orthopedic treatment, physical therapy, occupational therapy, speech therapy, an eye specialist—as one of his eyes was not properly focusing—and ear tubes because of persistent ear infections. Robeul K. required two to three medical appointments per month, as well as in-home therapy.

¶8 On November 15, 2011, the State filed a CHIPS petition for Robeul K., and on February 28, 2012, the trial court found Robeul K. to be a child in need of protection or services pursuant to WIS. STAT. § 48.13(10).

¶9 The trial court entered written orders outlining the conditions for return with respect to Mohammed K. and Robeul K. The conditions for return for both boys were essentially the same.

¶10 In May 2012, Faizel K. was charged with two counts of child abuse, contrary to WIS. STAT. § 948.03(3)(a). The first count related to Mohammed K.'s head injury and the second count related to his tibia fracture. A jury found Faizel K. guilty of both charges in October 2013.

¶11 On September 24, 2012, the State filed petitions for the termination of Faizel K.'s parental rights to Mohammed K. and Robeul K. Because of numerous delays, none of which are at issue here, the trial took place a year and a half later, on March 24-26, 2014.

¶12 At trial, Children's Hospital family support specialist Jennifer Ralston testified about the many services provided to Faizel K. and Shu Dah B. regarding their children's health and care. Ralston was familiar with Burmese culture, as she had attended trainings regarding Burmese culture, had relationships

with agencies serving Burmese refugees, and had assignments with other Burmese families. Ralston helped make the family's home environment safe, including installing smoke detectors, carbon monoxide detectors, outlet plugs, and removing unsafe items. Additionally, she researched whether the family would be eligible for food share and/or rent assistance. She encouraged Faizel K. to attend medical appointments, English classes, and home-management services through the Second Relocation Refugee Center.

¶13 Ralston testified that she took numerous steps to inform Faizel K. about Mohammed K.'s progress and to teach him how to meet Mohammed K.'s needs, but was rebuffed at every turn. Ralston informed Faizel K. that Mohammed K. had several appointments at Children's Hospital each week, and that information about these appointments was always communicated to Faizel K. in a language that he could read. In addition, Faizel K. received training at the hospital, with the aid of an interpreter, regarding how to care for Mohammed K. One particular training lasted about three hours and included instructions on how to use a "G-tube" to feed Mohammed K. and administer his medications. Faizel K. failed to demonstrate an understanding of Mohammed K.'s needs; he could not "teach back" what he had learned, and, as a general matter, insisted that his son was fine and did not require special attention. Indeed, Faizel K. claimed that Mohammed K. had not been abused but was born with his head injury, and thought that Mohammed K. was simply sleeping when he was in fact having seizures. Ralston further testified that Faizel K. cut back on scheduled visits with Mohammed K. between January 2011 and February 2012, claiming that he was too tired.

¶14 Ralston's testimony regarding Faizel K.'s relationship to Robeul K. was much the same. Ralston testified that she encouraged Faizel K. to perform

exercises with Robeul K. to address his tight torso and leg. Faizel K. did not fully understand her, however, and indicated that he was not going to do the exercises. Ralston also testified that during scheduled visits she attempted to instruct Faizel K. about the nature of Robeul K.'s health problems—including that he required medications and special feeding/care due to his numerous gastrointestinal issues—but that Faizel K. would insist that Robeul K. “was just fine.”

¶15 In addition, Candyce Phillips, the Bureau case manager assigned to Faizel K.'s case, also testified. Phillips testified that Faizel K. refused to attend ESL classes, even those that fit with his work schedule, because he wanted to sleep or go shopping. Phillips testified that Faizel K. also refused to attend therapy even though his psychological evaluation indicated it was necessary.

¶16 Faizel K. also testified at trial. Much of his testimony pertained to the criminal abuse charges relating to Mohammed K. and will not be discussed here. Regarding Robeul K., Faizel testified Robeul K. was not included in the no-contact order regarding his criminal case that prohibited contact with Mohammed K. and Shu Dah. B., yet he did not see, write to, or have anyone else write to Robeul K. since his May 5, 2012 arrest. In addition, he testified that he never contacted Robeul K.'s foster parents.

¶17 The trial court ultimately determined that there were grounds to find that: Faizel abandoned Robeul K., pursuant to WIS. STAT. § 48.415(1)(a)2.; Faizel K. failed to assume responsibility for Mohammed K. and Robeul K., pursuant to § 48.415(6); and that both children were in continuing need of protection or services, pursuant to § 48.415(2). Consequently, the trial court found Faizel K. unfit. Thereafter, after hearing testimony and considering evidence regarding the standards and factors set forth in WIS. STAT. § 48.426(2), the trial

court found that terminating Faizel K.'s parental rights was in the children's best interests. Written orders to this effect followed.

¶18 Faizel K. now appeals. Additional facts will be developed as necessary below.

ANALYSIS

¶19 On appeal, Faizel K. challenges the trial court's findings on the grounds phase of his trial, arguing that the evidence was insufficient to find him unfit. "Wisconsin has a two-part statutory procedure for the involuntary termination of parental rights." *Steven V. v. Kelley H.*, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. During the first, or "grounds" phase of the proceeding, "the burden is on the government," see *Sheboygan County DHHS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402, to "prove by clear and convincing evidence that one or more of the statutorily enumerated grounds for termination of parental rights exist," *Steven V.*, 271 Wis. 2d 1, ¶24; see also WIS. STAT. § 48.31(1). "During this step, the parent's rights are paramount." *Julie A.B.*, 255 Wis. 2d 170, ¶24 (citation omitted). "If grounds for the termination of parental rights are found by the court ... the court shall find the parent unfit." WIS. STAT. § 48.424(4). "Once the court has declared a parent unfit, the proceeding moves to the second, or dispositional phase, at which the child's best interests are paramount." *Steven V.*, 271 Wis. 2d 1, ¶26.

¶20 Appellate review of the trial court's verdict in this case is narrow; this court will sustain the verdict if there is any credible evidence to support it. See *Morden v. Continental AG*, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659. In applying this narrow standard of review, this court must consider the evidence in a light most favorable to the trial court's determination. See *Stunkel*

v. Price Elec. Coop., 229 Wis. 2d 664, 668, 599 N.W.2d 919 (Ct. App. 1999). This is because it is the role of the factfinder, not this court, to weigh the testimony of the witnesses and assess their credibility. *See Morden*, 235 Wis. 2d 325, ¶39. Thus, this court must “search the record for credible evidence that sustains the ... verdict, not for evidence to support a verdict that the [trial court] could have reached but did not.” *See id.* “[I]f the evidence gives rise to more than one reasonable inference, we accept the particular inference reached by the [trial court].” *See id.*

¶21 Specifically, Faizel K. claims that the evidence was insufficient to support the trial court’s findings that: he abandoned Robeul K.; he failed to assume responsibility for Robeul K. and Mohammed K.; and Robeul K. and Mohammed K. were in continuing need of protection or services. This court will address each argument in turn. *But see Steven V.*, 271 Wis. 2d 1, ¶24 (only one ground need be proven to uphold trial court’s decision).

(1) *The evidence was sufficient prove that Faizel K. abandoned Robeul K.*

¶22 Faizel K.’s first argument on appeal is that there was insufficient evidence to find that he abandoned his children pursuant to WIS. STAT. § 48.415(1)(a)3. He argues that he had no contact with his children from May 2012 to the time of the fact-finding hearing because he was incarcerated and there was a no-contact order prohibiting him from having contact with Shu Dah B. as well as Mohammed K. Faizel K. further argues that he did express concern about the children’s wellbeing to his social worker.

¶23 Contrary to what Faizel K. argues, however, there was no abandonment ground pled with respect to Mohammed K., only regarding Robeul K.; furthermore, the ground pled by the State and found by the trial court

was pursuant to WIS. STAT. § 48.415(1)(a)2., which specifies a different time-frame and circumstances than § 48.415(1)(a)3. Section 48.415(1)(a)2. provides that abandonment may be proven by showing “[t]hat the child has been placed, or continued in a placement, outside the parent’s home by a court order containing the notice required by s. 48.356(2) or 938.356(2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.”

¶24 Under the applicable standards, there was sufficient evidence to support the trial court’s finding that Faizel K. abandoned Robeul K. At his March 2014 trial, Faizel K. testified that although Robeul K. was not included in the no-contact order in his criminal case, he did not see, write to, or have anyone else write to Robeul K. since his May 5, 2012 arrest. In addition, he testified that he did not contact Robeul K.’s foster parents. Thus, by his own testimony, Faizel K. failed to visit or communicate with Robeul K. who was, as noted, placed outside his parents’ home for a period of three months or longer; and there was therefore sufficient evidence to prove that Faizel K. abandoned Robeul K. under §48.415(1)(a)2. Likewise, Ralston testified that Faizel K.’s visits with Robeul K. terminated with his May 2012 arrest. Also, Phillips testified that Faizel K. never had any messages that he wanted passed on to Robeul K.’s foster parents, nor was she personally aware of Faizel K. having contact of any kind with Robeul K.’s foster home.

¶25 Consequently, because the record amply supports the trial court’s finding that Faizel K. abandoned Robeul K., the trial court’s decision as to this issue will be upheld.

- (2) *The evidence was sufficient to prove that Faizel K. failed to assume responsibility for Robeul K. and Mohammed K.*

¶26 Faizel K. next argues that the evidence was insufficient to establish that he failed to assume parental responsibility for Mohammed K. and Robeul K. pursuant to WIS. STAT. § 48.415(6). He argues:

Faizel was the person who took Mohammed to the hospital after he became concerned.... Faizel stayed at the hospital for the first 5 days of the child's hospitalization. Faizel gave a helping hand to care for his child. Faizel expressed concern to the social workers about his children. Faizel participated in visits with his children until the visits were terminated in May 2012. The termination of the visits was not because of anything that ... Faizel did but rather because of transportation issues concerning Mohammed.

These are actions by the father vis-à-vis his children that demonstrate that he has had a substantial relationship with his children.

(Record citations omitted.)

¶27 WISCONSIN STAT. § 48.415(6) provides:

(a) Failure to assume parental responsibility, which shall be established by proving that the parent ... of the child ha[s] not had a substantial parental relationship with the child.

(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 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 expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

¶28 There was plenty of evidence adduced at trial showing that Faizel K. failed to assume parental responsibility for Robeul K. and Mohammed K. as defined by WIS. STAT. § 48.415(6). Regarding Robeul K., not only is it undisputed that Faizel K. never lived with Robeul K., but there also was, as discussed above, sufficient evidence to show that Faizel K. abandoned him, which evinces a lack of a “substantial parental relationship.” *See id.* In addition, Ralston testified that during visits she attempted to instruct Faizel K. about the nature of Robeul K.’s health problems—including that he required medications and special feeding/care due to his numerous gastrointestinal issues—but that Faizel K. would insist that Robeul K. “was just fine.” Regarding Mohammed K., Faizel K. undoubtedly subjected him to a hazardous living environment, *see id.*, when he physically abused him. Additionally, when Faizel K. attended visits with Mohammed K. prior to being criminally charged, Faizel K. failed to understand how to care for Mohammed K. and could not “teach back” what he was supposed to have learned. He cut back on visits from January 2011 to February 2012, claiming that he was too tired. He attended few of Mohammed K.’s medical appointments and failed to recognize and learn about Mohammed K.’s special needs, despite being instructed on these matters by experts. Furthermore, even after his incarceration, Faizel K. did not reach out to the Bureau or the foster family to obtain information or updates about either of his sons.

¶29 Consequently, because the record amply supports the trial court’s finding that Faizel K. failed to assume parental responsibility for Mohammed K. and Robeul K., the trial court’s decision as to this issue will be upheld.

(3) *The evidence was sufficient to prove that Robeul K. and Mohammed K. were in continuing need of protection or services.*

¶30 Faizel K.'s final argument on appeal is that there was insufficient evidence to support the trial court's conclusion that Robeul K. and Mohammed K. were in continuing need of protection or services. Specifically, he argues that the Bureau failed to make a diligent effort to provide court-ordered services in light of Faizel K.'s language limitations. He claims that the Bureau "never took into consideration" his learning difficulties and that by separating visits with Robeul K. and Mohammed K., the Bureau "made it more difficult, not easier" for Faizel K. to interact with his children.

¶31 This court disagrees; the record sufficiently supports the trial court's conclusion that the children had been adjudged to be in need of protection or services, including that the Bureau made reasonable efforts to provide Faizel K. with court-ordered services. *See* WIS. STAT. § 48.415(2). As noted, Ralston, who had training and experience with Burmese culture, tried to assist Faizel K. in meeting the CHIPS condition of return. Ralston helped make the family's home environment safe and researched whether the family would be eligible for food share and/or rent assistance. Ralston and Phillips both testified that Faizel K. was encouraged to attend medical appointments, English classes, and home-management services, but Faizel K. failed to follow through at all. In fact, he would not cooperate even when programming fit around his work schedule. Ralston further testified that Faizel K. was notified about Mohammed K.'s appointments with medical specialists and interpreters were provided so that he could attend and understand. Information regarding medical appointments was written, translated, and given to Faizel K. In addition, Ralston testified that education was provided to help Faizel K. care for his both sons' special needs.

Unfortunately, Faizel K. was not able to “teach back” what he had learned, and, as a general matter, insisted that his sons were fine and did not require special attention.

¶32 It is very clear that the Bureau did, in fact, go to great lengths to offer services to Faizel K. Sufficient evidence supports the trial court’s finding that “the Bureau made more than reasonable efforts to accommodate [Faizel K.] and his needs ... but he rejected that.” Therefore, the trial court’s conclusion will be affirmed.

By the Court.—Orders affirmed.

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

