COURT OF APPEALS
DECISION
DATED AND FILED

April 30, 1998

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.

Nos. 98-0307 and 98-0308

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

Case No. 98-0307

IN RE THE TERMINATION OF PARENTAL RIGHTS OF DALLAS M., A PERSON UNDER THE AGE OF 18:

LA CROSSE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SARA M.,

RESPONDENT-APPELLANT,

WILLIAM R.S.,

RESPONDENT.

Case No. 98-0308

IN RE THE TERMINATION OF PARENTAL RIGHTS OF KAELAN R.W.S., A PERSON UNDER THE AGE OF 18:

LA CROSSE COUNTY DEPARTMENT OF HUMAN

SERVICES,

PETITIONER-RESPONDENT,

V.

SARA M.,

RESPONDENT-APPELLANT,

WILLIAM R.S.,

RESPONDENT.

APPEAL from a judgment of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed.*

ROGGENSACK, J.[1] Sara M. appeals the termination of her parental rights to her two children. She ascribes error to a lack of timeliness in the filing of permanency plans, the lack of a timely review of the plans, an insufficiency of the plans and an alleged insufficient effort by La Crosse County to provide her with services. She also contends that an order requiring her to refrain from associating with abusive men violated her First Amendment right of free association. We find no merit to her contentions and therefore affirm the judgment of the circuit court.

[1] This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

BACKGROUND

Sara M. had two children, Dallas M., born March 5, 1987, and Kaelan R.W.S., born August 17, 1992. In June of 1993, a referral was made to the La Crosse County Department of Human Services for alleged abuse and neglect. An attempt was made to provide services to Sara at that time. Later, on March 22, 1995, the children were placed in foster care when Sara was confined to the La Crosse County Jail. On May 26, 1995, Dallas and Kaelan were adjudged to be children in need of protection and services (CHIPS) and their placement in foster care was continued. A permanency plan was attached to the 1995 order finding the children CHIPS. On January 22, 1996, the permanency plan was reviewed by an independent panel. On May 24, 1996, an extension hearing was held to determine if the foster care should be extended. On June 7, 1996, foster care was extended to May 26, 1997 because Sara had not made substantial progress on fourteen of the fifteen conditions necessary to the return of her children. A permanency plan was also attached to the 1996 order. On May 21, 1997, the Department filed a petition to terminate the parental rights of Sara.[2] A trial was held August 18th through August 20, 1997. The jury found that the Department had made diligent efforts to provide Sara with the services that were ordered by the court; that Sara had failed to demonstrate substantial progress toward meeting the conditions established for the return of Dallas and Kaelan to her home; and that there was a substantial likelihood that Sara would not meet the conditions for the return of the children within the twelve-month period following the conclusion of the fact finding trial.

[2] Petitions to terminate the parental rights of Dallas's and Kaelan's fathers were also filed. Their rights were terminated, but they do not appeal those judgments.

At the dispositional hearing, the circuit court made additional findings. First, it determined that the children were likely to be adopted after the termination Sara's parental rights; second, that both children were in good health; third, that Kaelan and Dallas had bonded with their foster mother and father; and fourth, that neither child was subject to the Federal Indian Child Welfare Act, 25 U.S. CODE § 1911 et seq.

Based upon the findings of the jury and the findings of the court, the court then concluded, as a matter of law, that the children were in continuing need of protection and services pursuant to § 48.415(2), STATS.; that Sara was an unfit parent and that her unfitness was so egregious, by clear and convincing evidence, as to warrant the termination of her parental rights. And finally, the court concluded that based on the recommendations of the guardian *ad litem*, the Department and the entire proceedings to date, it was in the best interests of Dallas and Kaelan to terminate Sara's parental rights.

In reaching its conclusions, the court carefully considered the lack of effort by Sara to meet even the most minimal needs of her children. Sara had not maintained a stable home environment into which the children might be transferred; she had been given repeated warnings about the effect on her children of the violent environment in which she placed them through her association with men who continued to batter her. The court also reviewed the diligent efforts which had been made by the Department, as it attempted to facilitate the return of the children to Sara.

On appeal, Sara asserts error on four theories: (1) that the County did not comply with the statutory requirements for timely filing permanency plans; (2) that the permanency plans that were filed were insufficient; (3) that the

Department did not make a diligent effort to provide services to Sara to enable her to obtain the return of her children; and (4) that Sara's First Amendment right of free association under the United States Constitution was violated by the Department's requirement that she refrain from associating with abusive men.

DISCUSSION

Standard of Review.

We will not reverse a factual determination made by a jury or by the circuit court unless it is clearly erroneous. Section 805.17(2), STATS.; ***Hur v. Holler***, 206 Wis.2d 335, 342, 557 N.W.2d 429, 432 (1996). The construction and application of a statute under facts as found by the court presents a question of law which we review independently. ***R.A.C.P. v. State***, 157 Wis.2d 106, 118-19, 458 N.W.2d 823, 829 (Ct. App. 1990). Whether the litigant's due process rights were violated in a proceeding in circuit court is a question of law, which we review *de novo*. ***Thomas Y. v. St. Croix County***, 175 Wis.2d 222, 229, 499 N.W.2d 218, 221 (Ct. App. 1993).

Due Process.

Sara contends on appeal that her due process rights were violated because the procedures required under § 48.38, STATS., were not met. She raises three contentions in this regard: (1) that the permanency plans required by § 48.38(3) were not timely, (2) that the permanency plans were not reviewed; and (3) that the permanency plans that were filed were insufficient under § 48.38(2). The Department argues that the permanency plans were timely filed subsequent to the children being placed outside of Sara's home under a court order, and even if they were not timely filed, there has been no constitutional deprivation because the

requirement is an administrative one which does not involve the process that is due in court. The Department cites ***Thomas Y.*** in support of its assertion that a late permanency plan, a late review, or a plan established through the use of a form are simply administrative insufficiencies and not errors with constitutional implications. The Department also alleges that the issue of whether the thirty-day time limit for a review under § 48.38(3), was not raised at the circuit court level and therefore, it is waived for appeal.

In ***Thomas Y.***, two young boys had been taken from their father's home and placed in foster care subsequent to a CHIPS proceeding. On appeal, Thomas, the father, alleged that his sons were placed outside of his home without a timely permanency plan, as is required by § 48.38(3), STATS. Thomas argued that this failure deprived the circuit court of subject matter jurisdiction. When we construed § 48.38, we noted that the plain language of the statute did require the filing of a permanency plan within sixty days of the date on which a child was placed outside of his or her home under a court order. However, we concluded that "preparing a permanency plan is an administrative requirement that does not involve the court, is not part of the court procedures governed by Subchapter V and does not arise out of the court's jurisdiction." ***Thomas Y.*** 175 Wis.2d at 228, 499 N.W.2d at 221.

Sara argues that ***Thomas Y.*** was a CHIPS case and therefore, it does not apply to a termination of parental rights. We do not agree. In ***Thomas Y.***, we construed the statute at issue in this case. ***Thomas Y.*** is controlling here. Therefore, we conclude that neither the late filing of the permanency plan nor the lack of a timely review constitutes a violation of Sara's due process rights which courts are bound to afford in termination of parental rights proceedings.

Sara next argues that the permanency plans were insufficient because forms were used, rather than narrative-style reports. That argument is without merit. The forms listed, in an easily understood format, those tasks toward which Sara was required to make substantial progress if she were to obtain the return of her sons. Sara does not even argue that if the same information had been provided in a narrative form, rather than on preprinted forms, she would have been able to comply with the requirements for the return of her sons. Additionally, this issue was never raised at any of the hearings where the permanency plan was reviewed. Therefore, we do not consider it further here. ***State v. Keith***, 216 Wis.2d 61, 80, 573 N.W.2d 888, 897 (Ct. App. 1997).

Factual Findings of the Jury.

Sara also challenges the factual findings made by the jury. She alleges that the Department did not make diligent efforts to provide services to her sufficient to enable her to obtain the return of her children. The factual findings of a jury in a termination of parental rights case will not be overturned unless such findings are against the great weight and clear preponderance of the evidence. *See* ***Kegel v. Oneida County Dept. of Soc. Servs.***, 85 Wis.2d 574, 581, 271 N.W.2d 114, 116 (1978). However, whether the evidence warrants a termination of parental rights is within the sound discretion of the circuit court. ***B.L.J. v. Polk County Dept. of Soc. Servs.***, 163 Wis.2d 90, 104, 470 N.W.2d 914, 920 (1991).

Here, the jury heard evidence that the Department established clear conditions for the return of Sara's children and then it provided the following services: (1) a case worker who would be available on a regular basis to assist Sara; (2) parent aid services; (3) counselors and therapists to assist Sara, both in parenting and in understanding her continuing relationships with abusive men; (4)

transportation services; (5) supervised visitation with Dallas and Kaelan; (6) respite care; (7) day care; (8) vocational rehabilitation; and (9) foster care.

Sara never challenged the sufficiency of the services provided to her, all of which were provided without charge. On appeal, Sara argues that she wasn't receiving the type of counseling that she needed and that she did not trust the counselor initially provided by the Department. However, at no point in the proceedings in the circuit court did she ask for a different counselor or let anyone know that she did not trust the one who had been assigned. Furthermore, the jury also heard Sara missed seventeen of the fifty appointments the Department set with the initial counselor, and when a different counselor was provided after the petition to terminate her rights had been filed, Sara missed twenty-five percent of the scheduled appointments. The jury heard that Sara was given repeated warnings of the possibility of the termination of her parental rights if she did not work toward achieving those skills necessary for the return of her children. Therefore, we conclude there was an ample factual record to support the jury's findings.

First Amendment Right.

Sara challenges the requirement of the Department that she refrain from associating with abusive men. The requirement listed two men by name, and when others were learned about, their names were added as well. Notwithstanding the fact that Sara was beaten so badly that she suffered a ruptured spleen and multiple abrasions, lacerations and broken bones, she continued to associate with the very persons who were an obstacle to the return of her children.

Sara cites no authority for the proposition that she has a First Amendment right to place her children in emotional and physical danger by living

with abusive, violent or intoxicated individuals. Sara had a choice. She chose abusive relationships rather than the return of her children. All of the cases cited by Sara involve association for one's social, political, race or religious purposes and do not implicate harm to a third party by the choices of association. None of the cases are applicable to the facts of this case. Therefore, we conclude that the requirement of the Department did not impair Sara's First Amendment right.

CONCLUSION

Because we find no reversible error in the substance or the procedures which attended the court's termination of Sara's parental rights, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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