COURT OF APPEALS
DECISION
DATED AND FILED

February 23, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3297

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

IN RE THE TERMINATION OF PARENTAL RIGHTS OF JOSEPH W.C. AND JOSHUA A.M., PERSONS UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARGARET C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed.*

SCHUDSON, J.[1] Margaret C. appeals from the trial court order, following a jury trial, terminating her parental rights to Joseph W.C. and

[1] This appeal is decided by one judge pursuant to § 752.331(2), STATS.

Joshua A.M. She argues that the verdict instructions and form were improper, that the evidence was insufficient to support the jury's verdict, and that the trial court erroneously exercised discretion in terminating her parental rights. This court rejects her arguments and affirms.

Joseph was born on November 7, 1988, and Joshua was born on November 15, 1991. In 1992, both were removed from Margaret's care and, on March 3, 1993, the juvenile court found Joseph and Joshua to be children in need of protection or services and entered an order specifying the conditions Margaret would have to meet before they would be returned to her. The court extended the CHIPS orders annually and, on March 20, 1997, the State petitioned to terminate Margaret's parental rights.

I. VERDICT

Margaret argues that the trial court's verdict form "denied her constitutional rights to due process by virtue of the jury instruction [being] strictly limited to the new law." She points out that during the years of the juvenile court's CHIPS jurisdiction over Joseph and Joshua, the legislature changed the legal bases for termination and, as a result, the mandatory TPR warnings to parents upon entry or extension of a CHIPS order were revised. *See* ***State v. Patricia A.P.***, 195 Wis.2d 855, 858-60, 537 N.W.2d 47, 48-49 (Ct. App. 1995). Noting that the trial court instructed the jury only under the new law, she contends:

> Although appellant concedes that the case could go forward, … the jury should have been instructed under both the old and new grounds[;] the jury should have been instructed that if they found the appellant failed to demonstrate substantial progress toward meeting the conditions established for returning the child to the home

> "because the appellant either substantially neglected, willfully refused or was unable to meet the conditions established for the return of the child to the home," it may find grounds for termination. In essence, if the jury finds grounds under the old law, which law is more strict, it would then be able to find under the new law as well.

Whether a trial court has utilized the proper legal standard governing termination of parental rights presents a question of law this court reviews *de novo*. *See* ***Patricia A.P.***, 195 Wis.2d at 862, 537 N.W.2d at 49-50. "[I]f the State substantially changes the type of conduct that may lead to the loss of rights *without notice to the parent*, the State applies a fundamentally unfair procedure." ***Id.*** at 863, 537 N.W.2d at 50 (emphasis added).

As Margaret concedes, the new law was in effect at the time of the CHIPS orders immediately preceding the TPR action and, accordingly, in 1995 and 1996 she had been warned of the grounds for termination under the new law. Margaret offers no authority to support the novel notion that, despite the inapplicability of the old law to the most recent CHIPS orders and TPR warnings, the TPR instructions and verdicts still should have incorporated the old law. Unlike the situation in ***Patricia A.P.***, Margaret received notice of the grounds for termination under the new law. Thus, while evidence of the old TPR standards and Margaret's earlier efforts to satisfy the conditions for return certainly were relevant, the old law no longer governed the jury's determination of the issues at trial. Therefore, the State properly prosecuted the TPR action under the new law, and the trial court properly instructed the jury and submitted verdicts under the new law.[2]

[2] This court also notes Margaret's concession that "[a]ll parties agreed to use the standard jury instructions, no modifications being made to those." The record confirms not only that Margaret agreed to the standard instructions, but also that she prevailed in objecting to any modifications of the standard instructions.

II. SUFFICIENCY OF EVIDENCE

Margaret argues that the evidence was insufficient to support the jury's verdict. Specifically, she contends that she had "made substantial progress toward meeting" all but three of the conditions prerequisite to the return of Joseph and Joshua, that she had made "partial" progress toward the completion of those three, that the "erratic inconsistent assistance" of the Department of Social Services had inhibited her efforts, and that, with improved performance by the Department, she "could have successfully completed the remaining conditions within 12 months following the fact finding hearing."[3]

Margaret also asserts that "[b]oth [the State] and the guardian *ad litem* in their briefs argue that [she] failed to make substantial progress on the conditions of return." She is incorrect. The State and guardian *ad litem* argue that, notwithstanding Margaret's efforts, progress, and compliance in many respects, the evidence established that she was unable to satisfy certain essential conditions and would not be able to do so in the next twelve months. The State and guardian *ad litem* are correct and, accordingly, this court concludes that the evidence was sufficient to support the jury's verdict.

On appeal, this court will not upset a verdict if any credible evidence supports it. *See* ***Richards v. Mendivil***, 200 Wis.2d 665, 671, 548 N.W.2d 85, 88 (Ct. App. 1996). The credibility of the witnesses and the weight afforded to their

[3] This court notes that the jury unanimously found that "the Milwaukee County Department of Human Services and the Children's Service Society of Wisconsin ma[d]e a diligent effort to provide the services ordered by the court."

testimony are left to the jury. *See* ***id.*** If more than one reasonable inference may be drawn from the evidence, this court must accept the jury's choice. *See* ***State v. Poellinger***, 653 Wis.2d 493, 506-07, 451 N.W.2d 752, 757 (1990). This court searches for credible evidence to sustain the verdict, not for evidence to sustain a verdict the jury did not reach. *See* ***Richards***, 200 Wis.2d at 671, 548 N.W.2d at 88.

Here, the evidence informed the jury of the deplorable conditions resulting in the removal of Joseph and Joshua from Margaret's home, the many years of efforts to help Margaret meet all the conditions to allow for their return, and the continuing circumstances apparently precluding her from ever satisfying the following portions of two of them:

> [T]he parent shall demonstrate the ability to manage a household independently and competently, including, bill paying, food preparation, maintaining the home and providing adequate supervision for the children at all times, whether the children are visiting or residing with the parent.
>
> . . . .
>
> The parent shall … demonstrate the understanding and ability to provide for the physical and emotional needs of the children.

The evidence informed the jury of Joseph's and Joshua's severe developmental disabilities, their exceptional educational needs, Margaret's significant limitations in providing appropriate care and supervision, and her inadequate parenting of her other children who do not have Joseph's and Joshua's deficiencies. In her testimony, Margaret acknowledged not only her need for substantial "training" to be able to meet Joseph's and Joshua's special needs, but also her failure to obtain that training in the years since the boys were removed from her care. As Dr. Burton Silberglitt explained, despite her sincere efforts,

Margaret was unable to meet the boys' physical and emotional needs, and would not be able to do so within the next year.[4] Clearly, the evidence was sufficient.

III. TERMINATION

Margaret asserts that the trial court erroneously exercised discretion in terminating her parental rights. Her argument, however, is limited to the following:

> It is clear that [the trial court] did not make its own findings or determinations, but merely adopted those proposed by the petitioner in her order. [The trial court] did not properly exercise its discretion as demonstrated by the decision which does not set forth the relevant facts or process by which this judge reached his conclusion.

Margaret fails to offer any theory or authority to support her claim. Arguments in appellate briefs must be supported by authority and references to the record, RULE 809.19(1)(e) & (3)(a), STATS. This court will not develop Margaret's argument for her. *See* ***Barakat v. DHSS***, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (appellate court need not consider "amorphous and insufficiently developed" arguments). Nevertheless, this court has considered the record and whether it supports the trial court's termination order.

When a jury finds grounds for termination of parental rights, the trial court must determine whether termination is appropriate. *See* §§ 48.424(3) & 48.427, STATS. "[T]he trial court 'must consider all the circumstances and

[4] Margaret replies that much of the evidence related to the earlier years, not to the year preceding termination. She does not contend, however, that such evidence should not have been considered. Clearly, while its weight might have been less than that of more recent evidence, it was relevant. Margaret also replies that, although Dr. Silberglitt's evaluation was conducted shortly before trial, because it "was of a very short duration, … its reliability must be carefully examined" — "reliability [she] challenges." Margaret offers nothing, however, to suggest that the jury was not entitled to rely on Dr. Silberglitt's report.

exercise its sound discretion as to whether termination would promote the best interests of the child.'" ***Mrs. R. v. Mr. And Mrs. B.***, 102 Wis.2d 118, 131, 306 N.W.2d 46, 52 (1981). The ultimate decision whether to terminate parental rights is discretionary, and this court will not reverse the trial court's decision absent an erroneous exercise of discretion. *See* ***Gerald O. v. Cindy R.***, 203 Wis.2d 148, 152, 551 N.W.2d 855, 857 Ct. App. 1996).

Here, at the dispositional phase, the trial court considered not only the trial evidence, but also additional reports of Dr. Silberglitt's psychological evaluations of the children, and testimony from Elizabeth Heredia, their foster mother and potential adoptive resource. The court found that the evidence supporting termination was overwhelming and, appropriately, gave particular emphasis to the fact that the children had been residing in a foster home since 1992 and that Ms. Heredia and her husband provided the appropriate adoptive resource in their best interest. *See* ***State v. Joseph P.***, 200 Wis.2d 227, 241, 546 N.W.2d 494, 500 (Ct. App. 1996) ("heav[]y consider[ation of] children's chance for adoption" is an "appropriate ground[]" for termination of parental rights); *see also* § 48.426(3)(a) & (f), STATS. Although the court's comments were brief, and although tracking all the criteria of § 48.426, STATS., would have been helpful and appropriate, this court concludes that the evidence supports the court's termination of Margaret's parental rights to Joseph and Joshua.

By the Court.—Order affirmed.

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