COURT OF APPEALS
DECISION
DATED AND FILED

April 20, 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.

Nos. 99-0546, 99-0547, 00-0187 and 00-0188

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

Case Nos. 99-0546 and 00-0187

IN THE INTEREST OF BRIDGET C.,
A PERSON UNDER THE AGE OF 18:

LAFAYETTE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

STEPHEN J.C.,

RESPONDENT-APPELLANT.

Case Nos. 99-0547 and 00-0188

IN THE INTEREST OF CHELSEA C.,
A PERSON UNDER THE AGE OF 18:

LAFAYETTE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

STEPHEN J.C.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Lafayette County: WILLIAM D. JOHNSTON, Judge. *Affirmed.*

¶1 ROGGENSACK, J.[1] Stephen J.C. appeals from a dispositional order and an extension of that dispositional order based on findings that his daughters, Bridget C. and Chelsea C., are children in need of protection and services (CHIPS) under WIS. STAT. § 48.13. He claims that: (1) the circuit court erred when it adjudicated his daughters CHIPS because they were without a parent or guardian to care for them after it had entered a child abuse injunction, which prevents him from contacting his daughters without their permission; and (2) the court erred in entering a CHIPS dispositional order, and extending that order, which orders prohibit his contacting Bridget and Chelsea without their permission and the approval of their therapist. We conclude that there was sufficient evidence to find Bridget and Chelsea CHIPS. We also conclude that the court did not err in establishing a condition within the CHIPS order that Stephen not contact his daughters, unless they requested the contact and their therapist approved it. Accordingly, we affirm the circuit court.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98). Additionally, all further references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

BACKGROUND

¶2 In June of 1998, Bridget and Chelsea petitioned the Lafayette County Circuit Court for a child abuse restraining order against their father, Stephen J.C.[2] Less than one week later, Lafayette County Human Services filed a petition alleging that the girls were CHIPS. The grounds alleged in that petition were that: (1) each child had been a victim of abuse; (2) each was at substantial risk of becoming a victim of abuse; and (3) both girls were without a parent or guardian because their mother was deceased and their father had abused them.

¶3 At the fact-finding hearing,[3] Bridget testified that Stephen beat her repeatedly. She testified that on one occasion, Stephen repeatedly hit her on her back and buttocks, both with an open hand and a closed fist. She also testified that after she spilled a soda on her great grandmother's blanket, Stephen beat her with such ferocity that she had bruises up and down her back. She said that on another occasion Stephen pushed her into her room, hit her on her shoulders and back, boxed her ears more than twenty times, then pushed her over the bed onto the wooden floor and kicked her four times. After that beating, Bridget said Stephen put an ice pack on his hand because it was injured from striking her so hard. Bridget also testified that her father threatened to throw her out a second story window, and that the instances of abuse occurred three to four times per week.

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[2] At the time of the proceedings, Bridget and Chelsea were thirteen and nine-years-old, respectively.

[3] The same testimony formed the basis for the court's fact-finding for the injunction and the CHIPS petition. Originally, Stephen objected to the court's suggestion that it utilize the testimony from the injunction hearing for the CHIPS fact-finding. However, he subsequently withdrew that objection.

¶4 Chelsea also testified about Stephen's abuse. She said that Stephen hit her with a belt and a rolling pin and threatened to cut off her fingers with a knife. She also stated that Stephen hit her on the head with a spoon when dinner was not on the table promptly at 6:00 p.m. She testified that Stephen pulled out large clumps of her hair and hit her on the face with a shoe. Chelsea also said that the incidences of abuse occurred three to four times per week. Bridget confirmed Stephen's abuse of Chelsea. She also said that during spring break of 1997, Stephen hit Chelsea in the face repeatedly and caused such severe bruises that Chelsea was unable to return to school for several days.[4]

¶5 Stephen testified at the hearing and denied all allegations of abuse. However, he did admit that he threatened to throw Chelsea out a window. The circuit court granted Bridget and Chelsea's petition for a child abuse injunction which prohibited Stephen from having any contact with the girls for a period of two years, unless Bridget and Chelsea wished to have contact with their father and their therapist permitted the visit.[5]

¶6 At the close of the fact-finding hearing, the circuit court entered an injunction and undertook the CHIPS petition which was pending. The court found Bridget and Chelsea CHIPS on all three grounds. The CHIPS dispositional order, which followed the finding of CHIPS, incorporated a no-contact provision, directing that Stephen not have contact with Bridget or Chelsea unless they

[4] The girls' testimony was also corroborated by social workers, a police officer and Jennifer C., the girls' half-sister. Jennifer testified that she had observed Stephen slap Chelsea in the face when Chelsea was still in her high chair.

[5] In a separate appeal, Stephen challenged the granting of the child abuse injunction. We upheld the circuit court's order, concluding that the evidence was sufficient to establish abuse. *See* ***Bridget C. v. Stephen J.C.***, No. 98-3441, unpublished slip op. (Wis. Ct. App. Oct. 14, 1999).

requested it and their therapist approved. The dispositional order also stated that if visitation did occur, those visits were to be supervised by the Lafayette County Human Services Department. The dispositional order was subsequently extended on the same terms. In this consolidated appeal, Stephen appeals the underlying dispositional orders and their subsequent extensions for both girls.[6]

DISCUSSION

Standard of Review.

¶7 Whether to enter or to extend a CHIPS dispositional order is a discretionary decision for a circuit court. *See* ***Sallie T. v. Milwaukee County Dep't of Health & Human Servs.***, 219 Wis. 2d 296, 305, 581 N.W.2d 182, 186 (1998); ***R.E.H. v. State***, 101 Wis. 2d 647, 653, 305 N.W.2d 162, 166 (Ct. App. 1981). We will not reverse a circuit court's discretionary decision unless its discretion was erroneously exercised. *See* ***Sallie T.***, 219 Wis. 2d at 305, 581 N.W.2d at 186. However, a proper exercise of discretion requires the circuit court to apply the correct standard of law to the facts as found. *See* ***id.*** Because determination of the proper legal standard to be applied in this case requires interpretation of WIS. STAT. ch. 48, we conduct that part of our review *de novo*. *See* ***Sallie T.***, 219 Wis. 2d at 305, 581 N.W.2d at 186.

¶8 Additionally, whether a CHIPS dispositional order entered pursuant to WIS. STAT. ch. 48 conflicts with a child abuse injunction entered pursuant to WIS. STAT. § 813.122 involves statutory construction and the application of

[6] Stephen's claims of error on appeal are the same for the dispositional orders, entered January 20, 1999, as for their extensions, entered January 14, 2000. He makes no separate claims of error that are specific to the extension orders.

statutes to undisputed facts, which are questions of law that we review *de novo*. *See* ***Gonzalez v. Teskey***, 160 Wis. 2d 1, 7-8, 465 N.W.2d 525, 528 (Ct. App. 1990).

The CHIPS Finding.

¶9 Stephen makes two arguments that are somewhat related. First, Stephen contends that the circuit court erred when it found his daughters CHIPS because they were without a parent or guardian. Stephen reasons that the circuit court found the girls CHIPS because the restraining order prevented him from having any contact with the girls. Therefore, after their mother's death, they had no parent or guardian to care for them. He states that because the circuit court was not bound by the injunction, it was error for the court to conclude the children were CHIPS because of the existence of the no-contact provision in the injunction.

¶10 Stephen's argument fails to take into account all of the grounds for the CHIPS findings. The court found Bridget and Chelsea CHIPS based upon three grounds: (1) that they were without a parent or guardian; (2) that they had been the victims of abuse; and (3) that they were at substantial risk of becoming victims of abuse. Therefore, even assuming, *arguendo*, that it was error for the circuit court to reason that its authority in the CHIPS proceeding was controlled by the injunction, that alleged error was harmless because the court made two additional, independent findings of the grounds for its CHIPS order: abuse and the danger of abuse. Stephen does not contend that the evidence of abuse and the substantial risk of future abuse was insufficient to make CHIPS findings on those bases. Further, given Bridget and Chelsea's detailed testimony, we conclude that the findings of CHIPS based upon severe child abuse and the danger of further abuse were well supported.

Contact Restriction.

¶11 Stephen also contends that the court erred in constructing CHIPS dispositional orders which tracked the no-contact provisions of the child abuse injunction. He argues that "the juvenile court is paramount" and that the injunction entered pursuant to WIS. STAT. § 813.122 cannot "control over CHIPS." He contends that the no-contact provision of the injunction, which is also present in the CHIPS dispositional orders, is "the antithesis of Chapter 48 which requires the Department to make an effort to return the child to the family."

¶12 WISCONSIN STAT. § 48.15 provides:

> **Jurisdiction of other courts to determine legal custody**. Nothing contained in ss. 48.13, 48.133 and 48.14 deprives other courts of the right to determine the legal custody of children … if the legal custody or guardianship is incidental to the determination of causes pending in the other courts. But the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 938 is paramount in all cases involving children alleged to come within the provisions of ss. 48.13 and 48.14 ….

Based upon what he contends is the plain language of § 48.15, Stephen argues that the juvenile court should have disregarded the injunction because a juvenile court in a WIS. STAT. ch. 48 proceeding is paramount to all other courts.

¶13 The interplay between WIS. STAT. ch. 48 and other statutes addressing the needs of children has been reviewed in circumstances different from those present here. For example, in ***State ex rel. Rickli v. County Court for Dane County***, 21 Wis. 2d 89, 123 N.W.2d 908 (1963), the supreme court considered ch. 48 and its effect on other proceedings that affect juveniles. There, the court recognized that the jurisdiction of juvenile court and family court overlapped. It reasoned that based upon the language of ch. 48, a juvenile court's

jurisdiction was paramount, such that a family court could not make a finding contrary to a prior juvenile court disposition. *See* ***Rickli***, 21 Wis. 2d at 95, 123 N.W.2d at 911. However, the court also noted that family court retained jurisdiction "to do anything which does not conflict with the orders and findings of the juvenile court." ***Id.*** at 97, 123 N.W.2d at 912. Therefore, under ***Rickli***, another court does not lose jurisdiction, nor does its order become unenforceable, because it pertains to a matter which is also subject to the jurisdiction of juvenile court.

¶14 In the present case, the circuit court had two proceedings before it: the injunction under WIS. STAT. § 813.122 and the CHIPS petitions under WIS. STAT. § 48.13. When confronted by two statutes, the duty of a court is to harmonize them in a way that will give effect to the intent of the legislature in enacting both statutes. *See* ***Byers v. LIRC***, 208 Wis. 2d 388, 395, 561 N.W.2d 678, 681 (1997).

¶15 In analyzing the intent of the legislature in enacting the child abuse injunction provisions, we note that in 1979, the legislature acknowledged that domestic abuse was a serious statewide social concern. *See* ***Schramek v. Bohren***, 145 Wis. 2d 695, 702, 429 N.W.2d 501, 503 (Ct. App. 1988). Through WIS. STAT. ch. 813, "the state legislature created protective measures for those individuals who, as a member of either an adult family or a household, were domestically abused by other family or household members." *See* ***Schramek***, 145 Wis. 2d at 711, 429 N.W.2d at 507. Similarly, WIS. STAT. ch. 48 also strives to protect children. However, there, the legislature sought to balance that goal with the goal of preserving the unity of the family. Setting forth its legislative purpose within the statute itself, the legislature stated:

> While recognizing that the paramount goal of this chapter is to protect children … [and] to preserve the unity of the family, *whenever appropriate*, by strengthening family life through assisting parents … *whenever appropriate*, in fulfilling their responsibilities as parents …. The courts and agencies responsible for child welfare, while assuring that a child's health and safety are the paramount concerns, should assist parents … in changing any circumstances in the home which might harm the child … which may require the child to be placed outside the home …. *The courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family.*

Section 48.01(a) (emphasis added).

¶16 Based upon the language of WIS. STAT. ch. 48 and its interpretation in ***Rickli***, we conclude that ch. 48 neither deprives other courts of jurisdiction over a child, nor prohibits them from entering non-conflicting orders. Here, the no-contact provisions found in both the injunction and the CHIPS dispositional orders were entirely consistent with each other. The court relied upon the same testimony that supported the fact-finding in the injunction proceeding as it did for the fact-finding for the CHIPS determinations. Therefore, it is not surprising that the no-contact provisions are the same. Stephen's claim that the ch. 48 proceeding prevents the enforcement of the injunction is without merit, as there is no conflict between the injunction and the dispositional orders.

¶17 Additionally, we find no merit to Stephen's claim that the no-contact provision of the CHIPS dispositional orders is in direct conflict with the goal of preserving family unity found in WIS. STAT. § 48.01. The legislative purposes of the injunction and of WIS. STAT. ch. 48 are easily harmonized in this case. The language of the statute indicates that when the goal of preserving family unity is in conflict with the goal of protecting the child, the protection goal prevails. *See*

§ 48.01 ("[t]he courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family").

¶18 The circuit court determined that Bridget and Chelsea's safety was its paramount concern. Therefore, it ordered that there would be no contact unless the girls requested it and their therapist approved it. The court also showed its concern for the girls' safety when it ordered that if any visitation did occur, it must be supervised by the Lafayette County Human Services Department. We see no error of law in the court's decision to include a no-contact provision in the CHIPS dispositional orders. And finally, we conclude there is no conflict between the dispositional orders and the injunction.

CONCLUSION

¶19 There was sufficient evidence to find Bridget and Chelsea CHIPS, and furthermore, the court did not err in establishing a condition within the CHIPS dispositional orders that Stephen not contact his two daughters unless they requested the contact and their therapist approved of it. Accordingly, we affirm the orders of the circuit court.

By the Court.—Orders affirmed.

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