

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 13, 2016**

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 No. 2015AP1702**

**Cir. Ct. No. 2013TP27**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

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

**K.C. a/k/a K.F.,**

**PETITIONER-RESPONDENT,**

**v.**

**B.S.-S.,**

**RESPONDENT-APPELLANT.**

---

APPEAL from an order of the circuit court for Kenosha County:  
DAVID P. WILK, Judge. *Reversed and cause remanded.*

¶1 HAGEDORN, J.<sup>1</sup> B.S.-S. appeals from an order of the circuit court terminating his parental rights regarding his child, X.S.-S. The circuit court relied solely on a single conviction of child abuse to find that B.S.-S. was unfit. B.S.-S. argues that the circuit court was required to find a pattern of abusive behavior and did not do so here. This appeal presents a single issue for review: should the circuit court's order terminating B.S.-S.'s parental rights be reversed because the statutory grounds relied upon require a pattern of abusive behavior? The law is clear and well established: a single conviction does not demonstrate a pattern of abusive behavior under WIS. STAT. § 48.415(5). Therefore, we conclude that the circuit court erred when it found that B.S.-S. was unfit.

### *Facts*

¶2 In February 2011, B.S.-S. was convicted of one act of child abuse under WIS. STAT. § 948.03(2)(b).<sup>2</sup> On May 2, 2013, K.C. filed a petition to terminate B.S.-S.'s parental rights regarding their child X.S.-S. The amended petition stated four grounds asserting that B.S.-S. was unfit: (1) abandonment, (2) child abuse, (3) failure to assume parental responsibility, and (4) commission of a felony against a child. K.C. moved for partial summary judgment that B.S.-S. was unfit on the grounds of child abuse. The circuit court heard arguments on the motion, and counsel for K.C. argued that B.S.-S.'s conviction for child abuse was

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

<sup>2</sup> It was a felony conviction for intentionally causing harm to a child. Although both K.C. and the guardian ad litem repeatedly refer to B.S.-S.'s child abuse conviction as a class C felony, we note that B.S.-S.'s conviction under WIS. STAT. § 948.03(2)(b) is a class H felony and not a class C felony. B.S.-S. was also convicted of two counts of obstructing an officer and one count of disorderly conduct. These convictions are not relevant to this appeal.

sufficient grounds for termination. Although B.S.-S. opposed the motion, his counsel stated that “I believe [the conviction] does conform with the statutory requirements for termination.” After argument, the circuit court granted K.C.’s motion solely on the basis of B.S.-S.’s child abuse felony conviction. The circuit court explained that a felony conviction for child abuse is “one of the statutory grounds for involuntary termination of parental rights under [WIS. STAT. §] 48.415(5).” After finding B.S.-S. unfit, the circuit court found that termination of parental rights was in X.S.-S.’s best interests and ordered that B.S.-S.’s parental rights be terminated. B.S.-S. appeals this order. On appeal, both B.S.-S. and the guardian ad litem for X.S.-S. argue that the circuit court erred when it found that B.S.-S.’s single conviction for child abuse was sufficient grounds for termination. K.C. has not filed a brief in response despite multiple requests by this court to do so.

### *Analysis*

¶3 We review the circuit court’s grant of summary judgment de novo. *State v. Bobby G.*, 2007 WI 77, ¶36, 301 Wis. 2d 531, 734 N.W.2d 81. Summary judgment is appropriate when there is no dispute as to material facts and “the moving party is entitled to judgment as a matter of law.” *Id.* The interpretation of WIS. STAT. § 48.415 and the application of that statute to a given set of facts are questions of law that the court reviews de novo. *Tammy W.-G v. Jacob T.*, 2011 WI 30, ¶16, 333 Wis. 2d 273, 797 N.W.2d 854.

¶4 B.S.-S. argues that his single conviction for child abuse is insufficient grounds for termination of his parental rights. He contends that the circuit court needed to find that he exhibited a pattern of abusive behavior in order to find him unfit under WIS. STAT. § 48.415(5)(a). Both B.S.-S. and the guardian

ad litem for X.S.-S. agree that B.S.-S.'s conviction, without more, does not constitute such a pattern. We agree that his conviction does not demonstrate a pattern of abusive behavior as required by § 48.415(5)(a).

¶5 WISCONSIN STAT. § 48.415 specifies a number of grounds for involuntary termination of parental rights, one of which is child abuse. Section 48.415(5). Child abuse must be proven by establishing as follows:

[T]hat the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and proving either of the following:

(a) That the parent has caused death or injury to a child or children resulting in a felony conviction.

*Id.* Thus, in addition to a felony conviction, this specific statutory ground for termination requires the showing of a pattern of abusive behavior that poses an ongoing substantial threat to the child. This court has made clear that a single conviction is not enough to establish a pattern of physically or sexually abusive behavior. *Monroe Cty. v. Jennifer V.*, 200 Wis. 2d 678, 683-84, 548 N.W.2d 837 (Ct. App. 1996).

¶6 Here the circuit court relied exclusively on B.S.-S.'s conviction for child abuse to find him unfit. The court never addressed whether B.S.-S. exhibited a pattern of physically or sexually abusive behavior as required by the statute. The record is likewise devoid of facts demonstrating such a pattern, or that the pattern posed a substantial threat to X.S.-S.'s health. Therefore, we agree that the statutory basis purportedly relied on here was not satisfied as a matter of law. K.C. does not contest this despite our request that she respond. It could be that a pattern of abuse posing a substantial threat to the child is present, or that other sufficient statutory grounds exist to support termination. But other, potentially

sufficient, grounds are not presented to this court here. Therefore, the law compels us to conclude that the grant of summary judgment was in error.

¶7 The sole basis for the circuit court's determination that B.S.-S. was unfit was a single count of child abuse. This does not demonstrate a pattern of physically or sexually abusive behavior as required by WIS. STAT. § 48.415(5)(a). Accordingly, we must reverse its order terminating B.S.-S.'s parental rights.

*By the Court.*—Order reversed and cause remanded.

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

