COURT OF APPEALS
DECISION
DATED AND FILED

April 11, 2017

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. 2016AP1378
2016AP1379
2016AP1380

Cir. Ct. Nos. 2015TP16
2015TP17
2015TP18

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

NO. 2016AP1378

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

BARRON COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

C. K.,

RESPONDENT-APPELLANT,

M. B.-T.,

RESPONDENT.

NO. 2016AP1379

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

**BARRON COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,**

PETITIONER-RESPONDENT,

V.

C. K.,

RESPONDENT-APPELLANT,

M. B.-T.,

RESPONDENT.

NO. 2016AP1380

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

**BARRON COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,**

PETITIONER-RESPONDENT,

V.

C. K.,

RESPONDENT-APPELLANT,

M. B.-T.,

RESPONDENT.

APPEALS from orders of the circuit court for Barron County: JAMES C. BABLER, Judge. *Affirmed*.

¶1 SEIDL, J.[1] C.K. appeals termination of parental rights (TPR) orders to her children, C.R.K.,[2] E.K., and K.K.[3] She raises several arguments involving the grounds phase of the proceedings: (1) she was denied her right to a jury trial when the circuit court answered an element of WIS. STAT. § 48.415(2) without performing a colloquy; (2) her trial counsel was ineffective for failing to argue WIS. STAT. § 48.415(6) is unconstitutional as applied to her; and (3) the court erred in admitting certain testimony at trial. She also requests a new trial in the interests of justice. We reject these arguments and affirm.

[1] These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Notwithstanding WIS. STAT. RULE 809.107(6)(e), we may extend the time to issue a decision in a termination of parental rights case. We exercise our authority to extend the time for issuing our decision in these appeals. The extension was necessary to permit us to study the reply brief and give these appeals the careful consideration the litigants deserve.

[2] We henceforth refer to the first child captioned in these appeals, C.K., with a middle initial as C.R.K. to avoid any confusion with the mother in this case.

[3] The children's father also appealed the termination of his parental rights. *See* ***Barron Cty. D.H.H.S. v. M.B.-T.***, Nos. 2016AP1381, 2016AP1382, 2016AP1383, unpublished slip. op (WI App Mar. 31, 2017). These appeals share a record, but the father's appellate issues are distinct from those raised here.

BACKGROUND

¶2 C.K's three children were placed outside of her home under dispositional orders pursuant to WIS. STAT. § 48.13(10). The County filed TPR petitions against C.K. and the children's father on October 8, 2015, alleging grounds for termination existed due to continuing need of protection or services (continuing CHIPS) and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6). C.K. was appointed counsel, contested the petition, and demanded a jury trial.

¶3 The day before the trial, the circuit court held a hearing at which it addressed a motion in limine C.K. filed. C.K. was not present at the hearing. C.K.'s trial counsel moved to stipulate to satisfaction of the first element of the jury instructions involving grounds of continuing need of protection or services under WIS. STAT. § 48.415(2). *See* WIS JI—CHILDREN 324 (2015). The instruction for the first element stated: "Has [child] been adjudged to be in need of protection or services and placed outside the home for a cumulative total period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law?" ***Id.*** The circuit court agreed to the stipulation but declined trial counsel's suggestion to conduct a colloquy with C.K. based on its understanding that TPRs do not require colloquies because they are civil cases. The court instead asked trial counsel if C.K. gave permission to stipulate to the element, to which trial counsel responded, "That's correct, Judge. We've discussed it."

¶4 C.K.'s motion in limine requested exclusion of testimony from deputy David Kuffel of the Barron County Sheriff's Department. Kuffel's

anticipated testimony related to the impetus for removing the children from C.K.'s residence. The circuit court denied that motion. More facts regarding Kuffel's testimony at trial are provided below.

¶5 The jury trial on the grounds phase lasted two days. The dispositional orders for all three children were introduced into evidence. A social worker testified that all three children had been placed outside the home under temporary orders since September 2014 and that the effective dates of the court's orders were each December 22, 2014. The orders contained notices regarding termination of parental rights and set forth the conditions for safe return of the children to the home. *See* WIS. STAT. § 48.356. All three orders bore C.K.'s signature. C.K. additionally testified that she was an active participant in the CHIPS proceedings for the children—including that she was present at the dispositional hearing at which the orders were entered—and that she knew the orders imposed conditions for safe return of the children.

¶6 At the final instruction conference, the parties stipulated to the existence of the first element regarding grounds under WIS. STAT. § 48.415(2). The court discussed the stipulation with C.K.'s trial counsel and C.K.:

> THE COURT: Counsel, I provided to all attorneys at least yesterday copies of the proposed verdict forms for all three children. … [A]ny objection to the form of the verdict for each child?
>
> [TRIAL COUNSEL]: No, Judge.
>
> ….
>
> THE COURT: And I want to put on the record, the court has answered "Yes" to number one. [Trial counsel], do you agree that I believe there's a stipulation among counsel that the court could answer "Yes" to question number one for each of the verdict forms?

> [TRIAL COUNSEL]: Yes, Judge. And for the record, it goes beyond the stipulation of counsel. It's a stipulation that I've advised [C.K.] on, we've discussed, and she's in agreement to that as well.
>
> THE COURT: Okay. Is that true, [C.K.]?
>
> [C.K.]: Yes.

¶7 At the close of trial, the circuit court instructed the jury on the first element of the continuing CHIPS ground, but it informed them that it had answered the question "yes" because the evidence was undisputed. The jury found as grounds for termination that all three children had a continuing need for protection or services. The jury did not otherwise indicate an answer of its own on the verdict forms regarding the first element. The jury also found grounds for termination based on a failure to assume parental responsibility as to E.K. and K.K., but not C.R.K. The circuit court thus found C.K. unfit as a parent. At the dispositional hearing, the circuit court concluded that it was in the children's best interests to terminate C.K.'s parental rights, and it entered orders to that effect on April 11, 2016.

¶8 C.K. filed a motion to remand to the circuit court to hold a postdispositional hearing, which this court granted. C.K. argued her trial counsel provided ineffective assistance by stipulating to the first element of WIS. STAT. § 48.415(2) when C.K. allegedly never personally received the orders, by not objecting to Kuffel's testimony, and by failing to argue § 48.415(6) was unconstitutional as applied to her. The circuit court ultimately rejected C.K.'s arguments and entered an order denying her postdisposition motion. C.K. now appeals.

DISCUSSION

I. Stipulation to Question One of Verdict Form

¶9 C.K. argues the circuit court erred when it accepted the stipulation and answered the first element regarding grounds under WIS. STAT. § 48.415(2) without first ascertaining whether C.K. knowingly, voluntarily, and intelligently withdrew this element from the jury's determination. The County does not argue either that the court performed a valid colloquy with C.K. or that the jury otherwise decided the element regardless of the stipulation. Instead, the County claims the court was not required to conduct a colloquy in this instance.[4]

¶10 In ***Walworth County D.H.H.S. v. Andrea L.O.***, 2008 WI 46, ¶28, 309 Wis. 2d 161, 749 N.W.2d 168, our supreme court presumed that a stipulation on the first element of the continuing CHIPS verdict constituted a partial withdrawal of a demand for a jury trial. *See also* ***id.***, ¶¶30-34. Because WIS. STAT. ch. 48 lacks any statutory procedure for withdrawal of a jury trial demand, the supreme court "urge[d] … circuit courts in TPR proceedings [to] consider personally engaging the parent in a colloquy explaining that a stipulation to an element withdraws that element from the jury's consideration and determining that the withdrawal of that element from the jury is knowing and voluntary." ***Id.***, ¶¶30, 55. However, our supreme court ultimately concluded that the lack of a colloquy was not reversible error under the facts of the case. ***Id.***, ¶¶50, 57-58.

[4] These issues are subject to independent appellate review. *See* ***Walworth Cty. D.H.H.S. v. Andrea L.O.***, 2008 WI 46, ¶18, 309 Wis. 2d 161, 749 N.W.2d 168.

¶11 In ***Andrea L.O.***, the parties entered into a stipulation regarding the first element at the commencement of trial. ***Id.***, ¶¶8-9. The court asked Andrea if she agreed to the stipulation, and she responded, "yes." ***Id.***, ¶9. During opening statements, the jury was told the first element was already decided. ***Id.***, ¶10. The court order was marked and received as an exhibit, and the social worker testified that Andrea's child had been placed out of the home for twenty-four months. ***Id.***, ¶11. The court instructed the jury on the first element, but also informed the jury there was no dispute as to the first element and explained it had answered the question. ***Id.***, ¶14. Despite these instructions, the jury was provided with a blank special verdict form and wrote in "yes" for question one. ***Id.***, ¶16.

¶12 Our supreme court determined that because "the jury was presented with ample evidence of the element, was instructed on the element, and answered a verdict question on that element[,]" Andrea received a jury trial on the element despite the stipulation. ***Id.***, ¶57. The court further concluded:

> [T]here would be no error here even if the circuit court rather than the jury had decided the first element. Under the circumstances of this case, the circuit court was not required to engage in a personal colloquy in order to ascertain that a withdrawal was knowing and voluntary. Andrea agreed to the stipulation in open court. The stipulation addressed a single, undisputed, paper element where another element was the focus of the controversy at issue. Additionally, there was ample uncontroverted evidence to support the stipulated element.

Id., ¶58.

¶13 Conversely, in ***Manitowoc County H.S.D. v. Allen J.***, 2008 WI App 137, ¶17, 314 Wis. 2d 100, 757 N.W.2d 842, this court remanded for a new trial on grounds for unfitness when there was no colloquy regarding a stipulation to the

first element of a continuing CHIPS verdict. We noted three factors that distinguished Allen J.'s case from ***Andrea L.O.*** First, Allen J. never personally agreed to the stipulation on the record. ***Allen J.***, 314 Wis. 2d 100, ¶¶2-3, 15. Second, the court order was never received in evidence and a social worker did not definitively testify as to how long the children had been removed from the home. ***Id.***, ¶¶2-3, 14. Finally, the court, not the jury, answered the verdict question. ***Id.***, ¶¶3, 15. Under these facts, we concluded the error was not harmless "for the simple reason that … there is sparse evidence in the record on the element …. [This] makes it impossible for us to find the element 'undisputed and indisputable.'" ***Id.***, ¶¶16-17 (quoting ***Andrea L.O.***, 309 Wis. 2d 161, ¶49).

¶14 The County argues that the facts of C.K.'s case place it within the scope of ***Andrea L.O.*** and that the evidence here was also undisputed and indisputable. We agree. The stipulation here was on the same "paper element" as in ***Andrea L.O.***, one that was expressly provable and readily verifiable by official documentary evidence. ***Andrea L.O.***, 309 Wis. 2d 161, ¶¶4, 41. Like the order in ***Andrea L.O.***, and unlike that in ***Allen J.***, the CHIPS orders here were entered into evidence, appended with the statutorily required notice, and the jury also heard uncontroverted testimony that the children had been removed from the home under an effective court order since December 2014, at least nine months before the TPR petitions were filed on October 8, 2015, and eighteen months before the trial. *See* ***Allen J.***, 314 Wis. 2d 100, ¶¶14-15; ***Andrea L.O.***, 309 Wis. 2d 161, ¶¶11, 58. Additionally, C.K. affirmed on the record, after testimony had been taken on the element, that she had discussed and approved the stipulation. *See* ***Andrea L.O.***, 309 Wis. 2d 161, ¶¶34, 58.

¶15 C.K. attempts to distinguish this case from ***Andrea L.O.*** for two reasons. She first observes her trial counsel earlier proposed the stipulation to the circuit court at the motion in limine hearing when C.K. was personally absent, whereas in ***Andrea L.O.***, the stipulation occurred at the commencement of trial with Andrea present. *See* ***id.***, ¶9, 34. However, ***Andrea L.O.*** does not stand for the proposition that the parent must be present and affirm the stipulation as it is initially proposed. Rather, all ***Andrea L.O.*** required was that C.K. personally agreed to the stipulation on the record, which C.K. did at the instruction conference while also affirming trial counsel explained to her what the stipulation entailed.[5] *See* ***id.***, ¶¶54, 58; *see also* ***Allen J.***, 314 Wis. 2d 100, ¶15 (lack of "verbal assent to the stipulation in court" from parent constituted error).

¶16 C.K. next observes the jury did not otherwise indicate any position on the answered question, whereas in ***Andrea L.O.***, the jury was given a blank verdict form and answered "yes" on the first stipulated element. ***Andrea L.O.***, 309 Wis. 2d 161, ¶16. However, as our supreme court made clear, the fact that the circuit court answered the question rather than the jury does not affect the outcome in this case: "There would be no error … even if the circuit court rather than the jury had decided the first element." ***Id.***, ¶58.

[5] Despite both statements on record, C.K.'s trial counsel testified at the postdispositional hearing that he did not have a "specific recollection" of ever discussing the stipulation with C.K. and that he did not document this decision to stipulate in his records. However, C.K. does not argue on appeal that her trial counsel was ineffective for stipulating to the first element of the continuing CHIPS ground for any reason, despite doing so in her postdispositional motion. We thus deem that argument abandoned. *See* ***State v. Johnson***, 184 Wis. 2d 324, 344-45, 516 N.W.2d 463 (Ct. App. 1994).

¶17 Finally on this issue, C.K. argues WIS. STAT. § 48.415(2) and its corresponding jury instructions require not only that the dispositional orders were entered and contained the required statutory notice, but also proof that a parent received and read copies of them.[6] C.K. testified at the postdispositional hearing that she could not recall ever receiving a copy of all three dispositional orders. Although she acknowledged she "went over" the conditions during team meetings with County personnel pursuant to the CHIPS orders, C.K. testified she "didn't see it in writing [and] … never got to see what was in their hand" during those meetings. From this, she argues the first element cannot be established because no evidence was received at trial proving her receipt of the CHIPS orders in light of her denial.

¶18 Even if we accept C.K.'s view of the law, we agree with the County that C.K.'s argument still fails. C.K. signed all three CHIPS orders with the notices attached, which were entered into evidence, and C.K.'s testimony established she was well aware of the conditions for return of her children. Furthermore, C.K.'s address, at which the notice and the petition were served for each of the TPR proceedings, remained the same throughout the CHIPS proceedings and the jury trial. The circuit court found C.K.'s claims of non-receipt to be incredible based upon these facts. As the fact-finder at the

[6] C.K.'s argument that a parent's receipt and acknowledgment of the written orders must also be proved under the first element is unsupported by relevant case law or any clear statutory directive. As best we can determine, her argument is this: WIS. STAT. § 48.415(2)(a)1. requires a circuit court to enter an order deciding one or more CHIPS dispositions pursuant to WIS. STAT. § 48.345; once a court does that, it must reduce findings and conclusions to writing under WIS. STAT. § 48.355(2)(a); and, finally, the court must then provide a parent with a copy of the orders, and apparently ensure they are read, under § 48.355(2)(d). We do not understand the jury instructions to require proof of "reading" the CHIPS orders.

postdispositional hearing, the circuit court is the ultimate arbiter of credibility, and we shall not upset its findings on appeal unless they are clearly erroneous. *See* ***Lessor v. Wangelin***, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998). In addition, C.K. has not addressed the County's argument on the receipt issue in her reply brief, so we deem this issue conceded and shall not address it further. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

II. Constitutionality of WIS. STAT. § 48.415(6) As Applied

¶19 C.K. next argues that WIS. STAT. § 48.415(6) as alternate grounds for terminating her parental rights to E.K. and K.K. violated her substantive due process "as-applied" to her and that her trial counsel was ineffective for failing to raise that issue. Specifically, she argues it was fundamentally unfair for the County to remove the children from the home and afterward claim C.K. failed to exercise daily supervision of, and establish a substantial parental relationship with, her children.

¶20 Nothing in the record indicates C.K. either served the attorney general with notice of her constitutional challenge, as required by WIS. STAT. § 806.04(11), or otherwise notified the attorney general of this appeal. *See* ***W.W.W. v. M.C.S.***, 161 Wis. 2d 1015, 1024-25, 468 N.W.2d 719 (1991). This requirement is not obviated merely because C.K. alleges WIS. STAT. § 48.415(6) was unconstitutional on an "as-applied" basis rather than a "facial" one. *See, e.g.*,

O'Connell v. Board of Educ., Joint Dist. #10, 82 Wis. 2d 728, 732-35, 264 N.W.2d 561 (1978). We therefore do not address her argument on this issue.[7]

III. Admissibility of Evidence

¶21 C.K. argues the admission of deputy Kuffel's testimony at trial was improper. In the circuit court, C.K. claimed that his testimony was either irrelevant or unduly prejudicial because it was unrelated to any of the grounds at trial. The circuit court disagreed, concluding Kuffel's testimony was probative of the issue of C.K.'s failure to assume parental responsibility.

¶22 Kuffel testified that he was conducting surveillance of the residence shared by C.K. and the father on September 18, 2014, during an ongoing controlled drug buy. Through a confidential informant present at the residence who possessed a tracking device and audio transmitter, Kuffel overheard the sound of a female voice and what sounded like children inside the residence. Kuffel executed a search warrant of the residence later that day, when C.K., the father, and "two or three small children" were present. Kuffel discovered drug paraphernalia and trace amounts of methamphetamine and marijuana throughout the residence. Kuffel observed a digital scale with trace amounts of

[7] Even if C.K. had served or provided the attorney general with notice of her constitutional claim, we would not address it. We have affirmed that WIS. STAT. § 48.415(2) continuing CHIPS grounds exist here, thus supporting the circuit court's finding of unfitness under WIS. STAT. § 48.424(4). Accordingly, there would be no need to reach C.K.'s argument on whether § 48.415(6), as alternate grounds for unfitness, was unconstitutional as applied. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (appellate courts need only address dispositive issues); ***Grogan v. Public Serv. Comm'n***, 109 Wis. 2d 75, 77, 325 N.W.2d 82 (Ct. App. 1982) ("We do not decide constitutional issues if the resolution of other issues can dispose of an appeal.").

methamphetamine on it, which in his experience meant the scale was most likely used for drug distribution. Kuffel contacted the county department of health and human services in response to the incident.

¶23 Kuffel testified he discovered a substance that tested positive for "THC" in a cabinet, which also contained baby bottles. In a bedroom, he found "a can that had some sort of liquid" with two syringes inside of it that "would be in reach of a small child." Kuffel stopped one child from chewing on a vacuum cleaner cord plugged into the wall, while another child in the same room repeatedly loosened and constricted a phone charging cord around the child's neck. C.K. and the father were in the same room with the children while the cord-related perils occurred. Kuffel testified the father eventually told the child with the phone charger "hey, be careful, you're going to ruin the cord."

¶24 On appeal, C.K. argues this testimony was improper "other acts" character evidence and otherwise inadmissible because it was unduly prejudicial and presented little probative value. Under WIS. STAT. § 904.04(2), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith." However, evidence of other acts may be admitted if there is an acceptable purpose under § 904.04(2) for doing so, the evidence is relevant, and the evidence's probative value is not substantially outweighed by the danger of unfair prejudice. ***State v. Sullivan***, 216 Wis. 2d 768, 782, 576 N.W.2d 30 (1998).

¶25 We conclude the circuit court did not err in admitting Kuffel's testimony. Kuffel's testimony was not impermissible "other acts" evidence subject to WIS. STAT. § 904.04(2) because whether a parent has been convicted of

drug crimes or otherwise engages in drug trafficking in his or her home—thus exposing his or her children to such activity—goes to "opportunity" under § 904.04(2) to establish a substantial parental relationship. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶¶26, 32, 259 Wis. 2d 429, 655 N.W.2d 752. Under WIS. STAT. § 48.415(6)(b), a "substantial parental relationship" is defined as "the acceptance and exercise of significant responsibility for the child's daily supervision, education, protection, and care." This standard requires the fact-finder to consider the "totality-of-the-circumstances," which covers the entire life of the child rather than a limited period of time. ***Tammy W-G. v. Jacob T.***, 2011 WI 30, ¶¶28-30, 333 Wis. 2d 273, 797 N.W.2d 854**.** A fact-finder may also look to the quality of care and whether the child was exposed to a "hazardous living environment" during a parent's supervision of the child. ***Id.***, ¶37.

¶26 C.K. claims Kuffel's testimony was improperly attributed to C.K., rather than the father. However, C.K. shared the residence with the father at that point, and she was present when Kuffel searched the residence. Again, C.K. testified she actively participated as the "middleman" in methamphetamine dealing that occurred in her home, behavior which led directly to both the CHIPS and TPR proceedings. The fact that C.K.'s conduct did not result in a criminal conviction, as it did for the parent in ***Quinsanna D.***, does not detract from its relevance here. *See* ***Quinsanna D.***, 259 Wis. 2d 429, ¶¶10, 26.

¶27 Given this evidence, the circuit court properly concluded both at trial and at the postdispositional hearing that Kuffel's testimony was relevant to the issue of whether C.K. established a "substantial parental relationship." The court also properly weighed the potential for unfair prejudice against the testimony's probative value in admitting it at trial. C.K. disputes this conclusion regarding

unfair prejudice, arguing that Kuffel's testimony was couched in "inflammatory rhetoric." Certainly, Kuffel's testimony was not beneficial to C.K. As the circuit court correctly recognized, however, the living conditions of C.K.'s home were indicative of lacking parental qualities, relevant to WIS. STAT. § 48.415(6), and were not "horrific" to the point of outweighing any probative value or being unfairly prejudicial. *See* ***State v. Sarfraz***, 2014 WI 78, ¶52, 356 Wis. 2d 460, 483-84, 851 N.W.2d 235 ("Evidence is unduly prejudicial when it threatens the fundamental goals of accuracy and fairness of the trial by misleading the jury or by influencing the jury to decide the case upon an improper basis."). C.K. argues the evidence conjures "visions of … strangulation" and "electrocution," but the testimony does not show those dangers actually came to pass.

IV. Ineffective Assistance of Trial Counsel

¶28 C.K. argues her trial counsel provided ineffective assistance to her in a number of respects. In a TPR case, parents have a statutory right to effective assistance of counsel.[8] *See* ***A.S. v. State***, 168 Wis. 2d 995, 1004-05, 485 N.W.2d 52 (1992). Trial counsel is ineffective when counsel's performance was deficient and this deficient performance resulted in prejudice. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

¶29 C.K. first argues her trial counsel provided ineffective assistance by failing to make the constitutional argument we have rejected as set forth above. *See supra* ¶¶19-20. We conclude C.K.'s trial counsel did not provide ineffective

[8] On appeal, C.K. provides no legal citation regarding ineffective assistance of counsel, be it in a criminal or TPR case. We admonish C.K.'s appellate counsel for this glaring and easily avoidable omission, which violates WIS. STAT. RULE 809.19(1)(e).

assistance in that regard because counsel cannot be held deficient for failing to raise a losing argument. *See* ***State v. Wheat***, 2002 WI App 153, ¶14, 256 Wis. 2d 270, 647 N.W.2d 441.

¶30 Second, C.K. alleges her trial counsel was ineffective for not moving to redact "daily" from the jury instructions on WIS. STAT. § 48.415(6) to avoid confusing the jury. The instruction given to the jury was an accurate restatement of WIS JI—CHILDREN 346, and, accordingly, of § 48.415(6), which C.K.'s trial counsel recognized at the postdispositional hearing. Trial counsel's failure to request that this proper instruction be further modified is thus not deficient performance. *See* ***Strickland***, 466 U.S. at 687-88.

¶31 Finally, C.K. claims her trial counsel was ineffective for failing to object to Kuffel's testimony as set forth above. *See supra* ¶¶21-27. However, trial counsel did just that by filing a motion in limine, and therefore cannot be held deficient for failing to do so.

V. New Trial in the Interests of Justice

¶32 Finally, C.K. requests that this court exercise our power of discretionary reversal under WIS. STAT. § 752.35 and order a new trial in the interests of justice. *See* ***Vollmer v. Luety***, 156 Wis. 2d 1, 19, 456 N.W.2d 797 (1990). The following sentence is the extent of C.K.'s argument in that regard: "The real controversy was never tried: the parent was never warned of default and the court applied the wrong facts and the wrong law." Apparently, C.K. at least partially alludes to the procedural posture of the children's father's appeals rather

than her own.[9] In any event, she fails to develop any argument that discretionary reversal is appropriate in these cases. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Orders affirmed.

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

[9] In the father's appeals, we have rejected his arguments that the circuit court erred when it entered a default judgment against him and denied a motion to vacate the default judgment. *See* ***M.B.-T.***, Nos. 2016AP1381, 2016AP1382, 2016AP1383, unpublished slip. op.