

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2001

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. 01-0661
01-0662
01-0663**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

NO. 01-0661

**IN RE THE TERMINATION OF PARENTAL
RIGHTS TO DANIELLE M., CAYLA M.,
AND EVAN M., PERSONS UNDER THE
AGE OF 18.:**

CAREN C.,

**PETITIONER-
RESPONDENT,**

v.

ROBIN M.,

**RESPONDENT-
APPELLANT.**

NO. 01-0662

**IN RE THE TERMINATION OF PARENTAL
RIGHTS TO DANIELLE M., CAYLA M.,
AND EVAN M., PERSONS UNDER THE AGE
OF 18.**

CAREN C.,

**PETITIONER-
RESPONDENT,**

v.

ROBIN M.,

RESPONDENT-APPELLANT.

NO. 01-0663

**IN RE THE TERMINATION OF PARENTAL
RIGHTS TO DANIELLE M., CAYLA M.,
AND EVAN M., PERSONS UNDER THE AGE
OF 18.**

CAREN C.,

**PETITIONER-
RESPONDENT,**

v.

ROBIN M.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Racine County:
WAYNE J. MARIK, Judge. *Affirmed.*

¶1 BROWN, P.J.¹ Robin M. appeals the termination of his parental rights on the basis that there was insufficient evidence to support the claim of failure to assume parental responsibility and that the trial court erroneously exercised its discretion in terminating his parental rights. We disagree and affirm.

¶2 Robin is the former husband of Caren C. During their marriage, they had three children: Evan, Cayla and Danielle. Caren divorced Robin while Robin was incarcerated. At the time that this proceeding was commenced, Robin was still incarcerated. Caren is now remarried.

¶3 Caren brought petitions to terminate Robin's parental rights on January 11, 2000. She alleged, *inter alia*, that Robin had failed to assume parental responsibility for the children. The matter went to a jury trial lasting four days. At the end of the trial, the jury returned a verdict finding that Robin had failed to assume parental responsibility. Thereafter, the trial court convened a dispositional hearing lasting two days. Then, on November 16, 2000, the trial court considered and denied Robin's motion to change the answer on the jury's verdict because it found the evidence sufficient to support the verdict. The court then found that it was in the best interests of the children to terminate Robin's parental rights and entered orders terminating the parental rights with respect to each of the three children. From these orders, Robin appeals.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version.

¶4 The first issue is whether there was sufficient evidence to support the jury's verdict that Robin failed to assume parental responsibility. A jury verdict will be sustained if there is any credible evidence to support the verdict. *Finley v. Culligan*, 201 Wis. 2d 611, 630, 548 N.W.2d 854 (Ct. App. 1996). This is even more true where, as here, the verdict has the circuit court's approval. *Id.* at 630-31. Before a reviewing court will reverse, there must be such a complete failure of proof that the verdict must have been based on speculation. *Id.* at 631. The credibility of the witnesses and the weight to be afforded their individual testimony are left to the jury. *Id.* Our consideration of the evidence must be done in the light most favorable to the verdict, and when more than one inference may be drawn from the evidence, we are bound to accept the inference drawn by the jury. *Id.*

¶5 This court has read the transcript but will not set forth in any detail what we found. This is because the very same things we would write to support the findings of the jury have already been well documented by the trial court in answering the motions after verdict. The trial court's rendition is found at Record 105, pages nine and ten. This court cannot improve on what the trial court found and would be merely regurgitating what has already been stated. In the interests of conservation of judicial resources, this court adopts the trial court's statements as its own and rules that the trial court's determination answers the sufficiency of evidence issue on this appeal.

¶6 The trial court's review of the evidence refutes each of Robin's complaints about the sufficiency of the evidence. For example, Robin's slant on the testimony that he was the sole breadwinner for a "significant period of time" is belied by other evidence. His statement that he was in the delivery room for the

birth of all three of his children pales in significance when considering how he parented them once the children left the delivery room. His assertion that the evidence supports his claim that he lived with the children for a significant period of time fails to explain his long absences when parenting responsibility was needed. His claim that he paid child support and money is contradicted by the haphazard and intermittent way in which support occurred. His claim that he watched his children in Caren's absence does not begin to address the testimony that he left Caren to virtually raise the children herself. And the claim that he "visited the children" does not start to erase the mountain of evidence showing how he abdicated his parental responsibilities. Robin's sufficiency of evidence claim fails.

¶7 Before leaving this issue, we will respond to a major theme of Robin's. He argues that he was prevented from maintaining contact with his children by Caren's failure to notify him of her whereabouts. Caren asserts in her brief that she was not at fault for this happenstance. Rather, Robin's own family knew of Caren's whereabouts, but for their own reasons declined to reveal Caren's location to Robin. In answer to Caren, whether Caren was at fault or not begs the question. The fact is that Robin did not know how to reach the kids.

¶8 But this is all irrelevant in the end. Robin's complaint that he did not contact the kids because he did not know where to reach them is relevant and material to Caren's other contention—that Robin abandoned his family. However, the jury found that Robin had not abandoned the family and the termination of parental rights is not based upon abandonment. But as respects the failure to be a parent, Robin's failure was evident long before he had trouble locating his kids. As pointed out by the trial court in the decision on the motions after verdict, the

record is replete with evidence of Robin's abdication of responsibility to act as a parent. That failure is what caused the termination. The fact that Robin lately was not able to contact his kids is a red herring. The die was already cast long before this occurrence.

¶9 We move on to whether the trial court erroneously exercised its discretion when it determined that termination of Robin's parental rights was in the best interests of the children. Robin raises the following contentions. First, he argues that he had a significant relationship with all the children and especially with Evan. According to Robin, Evan even expressed the view that he was not sure that he wanted Robin's parental rights severed permanently. Second, one expert, Dr. Marc Ackerman, did not support termination. Third, the evidence does not show that Robin is an unfit father. Finally, termination would not change the children's present environment in any significant way because the children are already in a stable environment with Caren and her current husband. Robin would not interfere with this environment. All he wants is a visitation schedule once he is released from prison.

¶10 We will answer each of Robin's arguments *seriatim*. First, Caren's expert reported that all of the children wanted to be adopted and Evan's desire to be adopted by Caren's husband was strong and unwavering. The husband cannot adopt unless Robin's parental rights are first terminated. Also, the evidence shows that Robin had an insignificant relationship with the children, not a significant one as claimed by Robin. The two girls were born and raised while Robin was gone or incarcerated during most of their lives. And as to Evan, the evidence was that Robin simply was not around when a father is expected to be around and never took care of the children the way that a responsible father would be expected to

care for his children. Second, while Ackerman may have opined against termination, Caren's expert opined in favor. The trial court was not bound to accept Ackerman's opinion and did not. Third, the evidence does show Robin to be an unfit father for the reasons expressed by the trial court. Fourth, Caren's expert testified that termination of Robin's rights and adoption by Caren's husband would provide for a "well integrated, healthy, functioning I say actually beautiful family unit." The outgrowth of this would be "predictability." Robin's claims that the trial court misused its discretion are rejected.

By the Court.—Orders affirmed.

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

