

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 21, 2001

Cornelia G. Clark
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.

No. 01-1541

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DELORES R.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Delores R. appeals from an order terminating her parental rights to her four-year-old son, Samuel R., Jr. She argues that:

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

(1) her due process rights were violated because the foster parents and the social workers interfered with her ability to parent her child; and (2) the trial court erroneously exercised its discretion when it terminated her parental rights. Because Delores's due process rights were not violated, and because the trial court did not erroneously exercise its discretion, this court affirms.

I. BACKGROUND

¶2 On April 6, 1996, Delores gave birth to Samuel. On May 6, 1996, the Milwaukee child welfare bureau received neglect referrals. After some investigation, bureau worker Christine Lisiak learned that Delores was moving from shelter to shelter with Samuel R. He was very sick with a high fever and vomiting. On May 2, 1996, Delores's aunt, Chrystal Blake, encouraged Delores to come live with her for a few days. Delores agreed, but when Chrystal suggested that Delores take Samuel to a doctor, Delores left. She told Chrystal that she was moving to the Salvation Army Family Crisis Center. Instead, Delores went to another aunt's home, Jackie Blake. When Jackie questioned Delores about how sick Samuel was, Delores tried to leave. Jackie then called the police, who took Delores and Samuel to the police station. Chrystal was called and she took Delores and Samuel to St. Mary's Hospital emergency room.

¶3 Samuel was admitted to the hospital on May 2, 1996. Delores was allowed to stay with Samuel. On May 5, 1996, a nurse heard a loud thump from Samuel's room. When the nurse entered, she saw Delores bending down to pick up Samuel who was on the floor. Delores said she must have fallen asleep while holding Samuel, who apparently fell to the floor. The doctor was summoned to check Samuel after the fall and, when he left, Delores asked the nurse to discharge Samuel. The hospital no longer had a medical reason to keep Samuel, and he was

discharged to his mother. The staff convinced Delores that there was a need for a follow-up appointment. Although Delores eventually scheduled an appointment, she did not show up for it.

¶4 Following this incident, Lisiak requested that the court issue a “pick-up” order pursuant to WIS. STAT. § 48.19(c). The trial court granted the request, and Lisiak took Samuel into protective custody. Samuel was placed in foster care on May 7, 1996. When he was six weeks old, he was placed in a foster home where he still resides. Occasionally, Delores visited Samuel until she moved to Chicago. When Delores returned from Chicago in February 1997, she attempted to reestablish contact. She visited with Samuel for four hours and twenty minutes in 1997. In 1998, Delores spent sixteen hours with Samuel and, in 1999, she visited with Samuel for one hour. Before the filing of the petition to terminate parental rights, Delores spent five and one-quarter hours with Samuel in 2000.

¶5 A petition terminating parental rights was filed on June 22, 2000. The petition alleged that Delores failed to establish a substantial parental relationship with Samuel, and that she was unfit to be his parent. After a trial, the jury found that grounds existed to terminate Delores’s parental rights; namely, that she failed to assume parental responsibility and never had a substantial parental relationship with Samuel. The dispositional hearing occurred on January 29, 2001. The court heard testimony from Samuel’s therapist, who tied Samuel’s anxiety to visits with Delores. The therapist also testified that Samuel had a strong bond with his foster parents, and no bond with Delores. The court found that it would be in the best interests of Samuel to terminate Delores’s parental rights. The trial court entered an order to that effect, and Delores now appeals.

II. DISCUSSION

A. *Due Process.*

¶6 Delores first claims that her due process rights were violated when the trial court terminated her parental rights. She asserts that the foster parents and the social workers interfered with her ability to parent Samuel. This court disagrees.

¶7 An individual's due process rights in termination of parental rights cases are not violated as long as there is a finding by the trial court that the individual is unfit and it is in the child's best interests to terminate the parental rights. *In re A.M.K. v. Sheboygan County Soc. Serv. Dep't*, 105 Wis. 2d 91, 312 N.W.2d 840 (Ct. App. 1981). The record reflects that the trial court satisfied this standard. The trial court found that Delores was unfit, noting that there was credible evidence to support the jury's finding that Delores failed to establish a substantial parental relationship. In addition, the trial court found that it was in the best interests of Samuel to terminate Delores's parental rights. *See id.* The trial court made this decision based on the statutory factors of WIS. STAT. § 48.426. The trial court considered the fact that Samuel had been with his current foster parents since he was six weeks old, which was 98% of his lifetime. The trial court found that Delores visited on an intermittent and sporadic basis and that there was no substantial relationship between Samuel and Delores or his biological siblings.

¶8 Moreover, there is no evidence that Delores was not provided proper warnings and notice of the proceedings and her rights. She was provided with an attorney, who called witnesses on her behalf. Her claims that the social workers and foster parents interfered with her ability to parent are refuted by her own testimony. On appeal, Delores claims that the social workers and foster parents

are responsible for her lack of visitation. Delores suggests that their actions, even before the trial in this case, violated her due process rights. Specifically, she argues that she was not advised of doctors' appointments and that the foster parents did not bring Samuel to scheduled visits. The record, however, reveals that she admitted that *she* missed visits, that *she* moved to Chicago, and that *she* "sacrificed" visiting with Samuel for reasons related to her other children.

¶9 Accordingly, this court cannot conclude that Delores was denied due process in this matter.

B. Trial Court's Decision.

¶10 Delores next claims that the trial court should have exercised its discretion, despite the jury's verdict, because Delores's conduct was not egregious and it was not necessary to terminate her parental rights. This court disagrees.

¶11 The decision of whether or not to terminate parental rights lies within the discretion of the trial court. *In re Guenter D.M. v. Dennis L.M.*, 198 Wis. 2d 10, 542 N.W.2d 162 (Ct. App. 1995). This court will not overturn a trial court's decision unless the trial court erroneously exercised its discretion. *Id.* A trial court properly exercises discretion when it considers the relevant facts, applies the correct law, and reaches a reasonable decision. *Id.*

¶12 Here, the record reflects that the trial court properly exercised its discretion. The trial court considered the relevant facts, including the amount of time Samuel had spent with his mother, and the lack of a substantial relationship between the two. The trial court considered the testimony of Samuel's therapist that visits with Delores aggravated Samuel's anxiety. The trial court considered the statutory factors set forth in WIS. STAT. § 48.426, including the likelihood that

Samuel would be adopted by the family he had lived with since he was six weeks old, that Samuel wanted to become a member of his foster family, and that termination would provide Samuel with a more stable and permanent family relationship. The trial court considered the best interests of Samuel and reached a reasonable decision. Based on the foregoing and the lack of parental responsibility demonstrated by Delores, it is in Samuel's best interests to terminate her rights.

¶13 Although Delores may not see her conduct as egregious, this court cannot override the trial court's reasoned decision that her conduct was sufficiently egregious to warrant termination. Delores was unable to establish a parental relationship with Samuel over four years; she spent approximately twenty-nine hours total time with Samuel since he was four weeks old; and she moved to another state during the time she should have been trying to demonstrate parental responsibility. The trial court's decision was not erroneous.

By the Court.—Order affirmed.

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

