

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 25, 1997

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 97-2667

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

**IN RE THE TERMINATION OF PARENTAL RIGHTS OF
HAYES A.J., CASSANDRA L.J. AND JERMAINE M.J.,
PERSONS UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

HAYES A.J.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL L. KONKOL, Judge. *Affirmed.*

CURLEY, J.¹ Hayes A.J. appeals from a trial court order terminating his parental rights (TPR) to Hayes A.J., Cassandra L.J. and Jermaine

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

M.J. Hayes claims that the trial court erred when it found that he voluntarily and intelligently waived his right to contest the grounds phase of his TPR proceeding. This court concludes that Hayes has failed to allege that he was prejudiced by the trial court's actions, and therefore, the TPR order is affirmed.

I. BACKGROUND.

On August 23, 1996, the State filed a petition seeking to terminate the appellant's parental rights to his children Hayes A.J, Cassandra L.J., and Jermaine M.J. A jury trial was scheduled to determine whether grounds for termination existed. Shortly before the jury trial was to begin, Hayes waived his right to the jury trial by admitting the facts alleged in the petition. Before accepting Hayes's admission of the facts, the trial court questioned Hayes as required by § 48.422(7), STATS. After the examination, the trial court found that Hayes had voluntarily and intelligently waived his right to a jury trial, and his right to contest the grounds alleged in the petition. On April 2, 1997, a contested dispositional hearing was held where the trial court found that it was in the children's best interests to terminate Hayes's parental rights. Hayes now appeals.

II. ANALYSIS.

Hayes claims that the trial court erred when it found that he voluntarily and intelligently waived his right to contest the grounds phase of his TPR proceeding. We conclude that Hayes has failed to allege prejudice, and therefore, we affirm the TPR order.

A TPR proceeding is a two-phase process. In the first phase, a determination is made as to whether grounds exist which would allow the trial court to terminate the parent's rights. If grounds are established, the trial court

makes a finding of unfitness. *See* § 48.424(4), STATS. The court then proceeds to the dispositional phase to determine whether the parent's rights should actually be terminated. *See* § 48.427, STATS.

If a parent contests the grounds alleged in the petition for termination of parental rights, the parent is entitled to a jury trial. Sections 48.422(2) & 48.424, STATS. A parent may choose to waive the right to a jury trial, however, by not contesting the grounds for the petition. Section 48.422(3), STATS., obligates the trial court to follow the procedure mandated by § 48.422(7), STATS., if the parent does not contest the petition. Section 48.422(7) provides:

48.422 Hearing on the petition. (7) Before accepting an admission of the alleged facts in a petition, the court shall:

- (a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.
- (b) Establish whether any promises or threats were made to elicit an admission and alert all unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.
- (c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

The concerns and duties imposed on the trial court under § 48.422 are similar to the concerns expressed and duties imposed under § 971.08, STATS., and *State v. Bangert*, 131 Wis.2d 246, 389 N.W.2d 12 (1986). *See In the Interest of Robert D.*, 181 Wis.2d 887, 892, 512 N.W.2d 227, 230 (Ct. App. 1994). This court has held, therefore, that a *Bangert* analysis is appropriate when determining whether a trial court committed reversible error by violating the mandates of § 48.422. *Id.* Thus, in order to prove reversible error, Hayes must make a prima facie showing that the trial court failed to follow the proper procedures under

§ 48.422(7), STATS., and allege that he, in fact, was prejudiced by the trial court's failure. *See id.*

Although Hayes claims that the trial court failed to conduct a proper colloquy under § 48.422, STATS., he fails to allege that he was prejudiced by what he perceives as the trial court's failure. Hayes does not claim that his admission of the alleged facts in the petition was involuntary. Hayes does not claim that he did not understand the nature of the acts set forth in the petition, or that he was unaware of the potential dispositions that could result from his admission. Therefore, in accord with the holding of *Robert D.*, we conclude that Hayes has failed to meet his initial burden of alleging that he was prejudiced by the trial court's alleged failure. Because Hayes has failed to allege prejudice, we affirm the trial court's TPR order.

By the Court.—Order affirmed.

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

