

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 8, 2005

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.

Appeal No. 2005AP1591

Cir. Ct. No. 2003TP6

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

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

ROCK COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

ELAINE H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Rock County:
RICHARD T. WERNER, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Elaine H. appeals an order terminating her parental rights of Dominique A. Elaine argues the trial court lost competency to terminate her parental rights because it did not hold a dispositional hearing within forty-five days of the fact-finding hearing, and because it did not enter a disposition order within ten days of the dispositional hearing. Elaine further claims the nearly two-year delay in this case was without good cause in violation of WIS. STAT. § 48.315(2) (2003-04).² We reject these arguments and affirm the order of the trial court.

FACTS

¶2 On January 29, 2003, Rock County filed a petition for the termination of Elaine's parental rights (TPR petition) to her six children. The petition alleged in part that William A. was the father of one of Elaine's children, six-year-old Dominique A., and Dominique was in continuing need of protection or services following a CHIPS disposition in March 2002 due to Elaine's failure to meet the conditions of return.

¶3 At the fact-finding hearing held on July 16, 2003, the jury found grounds to terminate Elaine's parental rights to all six children, including Dominique. The dispositional hearing was held on September 4, 2003.³ During the early stages of the dispositional hearing a representative of the Rock County

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2003-04).

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

³ Elaine does not raise any appellate issue based on the jury trial or verdict; thus the facts related to these events are not provided.

Department of Human Services informed the trial court that after completing discovery she determined there were insufficient grounds to terminate the father's rights. The representative requested that the court find grounds exist to terminate Elaine's parental rights to Dominique, withhold the order and extend the CHIPS order for a year to afford the father an opportunity to address the conditions of return. The trial court granted the Department's request; it found that grounds existed to terminate Elaine's parental rights to Dominique, withheld its disposition order relating to Dominique and ordered an extension of the disposition order in the CHIPS case relating to Dominique against the father, William A. The trial court dismissed the TPR case against William A. and adopted the permanency plan and return conditions with respect to William A. The trial court further found Elaine to be an unfit mother.

¶4 The court proceeded with the dispositional hearing. Evidence was taken regarding all six children. Elaine also presented evidence at this hearing and asked the trial court to continue the disposition orders on each of the six children, arguing the court should withhold its decision until after she completed the Rock County Education and Criminal Addictions Program (RECAP) at the jail. In the alternative, Elaine asked the court to explore the possibility of guardianships for the six children as opposed to terminating her parental rights. The trial court entered a disposition order terminating Elaine's parental rights to all children except Dominique.

¶5 The Department filed a second petition to terminate William A.'s parental rights. On September 4, 2004, the court extended the CHIPS order relative to Dominique. On March 9, 2005, another dispositional hearing was held to terminate both Elaine and William A.'s parental rights to Dominique. William A. failed to appear and his parental rights were terminated. At the beginning of

the hearing, Elaine's attorney moved to dismiss the action, arguing the trial court failed to hold the TPR dispositional hearing within the required forty-five days. The trial court denied Elaine's motion.

¶6 Elaine asked the court to not enter a TPR order, arguing Wisconsin statutes require a disposition order be entered within ten days of the dispositional hearing. The trial court determined the September 4, 2003 hearing was the dispositional hearing on Dominique and denied this motion as well. The trial court then terminated Elaine's parental rights to Dominique. Elaine appeals.

DISCUSSION

¶7 Elaine first argues the trial court lost competency to terminate her parental rights because it did not hold the dispositional hearing within forty-five days of the fact-finding hearing as required by WIS. STAT. § 48.242(4).⁴ Elaine

⁴ WISCONSIN STAT. § 48.424(4) states as follows:

48.424 Fact-finding hearing....

....

(4) If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427. The court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if:

(a) All parties to the proceeding agree; or

(b) The court has not yet received a report to the court on the history of the child as provided in s. 48.425 from an agency enumerated in s. 48.069 (1) or (2) and the court now directs the agency to prepare this report to be considered before the court makes the disposition on the petition.

claims the September 4, 2003 dispositional hearing terminated Elaine's rights only as to the other five children and not Dominique. Elaine contends the March 9, 2005 hearing was Elaine's dispositional hearing relating to Dominique, which is well beyond the statutorily required forty-five days. Therefore, according to Elaine, the trial court lost competency to terminate Elaine's parental rights to Dominique. The trial court determined the dispositional hearing was held on September 4, 2003. We agree with the trial court.

¶8 The record supports this conclusion. The September 4, 2003 hearing was intended to be a dispositional hearing for all six children and was commenced as such. The trial court called the cases pertaining to all six children and stated the parties were present for disposition. The Rock County Department of Human Services then asked the court to find "that grounds exist with regard to termination of the mother" but to withhold entering the TPR order in Dominique's case and to extend the CHIPS order "for one year to give the father the opportunity to address the return conditions." The trial court, after finding Elaine to be an unfit mother, agreed. Elaine never objected to the trial court's decision to withhold entry of the TPR order related to Dominique.

¶9 Other factors indicate the September 4, 2003 hearing was a dispositional hearing regarding Dominique. The Department filed a court report about all six children, including Dominique. In addition, the Department social worker, Geri Heim, testified about all six children, including Dominique. Heim testified Dominique was seven years old, in good health and had been out of the parental home for nearly two years. Heim indicated all the children had been placed with relatives and maintained contact with one another.

¶10 Heim also testified Dominique

does not show a lot of emotion, and when I ... have tried to, you know, make it okay for him or ask him if he's missing his mom he has a very hard time expressing whether he does or doesn't. He's very bland and doesn't really respond to that at all, so it's very difficult to know what Dominique's attachment or relationship with his mother is."

Heim testified it would not be harmful to any of the children to terminate Elaine's parental rights.

¶11 Elaine also presented evidence at this hearing. Elaine submitted a written report from Dr. Michael Kaye as an expert witness. Elaine testified about her relationship with the children. Elaine asked the trial court to continue the disposition orders on all six children, arguing the court should withhold its decision until after she completed the RECAP at the jail. In the alternative, Elaine asked the court to explore the possibility of guardianships for all six children as opposed to terminating her parental rights.

¶12 At the conclusion of this hearing, the trial court specifically stated "first of all, in making any determination I need to look through the factors that are set forth in Section 48.426, sub. three ... as it relates to the best interest of each child." The trial court's findings implicitly referenced all six children. The trial court found "letters from the State of Wisconsin indicate that a relative of each child has expressed an interest in applying for adoption and also, beyond that, that the state has a pool of approved adoptive families that could match with each child."

¶13 The trial court further found the children "were in good health at the time—basically in good health at the time they were removed and are basically in good health today." The trial court specifically referenced seven-year-old Dominique when addressing the age of each child. The trial court additionally

found it would not be harmful to sever the relationships between the children and Elaine. We are satisfied that the trial court properly determined that the dispositional hearing on Dominique was held on September 4, 2003.

¶14 Having determined the dispositional hearing for Dominique was held on September 4, 2003, we turn to the issue of whether the trial court lost competency to issue the disposition order on March 9, 2005. Elaine argues the trial court was required by WIS. STAT. § 48.427(1)⁵ to enter the disposition order ten days from the dispositional hearing. Thus, because the dispositional hearing was held on September 4, 2003, but the disposition order was not issued until March 9, 2005, Elaine contends the trial court lost competency to proceed. She further argues the delay in proceeding to disposition was not for “good cause” and was longer than “necessary.” *See* WIS. STAT. § 48.315(2). These arguments are without merit.

¶15 Whether the trial court complied with the time limits of WIS. STAT. § 48.427(1) and granted a continuance pursuant to WIS. STAT. § 48.315(2) presents questions of law, which we review de novo. *See State v. April O.*, 2000 WI App 70, ¶6, 233 Wis. 2d 663, 607 N.W.2d 927. The time limits in WIS. STAT. ch. 48 are mandatory and failure to comply with the time limits may result in the court’s loss of competency to proceed. *See Sheboygan County Dep’t of Social*

⁵ WISCONSIN STAT. § 48.427(1) states:

Dispositions. (1) Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days.

Servs. v. Matthew S., 2005 WI 84, ¶18, ___ Wis. 2d ___, 698 N.W.2d 631. “Time limits under WIS. STAT. ch. 48 may be delayed, continued, or extended, pursuant to WIS. STAT. § 48.315.” *Id.*

¶16 “[T]he general requirements of sec. 48.315(2), Stats., control all extensions of time deadlines under the Children’s Code.” *M.G. v. La Crosse County Human Servs. Dep’t*, 150 Wis. 2d 407, 418, 441 N.W.2d 227 (1989). Whether the facts of this case constituted “good cause” under WIS. STAT. § 48.315 is a question of law we decide without deference to the trial court. *See J.R. v. State*, 152 Wis. 2d 598, 603, 449 N.W.2d 52 (Ct. App. 1989). Section 48.315(2) provides:

(2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

In determining whether “good cause” exists to extend time limits under WIS. STAT. ch. 48, our paramount consideration is the best interest of the child. *See F.E.W. v. State*, 143 Wis. 2d 856, 861, 422 N.W.2d 893 (Ct. App. 1988). We also consider the following factors: “(1) that the party seeking the enlargement of time has acted in good faith; (2) that the opposing party has not been prejudiced; and (3) whether the dilatory party took prompt action to remedy the situation.” *Id.*

¶17 We conclude the trial court had good cause to delay entering the disposition order. At the September 4, 2003 dispositional hearing, the Department informed the trial court it lacked sufficient grounds to proceed with a TPR regarding the father and asked the court to “find that grounds exist with regard to

termination of the mother but withhold ordering that and to enter an extension for one year” to allow the father an opportunity to address the conditions of return.

¶18 The court granted the Department’s request, dismissed the TPR petition against the father, ordered the CHIPS order be extended against him for one year and adopted the permanency plan and conditions for return with respect to the father. The court also found Elaine to be an unfit mother. In granting the Department’s request to withhold ordering the termination of Elaine’s parental rights to Dominique, the court said:

Well, I do have before me a proposed order to extend disposition order in 02-JC 07, as well as the permanency plan in that particular matter. This matter – the 03-TP 6 matter did go to trial. The jury did find grounds to terminate the mother’s parental rights. I will find that those grounds did in fact exist. I will withhold any dispositional order in the T-P case as far as it relates to Dominique at this time, and I will enter an extension of the dispositional order in 02-JC 07. That again is relating to Dominique [A].

At the March 9, 2005 hearing, the trial court clarified its reasons for extending the time to issue its disposition order by stating it agreed with the Department’s approach of not requesting termination of only one parent.

¶19 The delay in this case was also the result of the pending CHIPS action involving Dominique’s father. At the time of the September 4, 2003 dispositional hearing, Elaine acknowledged such a delay could be anywhere from six months to a year. The Department was unable to move Dominique toward permanence prior to the March 9, 2005 finding that his father had abandoned him. Elaine did not object to this extension at the September 2003 hearing. Based on these facts, we also conclude the delay was “only for so long as [was] necessary. WIS. STAT. § 48.315(2).

¶20 We also observe that Dominique's guardian ad litem expressed his belief that continuation of the CHIPS order until William's parental rights could be terminated was in Dominique's best interest. As we have indicated, the best interest of the child is our paramount consideration. See *F.E.W.*, 143 Wis. 2d at 861. Here, Dominique's guardian ad litem believed the delay in entering the disposition order against Elaine was in Dominique's best interest.

¶21 With respect to the other factors we must consider in determining whether there was "good cause" to extend a time limit in a ch. 48 proceeding, we observe neither Elaine nor the Department apply these factors to the facts of record. Based on the record we do so here.

¶22 First, Elaine does not argue the trial court acted in bad faith by delaying entrance of the disposition order. Second, Elaine has not persuaded us that she has been prejudiced in any way. She also fails to point to anything in the record demonstrating she was prejudiced by the delay. The trial court made the necessary findings for terminating her parental rights to Dominique at the September 4, 2003 hearing. The only remaining act was for the court to enter the disposition order. Elaine has not demonstrated any possibility that the outcome would have been different had the delay not occurred. We also note Elaine was incarcerated from September 4, 2003 and March 9, 2005. Finally, although the delay between the two hearings was fairly substantial, the trial court acted as promptly as possible under the circumstances. The trial court noted at the March 9, 2005 hearing that the father caused much of the delay. Good cause existed to delay the entry of the disposition order terminating Elaine's parental rights to Dominique.

¶23 In sum, the trial court did not lose competency to terminate Elaine's parental rights; the dispositional hearing was held on September 4, 2003 and the delay in entering the TPR disposition order was for good cause pursuant to WIS. STAT. § 48.315(2). We therefore affirm the order of the trial court.

By the Court.—Order affirmed.

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

