

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 13, 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. 2005AP1231-FT**

**Cir. Ct. No. 2002JC80**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE INTEREST OF ELI J. O., JR.:**  
**MARATHON COUNTY DEPARTMENT OF SOCIAL SERVICES,**

**PETITIONER-RESPONDENT,**

**V.**

**KYRA D. M.,**

**RESPONDENT-APPELLANT,**

**ELI J. O., SR.,**

**RESPONDENT.**

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APPEAL from an order of the circuit court for Marathon County:  
PATRICK BRADY, Judge. *Affirmed.*

¶1 CANE, C.J.<sup>1</sup> Kyra D.M. appeals an order that extended the dispositional order for her child, Eli J.O., Jr. until Eli's eighteenth birthday. Kyra argues: (1) the court lost jurisdiction in this matter because it failed to hold an extension hearing before the applicable deadline, and it lacked the power to grant a second thirty-day extension of the CHIPS Dispositional Order; and (2) the court did not have sufficient evidence on which to base a finding that the Marathon County Department of Social Services (department) took adequate steps to meet the special needs of Eli and Kyra. We disagree and affirm the order.

### BACKGROUND

¶2 This appeal focuses on various CHIPS orders involving Eli and Eli's mother, Kyra. The trial court granted an initial dispositional order regarding Eli on October 1, 2003 with an expiration of the order on October 1, 2004. On October 30, 2003 the order was revised to permit out-of-home placement, and the expiration date was changed to October 30, 2004.

¶3 On October 28, 2004 nearing expiration of the revised order, the Marathon County Department of Social Services petitioned for extension of the revised order and for review of the permanency plan. The court granted a thirty-day temporary extension on October 29, 2004 pursuant to WIS. STAT. § 48.365(6) and scheduled a hearing on the department's request for an extension for November 17, 2004. In pertinent part § 48.365(6) states the following:

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). This is also an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days ....

¶4 At the November 17, 2004 hearing, Kyra appeared without counsel and indicated that she desired to contest the extension of the revised order and requested the court appoint her counsel. The court granted a second thirty-day extension to provide time for court appointment of Kyra's counsel and to schedule another hearing. Eli's guardian ad litem consented to the extension.

¶5 Counsel for Kyra was appointed on November 23, 2004. Kyra's counsel filed a motion to dismiss arguing that the court lost jurisdiction by improperly extending the order beyond the one thirty-day temporary extension as permitted by WIS. STAT. § 48.365(6). At a December 15, 2004 hearing, the court denied the motion to dismiss stating:

I have reviewed the [November 17] transcript and it states that the court was extending the dispositional order for 30 days beyond November 29<sup>th</sup>, and it was my understanding that that was agreed to by all the parties and that was in response to the fact that the mother needed counsel ....

....

[B]ased upon that, I believe this court still retains jurisdiction and I'm denying the motion to dismiss.

Subsequently, on December 29, 2004 a contested hearing was held, and the court ordered an extension of disposition until Eli's eighteenth birthday. The court also signed a permanency plan review order that stated that the department had adequately involved the appropriate service providers to meet the needs of Eli and Kyra. Kyra appeals.

## STANDARD OF REVIEW

¶6 Kyra's first argument is an issue of statutory interpretation. Statutory interpretation is a question of law that we review without deference. *See Richards v. Young*, 150 Wis. 2d 549, 555, 441 N.W.2d 742 (1989). Her second argument challenges a finding of fact. A trial court's finding of fact will be upheld unless it is clearly erroneous. WIS. STAT. § 805.17(2).

## DISCUSSION

¶7 Kyra argues that the court lost jurisdiction by failing to hold an extension hearing prior to the expiration of the temporary extension. Further, Kyra argues that the court erred when it granted the second thirty-day extension. For support of these propositions, Kyra relies on *In re B.J.N. & H.M.N.*, 162 Wis. 2d 635, 469 N.W.2d 845 (1991). In that case, the court granted a thirty-day temporary extension until March 1 pursuant to WIS. STAT. § 48.365(6). *Id.* at 642. The court scheduled a hearing on the extension for February 15, but prior to the hearing, the parents' attorney requested the hearing be rescheduled due to another commitment. *Id.* Ultimately, no hearing took place before the March 1 deadline, and the supreme court upheld the court of appeals' determination that the court lost jurisdiction on March 1 because no hearing was held before the expiration of the temporary extension. *Id.* at 654.

¶8 The facts at present differ from those in *B.J.N.* because here a hearing was held before the expiration of the temporary extension. At that

hearing, the parties stipulated to the second extension<sup>2</sup> because Kyra contested the proposed extension and requested court appointed counsel. In *Joni B. v. State*, 202 Wis. 2d 1, 11, 549 N.W.2d 411 (1996), the supreme court acknowledged the important role counsel can play in CHIPS proceedings in “ensur[ing] the integrity” of the proceeding and preventing “placing the individual judge in the untenable position of having to essentially serve as counsel for that parent.” We in turn recognize the significant issues at stake in a CHIPS proceeding and the necessary role that parents’ counsel can play in helping to facilitate a fair and equitable proceeding. Therefore, we support the position of the trial court that the second extension was necessary so Kyra could obtain counsel and that the parties stipulated to the extension.

¶9 Kyra next argues that the court erred in finding that the Department adequately involved the appropriate service providers in meeting the needs of Eli and herself. We disagree. The court heard testimony regarding the service providers and nature of the services. It also was provided a list of the numerous service providers involved in the case. The record supports the court’s conclusion that the service providers were appropriately involved, and the court’s decision is not clearly erroneous.

*By the Court.*—Order affirmed.

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<sup>2</sup> Kyra also contends that neither she nor her child actually stipulated to the extension. We disagree. First, Kyra effectively stipulated to the extension when she requested counsel and then failed to object to the extension when it was granted. Also, Kyra argues that the guardian ad litem did not have the power to agree to the extension for Eli. Again, we disagree. The guardian ad litem’s stipulation in this case was within the framework of the applicable statute. *See* WIS. STAT. § 767.045.

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

