COURT OF APPEALS
DECISION
DATED AND FILED

November 22, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2374 **Cir. Ct. No. 2005TP1**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE TERMINATION OF PARENTAL RIGHTS TO MEGAN I. R.,
A PERSON UNDER THE AGE OF 18:

BURNETT COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

TERA L. R.,

RESPONDENT-APPELLANT,

CRAIG T.,

RESPONDENT.

APPEAL from an order of the circuit court for Burnett County: MICHAEL J. GABLEMAN, Judge. *Reversed.*

¶1 CANE, C.J.[1] Tera R. appeals a dispositional order terminating her parental rights to Megan I.R. She contends that the circuit court lost competency to proceed before entering its dispositional order because the fact-finding hearing was not held within the mandatory forty-five-day time limit provided by WIS. STAT. § 48.422(2). This court agrees and reverses the order.

FACTS

¶2 On January 24, 2005, the Burnett County Department of Human Services filed a petition seeking termination of Tera's parental rights to her daughter Megan.[2] The petition asserted that grounds existed under WIS. STAT. § 48.415(2), which applies to children in continuing need of protection or services.

¶3 The initial hearing on the petition was held on February 18, 2005. Tera denied the allegations of the petition and requested a jury trial. Her attorney then stated, "[w]e will waive the—I believe it's a 45-day time limit, if that will aid the court in setting the final hearing." The court then stated, "[w]e will go off the record in just a moment while we set the date." The parties then discussed the placement of Megan and the whereabouts of Megan's father. That same day, the court issued a notice that the fact-finding hearing would be held on June 2, 2005. Aside from the two comments quoted above, there was no other discussion on the record regarding scheduling the fact-finding hearing, nor was there any indication of why it was scheduled beyond the forty-five-day time limit.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[2] The petition also sought to terminate Craig T.'s parental rights as Megan's father. Craig T. is not a party to this appeal.

¶4 At the June 2, 2005 fact-finding hearing, a jury found that grounds existed to terminate Tera's parental rights. The court then found Tera to be an unfit parent. On June 23, the court determined that termination would be in Megan's best interest, and it entered the dispositional order from which Tera now appeals.

DISCUSSION

¶5 In an action to terminate parental rights, a fact-finding hearing must be held within forty-five days of the hearing on the petition, unless the parties agree to proceed to a hearing on the merits immediately. WIS. STAT. § 48.422(2). Generally, all time limits set forth in the Children's Code are intended to be mandatory. ***Sheboygan County Dep't of Social Servs. v. Matthew S.***, 2005 WI 84, ¶18, 282 Wis. 2d 150, 698 N.W.2d 631. The Children's Code contains no provision for the waiver of time limits. ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. The only provision for delays, extensions, or continuances is found in WIS. STAT. § 48.315. ***April O.***, 233 Wis. 2d 633, ¶5. Failure to comply with the mandatory time limits causes a court to lose competency to proceed, provided time is not validly extended pursuant to § 48.315. ***Matthew S.***, 282 Wis. 2d 150, ¶18.

¶6 Tera argues that the court failed to comply with WIS. STAT. § 48.315(2), which states:

> 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. (Emphasis added).

Tera argues that the record contains no apparent reason for scheduling the fact-finding hearing beyond the statutory time limit.

¶7 In response, the Department argues that Tera should not be permitted to benefit from an error that she invited, supposedly because her counsel stated that Tera was willing to waive the time limit. The Department also argues that the time limit did not begin to run from the hearing on the petition because the father was not present and, therefore, the hearing was effectively "not accomplished."

¶8 This court rejects the Department's first argument for the same reason that it agrees with Tera's argument. The court set the date for the fact-finding hearing off the record. As such, this court cannot determine what reasons, if any, the court had for setting the hearing beyond the statutory time limit. Without knowing the court's reasons, this court cannot determine whether Tera invited the error, just as it cannot determine whether there was good cause.

¶9 WISCONSIN STAT. § 48.315(2) requires good cause to be shown on the record. In this case, whether good cause existed, none was shown on the record.[3] As a result, the court lost competency to proceed with the fact-finding hearing, which was scheduled after the mandatory time limit.[4]

[3] It is possible the trial court had good cause to extend the hearing beyond the forty-five days, but unfortunately the record is silent as to its reasons, thereby leaving this court with no alternative but to reverse the order terminating Tera's parental rights.

[4] This court acknowledges the irony of this decision. One of the purposes of the Children's Code is to "allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued in accordance with this chapter and termination of parental rights is in the best interest of the child." WIS. STAT. § 48.01(1)(gr). Here, a jury found grounds to terminate this parent's rights, and the circuit court found termination to be in the best interests of the child. Neither of these findings is questioned on appeal. Nonetheless, this child's future remains uncertain as the Department decides whether to file another termination petition.

¶10 This court also rejects the Department's unsupported argument that the hearing on the petition was "not accomplished." Further, even if the Department were correct, and the hearing on the petition were deemed not to have occurred, the court still would have lost competency because the hearing on the petition would not have been held within thirty days after the petition was filed. *See* WIS. STAT. § 48.422(1).

By the Court.—Order reversed.

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