

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 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 Nos. 2005AP2118
2005AP2119**

**Cir. Ct. No. 2004TP51
2004TP52**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

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

LA CROSSE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SHARON P.,

RESPONDENT-APPELLANT.

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

LA CROSSE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SHARON P.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for La Crosse County:
DENNIS G. MONTABON, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Sharon P. appeals orders of the circuit court terminating her parental rights to her children, Cameron P. and Alyisha P. Sharon P. argues the circuit court lost competency to proceed when it failed to hold a fact-finding hearing within forty-five days of the plea hearing, as required by WIS. STAT. § 48.422(2).² We disagree and affirm the orders of the circuit court.

FACTS

¶2 The petition to terminate Sharon P.'s parental rights to Cameron P. and Alyisha P.³ was filed on September 30, 2004. A plea hearing commenced on October 26, 2004, within the statutory limits for the plea hearing. That hearing was continued to November 9, 2004, with the consent of all counsel present, including the guardian ad litem. At the November 9, 2004 hearing, Sharon P.

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

² WISCONSIN STAT. § 48.422(2) states “[i]f the petition is contested the court shall set a date for a fact-finding hearing to be held within 45 days of the hearing on the petition, unless all of the necessary parties agree to commence with the hearing on the merits immediately.”

³ Petitions to terminate the parental rights of the father, Juan P., were also filed. However, Juan's appeal is proceeding separate from Sharon's appeal and will not be discussed here.

entered a denial and demanded a fact-finding hearing. Due to the complexity of the case, the court gave the parties ninety days to complete any necessary pretrial discovery. The fact-finding hearing was not scheduled at this time. The guardian ad litem did not object to the discovery order.

¶3 On February 11, 2005, a status hearing was held. At this hearing, the circuit court set a trial date of April 11, 2005. This date was outside the forty-five days of the October 26, 2004 plea hearing. However, the guardian ad litem did not object to holding the fact-finding hearing beyond the forty-five day time limit.

¶4 A motion hearing was held on April 4, 2005, with all counsel and parties present, including the guardian ad litem. The court announced jury selection would commence on April 25, 2005, rather than April 11, 2005, as originally scheduled. No discussion was held on the record as to the reason for setting over the fact-finding hearing date. However, the guardian ad litem did not object to this continuance.

¶5 The fact-finding hearing was held from April 25, 2005, through April 28, 2005. At the conclusion of the hearing, the jury found grounds to terminate Sharon's parental rights. At the conclusion of the May 23, 2005 dispositional hearing, the circuit court orally terminated Sharon's parental rights to both Cameron and Alyisha. A written order memorializing this decision was entered on May 27, 2005. Sharon appeals.

DISCUSSION

¶6 Where the facts are undisputed, whether the circuit court complied with the time limits and properly granted a continuance pursuant to WIS. STAT.

§ 48.315 presents a legal question of statutory interpretation subject to our independent review. *State v. Quinsanna D.*, 2002 WI App 318, ¶37, 259 Wis. 2d 429, 655 N.W.2d 752. Failure to comply with mandatory time limits under WIS. STAT. ch. 48 may result in the loss of the circuit court’s competency to proceed. *Quinsanna D.*, 259 Wis. 2d 429, ¶37. The time limits of WIS. STAT. § 48.422(2) are subject to various exceptions. WISCONSIN STAT. § 48.315(1)(b) provides that “time periods shall be excluded in computing time requirements within this chapter” for delay “resulting from a continuance granted at the request of or with the consent of the child and his or her counsel or of the unborn child by the unborn child’s guardian ad litem.” Under § 48.315(2), delays, continuances and extensions may be permitted if there is “good cause”:

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.

¶7 Sharon argues the circuit court lost competency to proceed when it failed to hold a fact-finding hearing within forty-five days as required by WIS. STAT. § 48.422(2). She contends there was no good cause to hold the hearing beyond the mandatory forty-five days and, by implication, the hearing was continued longer than was necessary in violation of § 48.422(2). Because we conclude the guardian ad litem consented to each continuance, and thus tolled the running of the time limit, we reject this argument.

¶8 The initial plea hearing was held on October 26, 2004, but was continued until November 9, 2004, with the consent of all counsel, including the guardian ad litem. Because the October 26, 2004 was the initial plea hearing, under WIS. STAT. § 48.422(2), a fact-finding hearing needed to be held within

forty-five days of this hearing, unless there was good cause or unless the guardian ad litem consented to the delay. *See* WIS. STAT. § 48.315(1)(b).

¶9 At the November 9, 2004 hearing, Sharon contested the allegations of the TPR petition and entered a plea of denial. Counsel, including the guardian ad litem, discussed the need for extensive pretrial discovery because of the complexity of the case. To accommodate counsel, the court ordered discovery be completed within ninety days. No trial date was set at this hearing. However, a status conference was scheduled for February 25, 2005. The guardian ad litem consented to the ninety-day timeline for discovery and did not object to scheduling the status conference on February 25, 2005; he also did not object to the court's failure to set a trial date. Sharon P. does not dispute these facts. Of importance to the circuit court, the parties indicated they waived the time limits.⁴

¶10 Instead of returning on February 25, 2005, as scheduled, the parties convened for a status hearing on February 11, 2005, to establish a trial date. At this hearing the circuit court extended the discovery deadline until March 7, 2005, and set jury selection for April 11, 2005. The guardian ad litem appeared in person and did not object to the April 11 trial date. Thus, under WIS. STAT. § 48.315(1)(b), this time period, until April 11, 2005, is excluded in computing the forty-five day time limit.

¶11 A motion hearing was held on April 2, 2005, where the guardian ad litem appeared in person. The court announced on the record that the fact-finding hearing date was rescheduled for April 25, 2005. The guardian ad litem did not

⁴ We note, however, under *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927, a party cannot waive the time limits as provided under WIS. STAT. ch. 48.

object to the April 25, 2005 trial date and, thus, under our view of WIS. STAT. § 48.315(1)(b), consented.

¶12 As we observed, the guardian ad litem consented to all continuances and therefore, under WIS. STAT. § 48.315(1)(b), the period to which he consented, from October 26, 2005 until April 25, 2005, is excluded from computing the forty-five day time limit. Therefore, the circuit court did not lose competency to proceed on the petition to terminate Sharon's parental rights.

By the Court.—Orders affirmed.

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

