

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 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. 2005AP2474
 2005AP2475
 2005AP2476**

**Cir. Ct. Nos. 2004TP11
 2004TP12
 2004TP13**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 2005AP2474

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

RUSK COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SHANNON S.,

RESPONDENT,

HAROLD S., SR.,

RESPONDENT-APPELLANT.

No. 2005AP2475

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

RUSK COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SHANNON S.,

RESPONDENT,

HAROLD S., SR.,

RESPONDENT-APPELLANT.

NO. 2005AP2476

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO HAROLD R. S., JR.,
A PERSON UNDER THE AGE OF 18:**

RUSK COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SHANNON S.,

RESPONDENT,

HAROLD S., SR.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Rusk County:
EUGENE D. HARRINGTON, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Harold S. appeals orders terminating his parental rights to three of his children. He contends that the circuit court failed to hold his fact-finding hearing within the statutory time limit and therefore lost competency to proceed. We reject Harold's argument and affirm the orders.

FACTS

¶2 On December 21, 2004, the Rusk County Department of Health and Human Services filed petitions to terminate Harold's parental rights to Melissa S., Shaun S., and Harold S., Jr. At his January 10, 2005 hearing on the petitions, Harold denied the County's allegations.

¶3 On January 31, Harold filed a request for a substitution of judge. On February 21, the newly assigned judge scheduled the cases for trial. While the fact-finding hearing was originally scheduled to begin on March 29, but at a scheduling conference on March 16, that hearing was rescheduled to April 26.

¶4 At the fact-finding hearing, a jury found that grounds existed to terminate Harold's parental rights. The court then found Harold to be an unfit parent, and at a dispositional hearing on June 8, the court concluded that terminating Harold's parental rights was in his children's best interests. Harold appeals.

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.

DISCUSSION

¶5 Harold claims that the fact-finding hearing was not held within forty-five days of the hearing on the petitions, as required by WIS. STAT. § 48.422(2). He asserts that the fact-finding hearing was held eight days beyond the statutory time limit, whereas the County contends the hearing was held one day prior to the expiration of the time limit. In their computations, both parties begin with the January 10 hearing date and end with the March 16 scheduling conference date.² However, the parties disagree about the amount of time tolled by the substitution of judge. *See* WIS. STAT. § 48.315(1)(c).

¶6 Harold begins tolling time from a February 8 hearing, where an assistant district attorney stated that Harold had filed a request for substitution of judge and where the court stated, “we’ll approve the substitutions.” The County begins tolling time from January 31, which was the date the substitution request was filed. Both parties stop tolling time on February 21, which was when the assigned judge issued a scheduling order and notice of hearing.

¶7 The County cites *State v. Joshua M.W.*, 179 Wis. 2d 335, 507 N.W.2d 141 (Ct. App. 1993), to support its contention that tolling begins on the date a substitution request is filed with the court. Harold cites no authority for beginning to toll time on the February 8 hearing date. *See* WIS. STAT. RULE 809.19(1)(e). Because Harold has not replied to the County’s argument, we deem

² According to the County, neither party counts time beyond the March 16 scheduling conference because, at that time, the fact-finding hearing was rescheduled pursuant to a continuance that tolled the time limits under WIS. STAT. § 48.315(1)(b), which deals with continuances granted with the consent of the child’s counsel.

the argument conceded. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). Thus, we conclude that time began tolling for the substitution of judge when the substitution request was filed with the court.

¶8 Accordingly, for the purposes of the forty-five day statutory time limit, twenty-one days elapsed between the January 10 hearing on the petitions and the January 31 filing of the request for substitution of judge. Twenty-three days passed between the February 21 scheduling order and the March 16 scheduling conference. Together, this totals forty-four days, which is within the forty-five days required by statute. *See* WIS. STAT. § 48.422(2).

By the Court.—Orders affirmed.

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

