**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**August 21, 2006**

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. 2006AP298**
**2006AP299**

**Cir. Ct. Nos. 2004TP131**
**2004TP132**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS**
**DISTRICT I**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**SHAWNETTA M. J.,**

**RESPONDENT-APPELLANT.**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**SHAWNETTA M. J.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed.*

¶1 KESSLER, J.[1] Shawnetta M.J. appeals from an order terminating her parental rights to Shaquea R. and Savannah R. Shawnetta argues that (1) the circuit court lost competency to proceed when it did not hold the fact-finding hearing within forty-five days of the plea hearing; (2) the circuit court lost competency to proceed when it did not hold the dispositional hearing within forty-five days of the date she waived the fact-finding hearing; and (3) Shawnetta's failure to appear at the dispositional hearing did not warrant a default sanction. We reject her arguments and affirm the order.

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

## BACKGROUND

¶2 This appeal concerns procedural challenges to a termination of parental rights proceeding, and we therefore provide only limited background on the grounds for termination and reasons supporting the termination of Shawnetta's parental rights. On March 16, 2004, the State filed a petition to terminate Shawnetta's parental rights. The alleged grounds for termination were failure to assume parental responsibility, *see* WIS. STAT. § 48.415(6), and continuing need of protection or services (CHIPS), *see* § 48.415(2). The petition also sought to terminate the parental rights of the alleged father, LaSando R.[2]

¶3 The State had difficulty locating Shawnetta. She ultimately made her initial appearance on June 24, 2004. The circuit court informed her of her rights, and then adjourned the initial appearance so that the public defender's office could appoint legal counsel for Shawnetta.

¶4 With respect to LaSando, the State noted that notice had been given by publication, and that the social worker had still been unable to locate him. The social worker said he had tried to locate LaSando through the children's grandfather, and that the grandfather indicated LaSando may be in prison in Tennessee. Shawnetta told the circuit court that she last heard LaSando was in prison in Texas or Tennessee. The social worker told the circuit court that he had been unable to find LaSando using a Wisconsin prison locator. The State moved

[2] The parental rights of LaSando, which were also ultimately terminated, are not at issue in this appeal and will not be addressed, except to provide background on attempts to locate him, which became an issue that caused delay.

to find LaSando in default. The circuit court declined to find LaSando in default and asked the State to check the federal prison database.

¶5 On July 28, 2004, Shawnetta, now represented by counsel, appeared for the continued initial appearance. The parties discussed LaSando. The State noted that it had checked with the federal prison system and still had not been able to locate LaSando. The circuit court directed the State to check with the prison authorities in Tennessee, based on Shawnetta's representation that LaSando's father had told her that LaSando was in prison in Tennessee.

¶6 Next, Shawnetta entered a formal denial to the petition and demanded a jury trial. The circuit court then indicated that it would schedule future dates. The circuit court and the parties then had the following discussion:

> [THE COURT]: The jury trial is going to be a little ways out, but the Status date in maybe a month, to give the State time to see if they can locate [LaSando].
>
> (Discussion off the record.)
>
> [THE CLERK]: First jury trial available is October 11th.
>
> [SHAWNETTA'S COUNSEL]: That's a bad day.
>
> [THE STATE]: That's a bad week for me.
>
> [THE CLERK]: Okay.
>
> Our next jury trial cycle is the week of Thanksgiving, which we're not allowed to sequester any juries [sic]. So then we go into the … first week of January. So, would be January 3rd….
>
> [GUARDIAN AD LITEM]: Okay.
>
> [SHAWNETTA'S COUNSEL]: Okay.
>
> [THE CLERK]: So, jury trial date is January 3rd of 2005 at 10 a.m.
>
> Three-day or five-day trial?

> [THE STATE]: I would think three.
>
> [THE CLERK]: Okay.
>
> [THE STATE]: Assuming we don't find the [f]ather. It may end up being longer.

The parties set a status date of September 22, 2004. No one objected to any of the dates. The circuit court offered additional comments on the scheduling:

> All right, the Court's tolling time limits for good cause, in terms of the trial date.
>
> Just so it's officially on the record, my next "trial" cycle is just in a few weeks. End of August. It would be impossible to schedule.
>
> Then the October cycle. The November cycle falls in the week of Thanksgiving, which is why we ended up with the week in January.
>
> So, the Court is tolling time limits for good cause.

¶7 A status conference was conducted on September 22, 2004.[3] The State indicated that it had once again searched for LaSando, checking with the federal prison systems and the state prison systems in Illinois, Wisconsin and Tennessee. The State asked the circuit court to enter a default judgment. The social worker provided additional information on his unsuccessful efforts to find LaSando by talking with LaSando's parents, who were also the potential adoptive resource, and others, and by calling Memphis, Tennessee, where he had been told LaSando might be imprisoned. The circuit court found LaSando in default.

¶8 A final pretrial conference took place on December 10, 2004. Shawnetta's counsel indicated that she wanted to stipulate to grounds for

[3] The Hon. Carl Ashley presided over the September 22, 2004 status conference.

termination, and then argue that her rights should not be terminated at the dispositional hearing. The circuit court scheduled a voluntary termination hearing for December 21, 2004.

¶9 On December 21, 2004, Shawnetta stipulated that she had failed to assume parental responsibility. Shawnetta provided testimony as to the basis for her stipulation, and a social worker provided testimony as to the factual basis to support the allegation that Shawnetta failed to assume parental responsibility. The circuit court accepted Shawnetta's no contest plea and found that the State had established a factual basis for finding that Shawnetta failed to assume parental responsibility. A dispositional hearing was set for January 3, 2005.

¶10 The parties appeared for the dispositional hearing on January 3, 2005. In attendance were LaSando's parents, Larry and Carolyn D., who had been caring for Shaquea and Savannah since December 2000 and who were the adoptive resource. The State presented testimony from a social worker about the children. The State also called Larry as a witness.

¶11 In the course of testifying, Larry said that he knew LaSando was incarcerated in a federal prison in Memphis, Tennessee, and that he had received a Christmas card from him. He said LaSando also speaks with the children by telephone. The circuit court called a recess and spoke with the attorneys off the record. When the circuit court went back on the record, it explained why a break had been taken:

> What I addressed with the lawyers off the record was, as [Larry] was testifying, it was becoming obvious, and then became very clear, that there is something in the record that we need to [address]….
>
> ….

> During the pendency of this case … I discussed with the … parties the status of the father…. Judge Ashley, after apparently, and according to the docket sheet, being told that a search of the federal system and the State of Wisconsin and the State of Tennessee had been conducted, that the father's whereabouts were, indeed, unknown, based on all that, Judge Ashley granted a default on September 22 of '04. Based on the information that I've seen, I'm sure I would have done the same thing in September.
>
> However, now a few months later, obviously with [Larry] testifying, it became clear that we do know where the father in this case is. We know exactly where he is. He's incarcerated in prison in Memphis, Tennessee. [Larry] indicated that he not only knows the location but has had some … fairly regular contact with his son, and that his son has had some contact with the two girls in this case.
>
> Based on all that, I don't think I can legitimately maintain the default…. Given the posture of this case, it's possible, if not likely, that the father may be in agreement with the way this matter is proceeding and may be in agreement with voluntary termination of his parental rights. But I don't know that.
>
> ….
>
> [H]e needs to be notified and represented…. [Then] I can take up whether he, A, wants the default lifted and, B, what his posture would be….
>
> So, what I'm going to do is adjourn the hearing….
>
> ….
>
> We'll set a status date in about 45 days, I think, as we know his exact location and as I'm directing that the Public Defender's office appoint somebody for him immediately, that will give him enough time to deal with all the various issues and, hopefully, have his position ready to go or ready to be dealt with at the next hearing within 45.

¶12 On February 23, 2005, the parties returned to court. The State reported that it had sent LaSando notice of the proceedings and had not received a reply directly from LaSando. However, Larry testified that he spoke with LaSando. Larry indicated LaSando was aware of the proceedings and did not

want to contest them. Larry said LaSando said he would like his daughters to continue living with Larry and Carolyn.

¶13 The circuit court concluded that LaSando was in default. The dispositional hearing was rescheduled. The court clerk offered a date one week later, but the guardian ad litem was unavailable. The clerk indicated that they were going to "go way out then" and offered April 12, 2005 as the date. Both the State and Shawnetta's counsel said that was fine. The circuit court then stated: "I will toll the time limits based on … cause and difficulty of calendaring this."

¶14 On April 12, 2005, Shawnetta did not appear. The State said that Shawnetta may be in the hospital. Shawnetta's counsel said that he had not been able to reach his client by phone and that "[t]he only way I'm hearing she was in the hospital, is the foster parents said she called their house asking to speak to the children." The State indicated that it would not seek a default based on the fact that Shawnetta had called the foster parents to let them know she was in the hospital. The State suggested that the case be rescheduled. No one objected. The circuit court agreed, and also asked Shawnetta's counsel for proof that she was hospitalized. The circuit court asked the clerk for a date "as soon as possible" and the clerk offered May 12, 2005. All parties agreed.

¶15 On May 12, 2005, Shawnetta appeared with her counsel. Counsel explained that Shawnetta had been hospitalized for a week with a bladder infection at the time of the last court hearing. Counsel then indicated that Shawnetta was not feeling well and was therefore "concerned about testifying given that she hasn't felt very well." The circuit court responded: "Taking everything together, [Shawnetta's] condition and the fact that we are calling this late … I'd be inclined to set this over." Both Shawnetta's counsel and the guardian ad litem said they

had no objection, but the State noted that Larry had continued to come to court each time to finish his testimony, and had expressed his concern that resolution of the matter was moving slowly.

¶16 The circuit court stated that it needed a two- or three-hour block of time so that the case could for certain be resolved. The clerk offered June 17, 2005, and all parties agreed.

¶17 On June 17, 2005, Shawnetta did not appear. The social worker indicated that several days earlier she spoke with Shawnetta's aunt, who said Shawnetta had once again been hospitalized, for problems related to diabetes. The aunt spoke with the social worker on the day of the hearing and said that when the aunt called the hospital that morning, the hospital said that Shawnetta had been discharged. The State asked for default judgment, noting that the case had been continued numerous times, to the detriment of the children and the foster parents who continued to come to court. The guardian ad litem agreed that default was appropriate.

¶18 Shawnetta's counsel told the circuit court that he had "no explanation for her failure to appear" but he asked for another hearing.

¶19 The circuit court offered its observations:

> The mother failed to appear on … April 12…. She appeared last month, May 12, but we were not able to go forward because she did not feel that she was able to testify on that date.
>
> She had notice of both of those dates. She also had notice, actual notice of today's date, June 17, at nine a.m. We discussed briefly, earlier, her non-appearance and, again, now at this portion of the hearing, her non-appearance.

The circuit court asked the social worker whether she had had any contact with Shawnetta. The social worker said she spoke with Shawnetta two-and-a-half weeks earlier, and that Shawnetta had not subsequently communicated any reason to the social worker why she might not appear in court. The circuit court then concluded:

> All right. This was scheduled at nine a.m. It's currently 10:37. The mother fails to appear. She's failed to contact the Court. She's failed to contact anyone to explain her non-appearance.
>
> I'm granting the State's request for a default of the mother….

¶20 The circuit court then heard additional testimony about the girls' progress and the proposal to have Larry and Carolyn adopt the girls. The circuit court determined that termination of the parental rights of both parents was in the children's best interest.

¶21 Shawnetta filed a notice of intent to appeal and new counsel was appointed. Due to delays, post-judgment counsel did not file a motion for post-judgment relief until March 2, 2006.[4] The motion sought relief from the default judgment. It asserted that Shawnetta had been hospitalized on the date she was defaulted. However, subsequent discovery revealed that she was released from the hospital the day before the June 17, 2005 hearing. Shawnetta did not appear for hearings on the motion for post-judgment relief, except to check in once with the court clerk before one hearing and indicate that she was too ill to stay for the

[4] The Court of Appeals approved extensions of time to file the motion. The delay is not at issue in this appeal and will not be addressed.

hearing. On May 10, 2006, the circuit court denied the motion for post-judgment relief. This appeal followed.

## DISCUSSION

¶22 Shawnetta challenges the termination on several bases, arguing that (1) the circuit court lost competency to proceed when it did not hold the fact-finding hearing within forty-five days of the plea hearing; (2) the circuit court lost competency to proceed when it did not hold the dispositional hearing within forty-five days of the date she waived the fact-finding hearing; and (3) Shawnetta's failure to appear at the dispositional hearing did not warrant a default sanction. We examine each in turn.

### I. Delay in scheduling the fact-finding hearing

#### A. Legal standards

¶23 At issue is whether the circuit court lost competency to proceed when it scheduled the fact-finding hearing for a date more than forty-five days after the continued hearing on the petition. *See* WIS. STAT. § 48.422(2).[5] A hearing may be held outside the forty-five-day limit if a continuance is granted.[6] *See* WIS. STAT. § 48.315(2), which provides:

[5] WISCONSIN STAT. § 48.422(2) provides:

> If 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.

[6] The Wisconsin Supreme Court has recognized that the word "continuance" in WIS. STAT. § 48.315(2) "is sufficiently broad to encompass situations in which the fact-finding hearing (continued)

> 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.

¶24 The Wisconsin Supreme Court has strongly encouraged circuit courts to state on the record reasons for continuing a fact-finding hearing beyond forty-five days, emphasizing that "[a] circuit court's failure to comply with the statutory time periods may result in loss of competency to proceed." ***State v. Robert K.***, 2005 WI 152, ¶57, 286 Wis. 2d 143, 706 N.W.2d 257. However, in the absence of an explicit statement of reasons in the record, good cause and the necessity of the length of the delay can be inferred if we find ample support in the record. ***Id.***, ¶¶33, 34.

¶25 The issue of whether a circuit court complied with the time limits and properly granted a continuance under WIS. STAT. § 48.315(2) presents a question of law we review independently. ***State v. Quinsanna D.***, 2002 WI App 318, ¶37, 259 Wis. 2d 429, 655 N.W.2d 752. When evaluating whether good cause existed, we consider four main factors: "(1) good faith of the moving party; (2) prejudice to the opposing party; (3) prompt remedial action by the dilatory party; and (4) the best interest of the child." ***Robert K.***, 286 Wis. 2d 143, ¶35.

**B. Application**

¶26 At the outset, we note that the State argues that we need not even consider whether there was good cause to schedule the fact-finding hearing

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is originally scheduled beyond the statutory 45-day time period." ***State v. Robert K.***, 2005 WI 152, ¶28, 286 Wis. 2d 143, 706 N.W.2d 257.

beyond forty-five days because the guardian ad litem consented to the delay.[7] The Wisconsin Supreme Court has yet to decide this issue. In ***Robert K.***, the court decided a similar case based on a good cause analysis and declined to address "whether a guardian ad litem's acquiescence in the circuit court's setting the fact-finding hearing beyond the 45-day period fulfills the consent requirement of Wis. Stat. § 48.315(1)(b)." ***Robert K.***, 286 Wis. 2d 143, ¶58. Because we conclude there was good cause to continue both the fact-finding hearing and the dispositional hearing, we decline to address the State's argument.

¶27 Shawnetta challenges the scheduling of the fact-finding hearing for a date more than forty-five days after the July 28, 2004 scheduling hearing. As noted above, the circuit court explicitly found that it was "tolling time limits for good cause, in terms of the trial date." The circuit court implicitly acknowledged that it held jury trials only certain weeks, and explained why the jury trial weeks prior to January were not workable.

¶28 Shawnetta argues that "court congestion in and of itself does not constitute good cause, and if it is to constitute good cause, there must be a sufficient record made establishing what cases are being given precedence to a case involving mandatory time limits." We reject Shawnetta's suggestion that court congestion is insufficient to constitute good cause because in ***Robert K.***, our supreme court explicitly recognized that "[c]ase law supports the conclusion that lawyer and litigant scheduling problems may constitute good cause under Wis. Stat. § 48.315(2)." ***Robert K.***, 286 Wis. 2d 143, ¶30.

[7] The guardian ad litem joined in the State's brief.

¶29 Here, the primary basis for good cause advanced by the circuit court was difficulty in scheduling a jury trial, although we acknowledge, as Shawnetta points out, that the circuit court also indicated it wanted the State to continue to try to locate the father. Shawnetta asserts that the case should not have been delayed to continue to try to locate LaSando. In addition, she presents brief argument on the four factors we must consider in evaluating whether good cause existed: (1) good faith of the moving party; (2) prejudice to the opposing party; (3) prompt remedial action by the dilatory party; and (4) the best interest of the children. *See* ***Robert K.***, 286 Wis. 2d 143, ¶35. Specifically, she argues that the State failed to take prompt remedial action to find LaSando. She also mentions prejudice, but discuses prejudice primarily as it related to delays in the dispositional hearing, which we address later in this opinion. Finally, she contends that the State's failure to find LaSando sooner was not in the children's best interest because "[n]eedless delays never serve the best interests of children."

¶30 We have considered the four factors and conclude that there was good cause to continue the fact-finding hearing. The explicit reason relied upon by the circuit court for delaying the fact-finding hearing was scheduling difficulties, although we agree with Shawnetta that at least the first month of delay was due to the circuit court's desire to give the State thirty days to find LaSando. With the August date "impossible to schedule," the next available trial week was October 11. Both the State and Shawnetta's counsel were unavailable on that day. Because of the Thanksgiving holiday, the jury trial could not take place in November jury week, leaving the next available date, January 3, 2004, which was selected.

¶31 Having recognized the two reasons for delay: giving the State thirty days to find LaSando and subsequent scheduling difficulties, we must consider the

good faith of the moving party. *See* ***Robert K.***, 286 Wis. 2d 143, ¶35. There is no indication in the record that any party sought to delay the proceedings; indeed, the State expressed frustration that it was being directed to keep calling different states to try to find LaSando. Next, we look at whether the opposing party was prejudiced. *See* ***id.*** Shawnetta has not identified specific prejudice that she suffered by the delay in the fact-finding hearing. Indeed, ultimately, she elected to concede grounds for termination, thus effectively removing any claim of prejudice as to the fact-finding hearing.

¶32 We also consider whether there was "prompt remedial action by the dilatory party." *See* ***id.*** The State explained on numerous occasions its numerous attempts to locate LaSando.[8] We are satisfied the State was taking prompt remedial action to satisfy the circuit court's concerns about notification to LaSando. Even assuming that the State could have done more to locate LaSando prior to June 28, 2004—making the State the "dilatory" party—the circuit court said it would delay the case for about thirty days, such that the case could have proceeded to trial on October 11, 2004, the next available jury trial date. However, it was the attorneys' schedules and the fact that the circuit court did not have access to a jury pool during every jury trial week that necessitated the other delays. We are satisfied the State made a good faith effort to take prompt remedial action to satisfy the circuit court's concerns about notification to LaSando.

[8] Shawnetta expresses understandable frustration that despite calls to numerous prisons, the State did not locate LaSando until LaSando's father told the circuit court that he had an address for LaSando in Tennessee. While the failure to find LaSando before January 2004 was unfortunate, there is nothing in the record to suggest that the State acted in bad faith when it tried to locate LaSando. It is unknown why the federal bureau of prisons told the State that LaSando was not incarcerated in the federal system when it appears that he was.

¶33 Finally, we consider the best interests of the children. *See* ***id.*** While prompt disposition of cases is important, preserving a parent's right to notice can also serve the children's best interest, as it avoids belated challenges to the termination. The circuit court's determination that the State should continue to try to locate LaSando was reasonable, and consistent with the best interests of the children. We are also satisfied that it was reasonable for the circuit court to attempt to consolidate resolution of the parental rights of both parents in one proceeding.

¶34 Having reviewed the record and the four factors, we conclude that there was good cause on the record to continue the fact-finding hearing beyond forty-five days. The circuit court did not lose competency to proceed.

## II. Delay in the dispositional hearing

### A. Legal standards

¶35 Pursuant to WIS. STAT. § 48.424(4), a dispositional hearing must be scheduled within forty-five days of the fact-finding hearing. However, delays in the dispositional hearing are subject to the same continuance rules applied with respect to delays in fact-finding hearings. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶¶37-39, 259 Wis. 2d 429, 655 N.W.2d 752; ***State v. April O.***, 2000 WI App 70, ¶11, 233 Wis. 2d 663, 607 N.W.2d 927.

### B. Application

¶36 Here, the dispositional hearing was scheduled to begin, and in fact began, on January 3, 2005—thirteen days after Shawnetta waived her right to a fact-finding hearing. Shawnetta argues that this hearing should not have been

continued to allow the State time to contact LaSando using contact information supplied in court by LaSando's father. We disagree.

¶37 The circuit court recognized that delaying the hearing was not ideal, but also that sustaining the default judgment after they all now knew how to reach LaSando would potentially violate LaSando's rights, which could delay ultimate resolution of the case, contrary to the best interests of the children. Because locating LaSando could prevent a legal challenge months or years down the road, we agree with the circuit court's implicit conclusion that continuing the dispositional hearing was in the children's best interest.

¶38 Shawnetta again complains that LaSando's whereabouts should have been discovered earlier. While that may be true, we disagree that the circuit court should have ignored the newly discovered information about LaSando's location and finished the dispositional hearing without providing LaSando with adequate notice of the proceedings. In addition to preserving LaSando's rights, the issue of whether LaSando planned to contest the termination could affect the results of the dispositional hearing. It was appropriate to continue the hearing so that LaSando could be formally notified.

¶39 Shawnetta also challenges the scheduling of the continued dispositional hearing for April 12, 2005. She contends that it was unreasonable to schedule the continuation forty-eight days after the February 23, 2005 hearing. We conclude that scheduling difficulties justified this delay. First, the circuit court offered a date one week after February 23, 2005, but the guardian ad litem was unavailable. The clerk indicated that scheduling was going to "go way out then" and offered April 12, 2005 as the next available date. Both the State and

Shawnetta's counsel agreed to that date. The circuit court then stated: "I will toll time limits based on … cause and difficulty of calendaring this."

¶40 Shawnetta is not challenging the fact that the dispositional hearing did not immediately continue on February 23, 2005; she appears to concede that a new date was needed. Rather, she challenges the length of delay. Based on the record, as well as the oft-recognized challenge of scheduling cases in Milwaukee County, we conclude that the adjournment was reasonable and that there was good cause to set the next court date as April 12, 2005. *See* ***Robert K.***, 286 Wis. 2d 143, ¶57 n.34 ("The federal courts have recognized that Milwaukee County has had difficulties disposing of adoption-related cases quickly and effectively. The Milwaukee County foster care system is currently operated under the supervision of a consent decree entered by a federal court.").

¶41 Shawnetta argues that she was prejudiced by the delays in the dispositional hearing because her health deteriorated in the months after the start of the January 3, 2005 dispositional hearing. She explains: "Because the January 3rd disposition hearing was halted, that contested hearing was not concluded that day. There is no doubt that Shawnetta's subsequent health problems contributed to the default being entered against her." It is indeed unfortunate that Shawnetta's health worsened in the months that followed the start of the dispositional hearing. However, the issue before this court is whether she was prejudiced by the findings of good cause on January 3, 2005, and February 23, 2005. At the time the circuit court found good cause to continue the dispositional hearing there was no indication that Shawnetta's health required that her testimony be immediately taken, or that a delay would prejudice her. It was her declining health, not anything brought about by the delays themselves, that ultimately made it difficult for her to participate in the proceedings. Shawnetta's

subsequent health problems do not negate the fact that the circuit court had good cause to continue the hearing.

¶42 We conclude that there was good cause to interrupt the dispositional hearing and continue it for a reasonable time so that LaSando could be contacted. It was reasonable, and there was good cause, to set the continued dispositional hearing for April 12, 2005. The circuit court did not lose competency to proceed.

## III. Default

### A. Legal standards

¶43 The parties agree that a circuit court can enter a default against a parent in a termination of parental rights case if a parent's failure to comply with the court order to appear is egregious. *See* ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768; ***Johnson v. Allis Chalmers Corp.***, 162 Wis. 2d 261, 275-76, 470 N.W.2d 859 (1991). Although the State and Shawnetta refer to the circuit court's action as a "default judgment," it is perhaps more accurate to characterize it as a refusal to again adjourn the hearing to allow Shawnetta to provide her own testimony in the dispositional phase. In making its decision on disposition, the circuit court relied on testimony from the social worker and Larry that was offered in January 2005 and additional testimony that the circuit court heard when Shawnetta did not appear. Regardless of how it is characterized, the issue before us is whether the circuit court erroneously exercised its discretion when it proceeded with the dispositional hearing and made its determination, without Shawnetta. We review that decision under the erroneous exercise of discretion standard. *See* ***Evelyn C.R.***, 246 Wis. 2d 1, ¶18.

**B. Application**

¶44 In her opening brief, Shawnetta devoted most of her argument to her assertion that she was not ordered to appear at future hearings. However, in her reply brief she withdrew that argument, conceding that she had been properly notified and warned. Thus, we focus our attention on her argument that her failure to appear was not egregious because "[t]he case had been pending for months due to no fault of her own, and had been delayed to allow the State to effectuate service on the father. There is no doubt that Shawnetta had serious medical issues."

¶45 We conclude that the circuit court did not erroneously exercise its discretion when it proceeded without Shawnetta. While it is undisputed that Shawnetta had medical issues, she failed to seek to communicate those medical issues to the circuit court or to seek continuances based on her health problems. This continued failure was egregious. She failed to appear on April 12, 2005, but the circuit court continued the hearing because Shawnetta had at least let the foster parents know she was hospitalized; even though she had not contacted her trial counsel or the circuit court. The circuit court continued the hearing on May 12, 2005, when Shawnetta told the circuit court that she was too ill to proceed. She was explicitly told in court to appear on June 17, 2005.

¶46 Shawnetta did not contact the circuit court or her trial counsel before she failed to appear on June 17, 2005. Shawnetta had been released from the hospital the day before she was scheduled to appear in court. After the final order was entered against her, and she moved to set aside the order, the case was extended for eleven months so that she could testify in support of her motion. Shawnetta appeared only once, and then left after telling the clerk she could not

stay. Ultimately, she failed to appear at the final hearing on her motion, offering her trial counsel no explanation. The circuit court affirmed its default decision, noting:

> [T]he mother has now failed to appear at three straight hearings. She's failed to appear on April 17th [2006], May 1st and today….
>
> ….
>
> I've given [Shawnetta], honestly, every possible benefit of the doubt in allowing her to appear and contradict the testimony from the State and [the social worker] or to supplement the record regarding the default that I granted in this case.
>
> While the rights inherent to a parent on a TPR are important, I think it's equally true that moving to disposition, moving to permanency, moving to a final decision, is very important as well….
>
> I'm finding that the default that I granted on June 17th of '05 was appropriate; I'm affirming that decision as a further basis for my decision to grant a default. As I said the mother has now failed to appear at three straight court dates without explanation, and [in] one case she left voluntarily after being at the court. I'm finding that her default was unexplained; that her default is egregious, and I'm granting the State's request for a default of the mother.

¶47 While this court, like the circuit court, is sympathetic to Shawnetta's health issues, we agree with the circuit court that Shawnetta's failure to participate in court proceedings, failure to attempt to make arrangements to reschedule hearings when she was too ill to participate, and her failure to contact the circuit court or her counsel when she missed hearings, was egregious. The circuit court did not erroneously exercise its discretion when it granted the default and proceeded with the dispositional hearing without Shawnetta.

*By the Court.*—Order affirmed.

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