COURT OF APPEALS
DECISION
DATED AND FILED

October 17, 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. 2006AP1304
2006AP1305
2006AP1306
2006AP1307

Cir. Ct. Nos. 2004TP72
2004TP73
2004TP74
2004TP75

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

NO. 2006AP1304
CIR. CT. NO. 2004TP72

IN RE THE TERMINATION OF PARENTAL RIGHTS TO JESUS D.-P., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TANIA P.,

RESPONDENT-APPELLANT.

NO. 2006AP1305
CIR. CT. NO. 2004TP73

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TANIA P.,

RESPONDENT-APPELLANT.

NO. 2006AP1306
CIR. CT. NO. 2004TP74

IN RE THE TERMINATION OF PARENTAL RIGHTS TO JEREMY D.-P., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TANIA P.,

RESPONDENT-APPELLANT.

NO. 2006AP1307
CIR. CT. NO. 2004TP75

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

TANIA P.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: THOMAS P. DONEGAN, Judge. *Affirmed.*

¶1 KESSLER, J.[1] Tania P. appeals from orders terminating her rights to her four children, Jesus D.-P., Reynalis P., Jeremy D.-P. and Tania A. Tania P. presents two issues on appeal. First, she claims that because the warnings provided to her during the "CHIPS" phase of the petitions for termination of her parental rights were only provided to her in English, where the State was aware that she spoke only Spanish, the trial court lacked competency to proceed. Second, she claims that the trial court erred in finding that she failed to assume parental responsibility, arguing that the State's evidence was insufficient to prove

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

that she had relied extensively on others to care for her children and that the trial court improperly shifted the burden of proof to her on this issue. Because competency for the court to proceed is based on the statutes, and the statutes have been followed in this case, and because we reject Tania P.'s argument that if we conclude that the trial court erred in finding that she never had a parental relationship with her children, we should remand for a new dispositional hearing, disregarding the trial court's determinations of abandonment under WIS. STAT. § 48.415(1) (2003-04)[2] and continuing need for protection and services under WIS. STAT. § 48.415(2), we affirm.

BACKGROUND

¶2 Tania P. (d.o.b. March 3, 1978) gave birth at various times to four children who are the subject of the termination petition. Jesus D.-P. was born on January 2, 1996; Reynalis P. was born on August 7, 1997; Jeremy D.-P. was born on November 4, 1999; and Tania A. was born on December 22, 2002. Reynaldo D. has been adjudicated in Puerto Rico as Jesus's father. Reynalis's father is deceased. Jeremy's father is unknown; however, Tania P. has stated that Reynaldo D. is his father. Jose Luis N. has claimed paternity to Tania A. which has been verified through DNA testing. Tania P. never married.[3]

¶3 On March 18, 2003, all four children, Jesus D.-P., Reynalis P., Jeremy D.-P. and Tania A., were found to be in need of protection or services. In

[2] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[3] The trial court also terminated the rights of all of the fathers; none of the fathers are parties to this appeal.

May 2002, Tania P. had left her three children (Tania A. was not yet born) in the care of a friend so that she could visit her ailing mother in Puerto Rico for a short period of time. On July 19, 2002, Jesus D.-P., Reynalis P. and Jeremy D.-P. were placed in State custody when Tania P.'s friend contacted the County and informed them that Tania P. had not yet returned from Puerto Rico and that the friend could no longer care for Tania P.'s children. Tania A. was placed into State custody on February 12, 2003, when Tania P. was arrested for selling drugs. Tania P. is limited cognitively, cannot read English, and can only read Spanish "a little bit."

¶4 Dispositional orders for each of the children were in effect for one-year periods to give Tania P. an opportunity to satisfy conditions for the return of her children. Tania P. failed to meet the conditions. On February 12, 2004, the State filed a petition to terminate Tania P.'s parental rights to all four children.

¶5 The petition alleged three grounds for termination: (1) Failure to assume parental responsibility, pursuant to WIS. STAT. § 48.415(6); (2) abandonment, pursuant to WIS. STAT. § 48.415(1)(a)2.; and (3) continuing need of protection and services, pursuant to WIS. STAT. § 48.415(2).

¶6 On January 10, 2005, Tania P. waived her right to a jury trial and the trial court accepted her waiver and granted her request to sever her trial from that of the father of Tania A. Trial commenced on April 27, 2005. The trial court found that the State had proven all three of the alleged grounds. On February 14, 2006, the Order Concerning Termination of Parental Rights (Involuntary) was signed, terminating Tania P.'s parental rights regarding Jesus D.-P., Reynalis P. and Tania A. On April 18, 2006, the Order Concerning Termination of Parental

Rights (Involuntary) was signed, terminating Tania P.'s parental rights regarding Jeremy D.-P. Tania P. now appeals from these orders.

STANDARD OF REVIEW

¶7 We review *de novo* a question of statutory construction. ***State v. Aaron D.***, 214 Wis. 2d 56, 60, 571 N.W.2d 399 (Ct. App. 1997). The construction of a statute is a question of law interpreted without deference to the trial court. ***Id.*** Statutory language will be given its plain, ordinary meaning. ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. "If the "language is clear and unambiguous, [an appellate court is] prohibited from looking beyond the statutory language to ascertain it's [sic] meaning." ***In re Paternity of LaChelle A.C.***, 180 Wis. 2d 708, 713, 510 N.W.2d 718 (Ct. App. 1993).

¶8 Whether a circuit court has lost competency is a question of law that we review independently. ***State v. Kywanda F.***, 200 Wis. 2d 26, 32-33, 546 N.W.2d 440 (1996); ***Village of Shorewood v. Steinberg***, 174 Wis. 2d 191, 200, 496 N.W.2d 57 (1993). Whether an objection to the competency of the circuit court can be waived is also a question of law which we review *de novo*. ***Kywanda F.***, 200 Wis. 2d at 32-33.

DISCUSSION

Warnings in Spanish

¶9 WISCONSIN STAT. § 48.356 requires that "[w]henever the court orders a child to be placed outside his or her home … or denies a parent visitation because the child … has been adjudged to be in need of protection or services,"[4] the court must provide both oral and written notice to "the parent or parents,"[5] of "any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child … to be returned to the home or for the parent to be granted visitation."[6]

¶10 In ***In re D.F.***, 147 Wis. 2d 486, 496, 433 N.W.2d 609 (Ct. App. 1988), abrogated in part, ***In re Jamie L.***, 172 Wis. 2d 218, 493 N.W.2d 56 (1992), and ***State v. Alice***, 2000 WI App 228, 239 Wis. 2d 194, 619 N.W.2d 151, we specifically held that:

> [T]he trial court's duty to warn and inform a parent under sec. 48.356(2), Stats., is included in that "panoply of substantive rights and procedures to assure that … parental rights will not be terminated precipitously [or] arbitrarily…." The statute is mandatory, unequivocal and imperative. The importance of the notice required by sec. 48.356(2) is reflected in the fact that the legislature has required that the dispositional orders which establish the CHIPS grounds for termination include the notice.

[4] *See* WIS. STAT. § 48.356(1).

[5] *See* WIS. STAT. § 48.356(2).

[6] *See* WIS. STAT. § 48.356(1).

Id., 147 Wis. 2d at 495 (citation omitted). Accordingly, we review the proceedings to determine whether the trial court complied with WIS. STAT. § 48.356(2) when it provided the written warnings only in English.

¶11 Tania P. argues that the notice contained in the CHIPS order, which WIS. STAT. § 48.356 requires to be written, does not meet the required element of proof that was used by the trial court at the TPR trial because it was not provided to Tania P. written in the Spanish language. Tania P. supports this argument by referencing Supreme Court Rules Preamble which states, in pertinent part: "Many persons are partially or completely excluded from participation in court proceedings due to limited proficiency in the English language…. Communication barriers must be removed as much as is reasonably possible so that these persons may enjoy equal access to justice." SCR 63.002 PREAMBLE (2003-04). Tania P. argues that since the trial court provided interpreters for Tania P. throughout the proceedings, it must have known that Tania P. could not speak or read English sufficiently to participate in the proceedings without this accommodation and, therefore, by not providing the CHIPS warnings in Spanish, the trial court failed to meet the statutory mandate underlying the § 48.356(2) requirement which then "deprived the TPR court of competence to adjudicate the Wis. Stat. § 48.415 grounds alleged in the petitions." Tania P. argues that the fundamental rights in a TPR are the equivalent to the rights accorded to arrestees under ***Miranda v. Arizona***, 384 U.S. 436 (1966), and that by providing written warnings only in English, the trial court deprived Tania P. of meaningful receipt of the TPR warnings. *Cf*. ***State v. Hindsley***, 2000 WI App 130, ¶34**,** 237 Wis. 2d 358, 614 N.W.2d 48 (***Miranda*** warnings insufficient when conveyed to deaf individual in only English-language-based sign and not in American Sign

Language in which individual was fluent); ***State v. Santiago***, 206 Wis. 2d 3, 11-12, 556 N.W.2d 687 (1996) (State must prove that when ***Miranda*** warnings given in Spanish the individual was capable of understanding them.). Tania P. concludes that "[t]he question becomes, then, whether the English-language written warnings meaningfully provided Tania [P.] with the same information required for the oral warnings, and the answer is no, because the court did not, consistently with SCR 63.002, take reasonable steps to remove communication barriers in the written warnings."

¶12 The State argues that the only element the trier of fact—judge or jury—needed to determine was whether the CHIPS order contained the statutorily-mandated warning. The State argues that the order did contain the mandated warning. The State further argues that Tania P. has waived her right to challenge the validity of the CHIPS court order because she never appealed it nor filed any motion to have it set aside. Finally, the State argues that Tania P. did not argue, in her motion to dismiss before the TPR court, that the TPR court did not have competence to proceed in her motion to dismiss the TPR, but, rather, simply argued that the notice contained in the CHIPS order could not meet the element of proof required under WIS. STAT. § 48.415 because the notice was not also written in the Spanish language.

¶13 In order to determine what effect the failure to provide written notice in Spanish in the CHIPS proceeding may have on the TPR proceeding, we must review the statutory scheme. ***In Interest of D.P.***, 170 Wis. 2d 313, 324, 488 N.W.2d 133 (Ct. App. 1992). In this case, the underlying statute at issue is WIS.

STAT. § 48.415.[7] Accordingly, the requirements of WIS. STAT. § 48.356 are

[7] WISCONSIN STAT. § 48.415 states, in pertinent part:

> **Grounds for involuntary termination of parental rights.** At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:
>
> **(1)** ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:
>
> ….
>
> 2. That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.
>
> ….
>
> (b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a) 2. or 3. The time periods under par. (a) 2. or 3. shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.
>
> (c) Abandonment is not established under par. (a) 2. or 3. if the parent proves all of the following by a preponderance of the evidence:
>
> 1. That the parent had good cause for having failed to visit with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.
>
> 2. That the parent had good cause for having failed to communicate with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.
>
> 3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:

(continued)

a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified in par. (a) 2. or 3., whichever is applicable, or, if par. (a) 2. is applicable, with the agency responsible for the care of the child during the time period specified in par. (a) 2.

b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

….

(2) CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services, which shall be established by proving any of the following:

(a) 1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2. a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

(continued)

applicable in the TPR proceeding "*only insofar as they are expressly made so by* § 48.415." ***D.P.***, 170 Wis. 2d at 324 (emphasis added). In this case, the State has petitioned for the termination of Tania P.'s parental rights on three statutory grounds: abandonment pursuant to § 48.415(1); continuing need of protection or services pursuant to § 48.415(2); and failure to assume parental responsibility under § 48.415(6). Of these three grounds for termination of parental rights, subsecs. (1) and (2) require the § 48.356 notice. *See* sec. 48.415(1), (2) and (6).

> (am) 1. That on 3 or more occasions the child has been adjudicated to be in need of protection or services under s. 48.13 (3), (3m), (10) or (10m) and, in connection with each of those adjudications, has been placed outside his or her home pursuant to a court order under s. 48.345 containing the notice required by s. 48.356 (2).
>
> 2. That the conditions that led to the child's placement outside his or her home under each order specified in subd. 1. were caused by the parent.
>
> ….
>
> **(6)** FAILURE TO ASSUME PARENTAL RESPONSIBILITY. (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child.
>
> (b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ever expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

¶14 WISCONSIN STAT. § 48.356[8] is unambiguous. *See* ***Marinette County v. Tammy C.***, 219 Wis. 2d 206, 215-16, 579 N.W.2d 635 (1998) ("[W]ell-informed people could not reasonably differ [that t]his statute unambiguously requires that any written order which places the child outside the home under § 48.356(1) notify the parent of the same information that sub. (1) specifies."). Accordingly, the warnings provided to Tania P. in the CHIPS proceeding must include the conditions under WIS. STAT. § 48.415 that she must meet in order to *not* have her parental rights terminated to her four children. The record demonstrates that it is undisputed that: (1) the warnings provided to Tania P. in English accurately set forth these conditions; (2) the trial court orally informed Tania P., through the Spanish interpreters at the various proceedings, of the warnings enumerated in the written notices; and (3) the social worker assigned to Tania P.'s case went over the conditions and warnings in the written notices with

[8] WISCONSIN STAT. § 48.356 states:

> **DUTY OF COURT TO WARN. (1)** Whenever the court orders a child to be placed outside his or her home, orders an expectant mother of an unborn child to be placed outside of her home or denies a parent visitation because the child or unborn child has been adjudged to be in need of protection or services under s. 48.345, 48.347, 48.357 , 48.363 or 48.365, the court shall orally inform the parent or parents who appear in court or the expectant mother who appears in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child or expectant mother to be returned to the home or for the parent to be granted visitation.
>
> **(2)** In addition to the notice required under sub. (1), any written order which places a child or an expectant mother outside the home or denies visitation under sub. (1) shall notify the parent or parents or expectant mother of the information specified under sub. (1).

her on at least four separate occasions. Because of Tania P.'s cognitive limitations and because, as Tania P. admitted, she only reads Spanish "a little bit" and, in fact, was found, through testing, to read at a first grade level, oral explanations—with written notice available to be translated for her if she inquired—were very important for her understanding. The record reflects that these oral notices were given to her by the trial court through an interpreter. The record further shows that she also received interpreting assistance through her social worker and from friends. Based on the record, we conclude that Tania P. was provided the statutorily required written notices, in English, which she had, or could have had, a social worker, friends (such as those who testified at the hearing), or her counsel discuss and explain to her, in terms that she could cognitively understand. Accordingly, we conclude that § 48.356's requirements of oral notice and written notice through the trial court's order were met in this case and, therefore, the trial court had competency to conduct the dispositional hearing.[9]

¶15 We also find merit in the State's argument that because Tania P. did not challenge the sufficiency of the written notices she received in the CHIPS proceeding, she is now precluded from challenging the competency of the court at or after the dispositional phase of the proceedings based upon those notices. In ***In the Interest of L.M.C.***, 146 Wis. 2d 377, 395-96, 432 N.W.2d 588 (Ct. App. 1988), the petitioner argued that the trial court had no competency because it did not have statutory authority to extend the date for hearing beyond one thirty-day extension. Here, Tania P. never objected to the CHIPS court or appealed from the

[9] We do believe that it is good policy to provide written information to a parent in the language which the parent speaks and we hope the State will do so in the future.

CHIPS orders containing the English-only notice. We conclude that not having raised the competency objection within the proceeding where it allegedly occurred, she is precluded from doing so as a collateral attack to the CHIPS proceeding in the TPR proceeding. ***Id.*** at 395-96.

Challenge to findings of fact regarding grounds for termination of parental rights

¶16 Tania P. argues that she should be granted a new dispositional hearing based on the fact that the State failed to prove that she never assumed a parental relationship with her four children. She argues that the evidence was insufficient to support the trial court's findings and that in making its determination, the trial court improperly shifted the burden of proof from the State to Tania P. She does not argue, however, that the State's evidence was insufficient for the trial court to find that the remaining two grounds for termination (abandonment and continuing need of protection and services) were met.[10] Rather, she argues that if we determine that the trial court erred in finding that she had failed to assume parental responsibility, because the parental relationship "lies at the heart of what the judge must determine at disposition," we should remand this case for a new dispositional hearing on the remaining grounds in the State's petition. We do not agree.

[10] In her opening brief, Tania P. does not address these other two grounds. She appears to only be requesting a new dispositional hearing in order to have an order that does not include a finding that she failed to assume parental responsibility as one of the grounds for termination of her parental rights. In her reply brief, she again requests a new dispositional hearing, but now implies that if we find that the trial court incorrectly ruled on the WIS. STAT. § 48.415(6) ground, this court should discard the entire result of the original dispositional hearing and remand for a new dispositional hearing.

¶17 Under WIS. STAT. § 48.415, the State need prove only that one of the twelve statutory grounds exists in order to justify an involuntary termination of parental rights. Sec. 48.415; ***In re Termination of Parental Rights to Alexander V.***, 2004 WI 47, ¶25, 271 Wis. 2d 1, 678 N.W.2d 856 ("[I]f a petitioner proves one or more of the grounds for termination by clear and convincing evidence, 'the court shall find the parent unfit.'" (citations omitted)). "There are no 'degrees of unfitness' under the statutory scheme; a court has no discretion to refrain from finding a parent unfit after all the elements of a statutory ground have been established." ***Alexander V.***, 271 Wis. 2d 1, ¶25 (citation omitted). Because the trial court found that the State had established, by clear and convincing evidence, the requisite elements of abandonment under § 48.415(1), and of continuing need for protection and services under § 48.415(2), § 48.415 requires that Tania P.'s parental rights be terminated. We conclude that the trial court properly found Tania P. unfit. The facts underlying the unchallenged findings are more than sufficient to support the trial court's discretionary conclusion in the dispositional phase that termination of parental rights was in the best interests of each child.

By the Court.—Orders affirmed.

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