

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 15, 2008

David R. Schanker
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. 2007AP2464
2007AP2465
2007AP2466**

**Cir. Ct. Nos. 2006TP13
2006TP14
2006TP15**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 2007AP2464

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

MARINETTE COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

AMANDA B.,

RESPONDENT-APPELLANT,

JASON S.,

RESPONDENT.

NO. 2007AP2465

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO REBECCA
L. B., A PERSON UNDER THE AGE OF 18:**

**MARINETTE COUNTY HEALTH AND HUMAN SERVICES
DEPARTMENT,**

PETITIONER-RESPONDENT,

V.

AMANDA B.,

RESPONDENT-APPELLANT,

CLINTON B.,

RESPONDENT.

NO. 2007AP2466

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

**MARINETTE COUNTY HEALTH AND HUMAN SERVICES
DEPARTMENT,**

PETITIONER-RESPONDENT,

V.

AMANDA B.,

RESPONDENT-APPELLANT,

CLINTON B.,

RESPONDENT.

APPEALS from orders of the circuit court for Marinette County:
RICHARD DELFORGE, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Amanda B. appeals orders terminating her parental rights. Amanda argues the trial court lost competency to exercise jurisdiction because it failed to complete the initial hearing within thirty days of the termination petition. Amanda also argues the evidence did not support the jury's verdict that the Marinette County Health and Human Services Department made reasonable efforts to provide court-ordered services. We disagree and affirm the orders.

BACKGROUND

¶2 On September 18, 2006, the Marinette County Department of Health and Human Services filed petitions to terminate Amanda's parental rights to her three children: Taylynn R.B., Rebecca L.B., and Austin R.B. The petitions also sought termination of the parental rights of the children's fathers. The court held an initial hearing on October 9 at which Amanda and Jason were present. Judge Tim Duket inquired whether Amanda wished to contest the petitions, and she indicated that she did. Jason stated he would not contest the petition. Judge Duket informed Amanda of her right to a jury trial, and Amanda requested a jury trial. Judge Duket also advised the parties of the contents of WIS. STAT. § 48.423, and concluded that statute was inapplicable here. At the conclusion of the hearing, Judge Duket recused himself from the case.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶3 The case was assigned to Judge David Miron on October 18, 2006, and a scheduling conference was held on October 25. At the scheduling conference, Amanda requested a judicial substitution.

¶4 On October 30, the case was assigned to Judge Richard Delforge. On November 6, a notice of hearing was sent, setting the matter for December 14. The date was selected by the court during an off-the-record scheduling conference that took place on November 6.

¶5 On December 14, the parties appeared before Judge Delforge. Both fathers testified that they wished to voluntarily terminate their parental rights. Judge Delforge confirmed that Amanda wished to contest the allegations and wanted a jury trial. Judge Delforge scheduled a jury trial, finding good cause to schedule the trial outside the forty-five day time limit.

¶6 The court held a jury trial beginning May 30, 2007. At the trial, Amanda's probation officer testified to her criminal convictions, revocations and time spent in jail. He also testified that Amanda had told him she used marijuana on a daily basis.

¶7 Social worker June Kruse testified to Amanda's court-ordered conditions, and her lack of compliance towards meeting those conditions. Kruse summarized the efforts made by the Department to assist Amanda in meeting the conditions. The services included arranging and facilitating visitation, offering assistance with housing, and referring Amanda to recommended services.

¶8 Kruse further testified that after the children were moved to Minnesota, she offered to make arrangements to meet Amanda halfway there and transport her to Minnesota to visit the children. Kruse stated Amanda refused the

offer because she did not want to ride in a car with Kruse for that long. The Department then scheduled phone contact with the children.

¶9 Christopher Crane, a mental health therapist for the Department, testified that he was concerned about Amanda's phone contact with the children. After reviewing tapes of the phone calls, he recommended that phone contact be ceased and that Amanda instead contact the children by writing letters that could be screened by the Department. However, Amanda sent letters straight to the foster home, rather than allowing the Department to screen the letters. Crane met with Amanda to discuss some recommendations that he felt would be helpful to Amanda in communicating with her children. However, according to Crane, Amanda was angry and argumentative at the meeting and did not wish to discuss any recommendations.

DISCUSSION

¶10 Amanda first argues the trial court lost competency to exercise jurisdiction because it failed to complete the initial hearing within thirty days of the petition as required by WIS. STAT. § 48.422(1). Whether the court complied with the time requirements of this statute is a question of law we review without deference. *See Waukesha County v. Darlene R.*, 201 Wis. 2d 633, 639, 549 N.W.2d 489 (Ct. App. 1996).

¶11 In this case, the petition was filed September 18 and an initial hearing was held October 9. At the hearing, the court inquired whether Amanda wished to contest the petition, informed her of her right to a jury trial and advised the parties of the contents of WIS. STAT. § 48.423. Therefore, the court complied

with the requirements of WIS. STAT. § 48.422(1) and completed Amanda's initial hearing on October 9, twenty-one days after the petition was filed.²

¶12 Amanda argues the initial hearing was commenced on October 9, but not completed until December 14, the date the parties appeared before Judge Delforge.³ It is unclear from Amanda's brief why she believes the hearing was not completed on October 9, as all the statutory requirements were met on that date. To the extent Amanda's argument contemplates the fact that the court did not set a date for a fact-finding hearing within forty-five days of the initial hearing as required by WIS. STAT. §48.422(2), the hearing was continued for good cause. *See* WIS. STAT. § 48.315(2). The court does not need to specifically reference the statute or utter the words "good cause" in order to invoke § 48.315(2). *State v. Robert K.*, 2005 WI 152, ¶33, 286 Wis. 2d 143, 706 N.W.2d 257. At the end of the October 9 hearing, Judge Duket stated he recused himself from the case and continued the matter in order for a new judge to be assigned. Obviously, Judge Duket could not schedule a fact-finding hearing at that time because he did not know what judge would be assigned to the case. Due to various substitutions, a new judge was not assigned until October 30. After the case was transferred, Judge Delforge held a hearing on December 14, and at that time found good cause to schedule a fact-finding hearing beyond the forty-five day limit.

² The characterization of the December 14 hearing as a continued plea hearing for the fathers is not relevant to Amanda's case.

³ In her reply brief, Amanda raises an estoppel argument regarding the Department's earlier characterization of the October 9 hearing. However, Amanda fails to properly develop this argument, and we will not develop it for her. *See Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995). Additionally, regardless of how the parties characterized the October 9 hearing, whether the court complied with statutory time requirements is an issue of law we review without deference. *See Waukesha County v. Darlene R.*, 201 Wis. 2d 633, 639, 549 N.W.2d 489 (Ct. App. 1996).

¶13 Amanda next argues the evidence did not support the jury’s verdict that the Department made reasonable efforts to provide court ordered services. In a challenge to sufficiency of the evidence, we view the evidence in the light most favorable to the jury’s verdict. *Morden v. Continental AG*, 2000 WI 51, ¶¶ 38-39, 235 Wis. 2d 325, 611 N.W.2d 659. “[I]f there is any credible evidence, under any reasonable view, that leads to an inference supporting the jury’s finding,” we will not overturn the finding. *Id.*, ¶38. The jury, and not the appellate court, is the ultimate arbiter of the weight and credibility of witnesses’ testimony. *Id.*, ¶39.

¶14 Amanda claims the Department’s efforts were not reasonable because once the children were moved out of Wisconsin there was no reasonable likelihood that she could maintain a close relationship with them. The record does not support this assertion. Rather, the record shows numerous efforts the Department made to help Amanda maintain contact with her children. Amanda’s own actions in refusing transportation to see her children, and refusing to discuss recommendations on how to properly write to her children, rendered the Department’s efforts futile.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

