

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 2, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 01-0349

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

CINDA L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
MICHAEL FISHER, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Cinda L. appeals from an order terminating her parental rights to her son Cyrus L. On appeal, she asserts that her right to due process was violated because at her CHIPS extension hearings, her right to counsel, as defined in *Joni B. v. State*, 202 Wis. 2d 1, 549 N.W.2d 411 (1996), was denied. Cinda contends that the circuit court did not engage in a proper colloquy with her concerning the possibility that counsel could be appointed for her during her CHIPS extension hearings. She asserts that therefore the CHIPS extension hearings were defective and could not properly be a basis for a petition to terminate parental rights under WIS. STAT. § 48.415(2). We disagree. Therefore, we affirm.

Relevant Facts

¶2 On May 17, 1995, in Kenosha county case no. 95-JF-289, a petition was filed alleging that Cinda's child, Cyrus, was a child in need of protection or services (CHIPS petition). On June 1, 1995, Cinda entered an admission to the petition and the court entered a dispositional order placing Cyrus outside Cinda's home. On June 25, 1996, the court held a hearing on the State's motion to extend the CHIPS dispositional order for one year. At the outset of the hearing, the court advised Cinda that she had the right to hire her own attorney, but that she did not have to if she wished to speak for herself. Cinda acknowledged that she understood, and the court then asked her again if she wished to hire an attorney; again she declined. The court entered an extension order continuing the jurisdiction of the CHIPS matter in juvenile court.

¹ This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(e) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶3 On July 22, 1997; July 22, 1998; June 11, 1999; and June 22, 2000, the juvenile court entered subsequent extension orders. On April 10, 2000, a petition was filed to terminate Cinda's parental rights (TPR). At the initial appearance on May 8, 2000, Cinda, for the first time, requested an attorney. The circuit court granted her request and appointed counsel. On August 4, 2000, Cinda filed a pretrial motion to dismiss the TPR petition on the ground that the CHIPS extension orders in the case were obtained in violation of due process for the same reasons on which she now bases her appeal to this court. The circuit court was provided with the transcripts from the CHIPS hearings and allowed argument on the motion. The motion was denied.

¶4 Cinda's jury trial began on August 7, 2000. During her testimony, she entered a no contest plea to the involuntary termination of her parental rights pursuant to WIS. STAT. § 48.415(2) (continuing CHIPS) and 48.415(1)(a)2 (abandonment). The court found that Cinda knowingly, freely and voluntarily entered her plea and further found her to be an unfit parent pursuant to WIS. STAT. § 48.424(4). On September 6, 2000, the court entered an order terminating Cinda's parental rights.

Analysis

¶5 Cinda bases her arguments on *Joni B.* In *Joni B.*, the court considered a challenge to an amendment to WIS. STAT. § 48.23(3), which prohibited a circuit court from appointing counsel for any adult in a CHIPS action. *Joni B.*, 202 Wis. 2d at 5. The court concluded that the statute violated due process because it precluded a case-by-case determination of the necessity for the appointment of counsel. *Id.* at 18.

¶6 Cinda argues that the circuit court erroneously exercised its discretion because it failed to address the issue of appointing counsel in her first CHIPS extension proceeding. However, the *Joni B.* court explained that a circuit court need not undertake such an inquiry in every case:

We emphasize that the key to an individualized determination is that the need to appoint counsel will differ from case to case. In other words, a circuit court should only appoint counsel after concluding that either the efficient administration of justice warrants it or that due process considerations outweigh the presumption against such an appointment. *If the parent does not request appointment of counsel and the court perceives no particularized need for counsel in the case before it, the court need not address the issue.*

Id. (emphasis added).

¶7 Cinda has failed to support her argument that the CHIPS hearing colloquy was inadequate. And *Joni B.* does not support Cinda’s argument. *Joni B.* recognizes that while the interests of parents affected by any CHIPS order are significant, there is no constitutional right to appointment of counsel. *Id.* at 10. *Joni B.* says that the circuit court *must* have discretion to appoint counsel in cases demonstrating a particularized need; *Joni B.* does not say that the circuit court must address the appointment of counsel in all cases. *Id.* at 18. What *Joni B.* requires is that the circuit court address the issue of appointment of counsel “*if*” the parent “*requests*” appointment of counsel. *Id.*²

¶8 The record does not show, nor does Cinda argue, that she requested appointment of counsel at her initial CHIPS extension hearing or at any of the

² We note that in *State v. Tammy L.D.*, 2000 WI App 200, ¶36, 238 Wis. 2d 516, ___ N.W. 2d ___, we held that a circuit court may be confronted with circumstances that require it to exercise discretion to appoint counsel without an accompanying request to do so. Such facts were not present in this case.

subsequent CHIPS hearings. Furthermore, the only transcript from the CHIPS hearings that has been provided is an excerpt of the transcript from the initial extension hearing. When an appellate record is incomplete in connection with an issue raised by the appellant, this court must assume that the missing material supports the circuit court's discretionary ruling. *Duhame v. Duhame*, 154 Wis. 2d 258, 269, 453 N.W.2d 149 (Ct. App. 1989).³ The record does not show that the CHIPS extension hearings were defective because the circuit failed to engage in a proper colloquy with Cinda regarding her right to counsel. The circuit court properly exercised its discretion.

By the Court.—Order affirmed.

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

³ The State maintains that Cinda is barred by laches. First, laches does not apply. Second, the State's argument is actually a *waiver* argument; we will treat it as such. The State contends that Cinda cannot challenge the underlying CHIPS action in a TPR appeal because she did not appeal from the CHIPS extension order in 1996. The State believes that Cinda has lost her ability to argue that the circuit court failed to engage in a proper colloquy with her.

We need not decide whether the State's waiver argument is correct. The waiver rule is one of judicial administration that, in the exercise of this court's discretion, we choose not to employ in this case. *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980).

