

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 18, 2009

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. 2009AP1738-FT
2009AP1739-FT**

**Cir. Ct. Nos. 2006JC211
2006JC212**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

No. 2009AP1738-FT

IN THE INTEREST OF DILAYNEE V.H., A PERSON UNDER THE AGE OF 17:

WINNEBAGO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

LARRY W. H.,

RESPONDENT-APPELLANT.

No. 2009AP1739-FT

IN THE INTEREST OF SHARINDA H., A PERSON UNDER THE AGE OF 17:

WINNEBAGO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

LARRY W. H.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Winnebago County:
SCOTT C. WOLDT, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Larry W.H. appeals from orders denying his motion to dismiss the Winnebago County Department of Health and Human Services' child in need of protection or services petitions (CHIPS petitions). Larry argues that the circuit court erred in ruling that the amended dispositional order was a corrected order. Larry is wrong; the amended dispositional order was a corrected order. We affirm.

¶2 At a dispositional hearing held on February 22, 2007, Larry pled no contest to the CHIPS petitions regarding custody of his two children. He received the Department's permanency plans, the conditions for return of the children, and the grounds for termination of parental rights (TPR) notices. After no objections were made, the court adopted the Department's permanency plan for adoption of the children and found that it was in the best interest of the children to follow the Department's recommendations. The court specified to Larry the conditions for return of his children: maintaining communication with the Department, managing substance abuse and mental health issues, managing stress and developing coping skills, demonstrating an ability to provide for the children's

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

needs, and learning to assume parental responsibilities. Also, the court specified to Larry potential grounds that could result in a TPR, including a failure to visit or communicate with the children for three months or longer.

¶3 The dispositional orders were filed on March 22, 2007, and the expiration date was listed as February 22, 2008. (The Department’s predispositional reports recommended that the order last for “one year after the return of the child to the parental home or until the child’s 18th birthday, whichever comes first.”) Amended dispositional orders were filed April 17, 2007, listing the expiration date to be the date of the children’s eighteenth birthday in 2024. The amended dispositional orders were mailed to Larry and his lawyer.

¶4 At a permanency plan review hearing held on October 1, 2007, the court assessed Larry’s efforts towards reunification with his children. The guardian ad litem noted that Larry had “stayed sober,” but still lacked the “parental know-how” of caring for children. The guardian ad litem also added that Larry was “making the effort and doing what he can.” The court adopted the permanency plans, adding a modification that it would be in the children’s best interest for there to be a concurrent goal of reunification between Larry and his children. The district attorney, at the court’s request, restated to Larry the grounds of a TPR, noting that a failure to visit or communicate with the children for three months or longer was grounds for terminating parental rights.

¶5 On August 19, 2008, TPR petitions were filed, citing Larry’s failure to meet the conditions for return of the children as well as abandonment.

¶6 At the second permanency plan review hearing held on September 25, 2008, the court found that the permanency plans were unchanged, apart from the fact that TPR petitions had been filed. The court approved the permanency

plans and noted that TPR was appropriate because Larry had not contacted his children since January 24, 2008.

¶7 On April 2, 2009, Larry brought a motion to dismiss the CHIPS petitions. At the hearing, Larry argued that “the corrected order that was filed and entitled ‘Amended Order’ did not in itself contain the conditions for return or the TPR warnings required by the statute” and must be void. The circuit court held that there was no additional hearing needed because Larry had all the documentation and notice of what occurred at the dispositional hearing and because the expiration date was a correction, not a modification. The court further reasoned that the expiration dates from the permanency plans were approved at the dispositional hearing and received no objections. The court denied the motion to dismiss. Larry appeals.

¶8 Statutory interpretation and application are questions of law which we review de novo. *State v. Andrew J.K.*, 2006 WI App 126, ¶13, 293 Wis. 2d 739, 718 N.W.2d 229.

¶9 We agree with the circuit court and find that it was the court’s intent to adopt the Department’s recommendations. We further find that the expiration date on the original order was simply a clerical mistake that was corrected by the amended order.

¶10 After receiving the permanency plans at the February 22, 2007 hearing, Larry made no objections to any of the Department’s recommendations. Additionally, the hearing transcript showed that the court found it in the children’s best interest to adopt all of the Department’s permanency plans and recommendations. The date on the original order set the expiration date at one year after the hearing, but no records indicate that any party believed the

permanency plans were limited to a one-year period. Furthermore, the mistake on the original order was discovered and amended after just four weeks, and the amended order was received without any objection.

¶11 Larry did not show that he relied on the original order's incorrect date or that he did not receive notice of the permanency plan process. At the hearings on February 22, 2007, and October 1, 2007, the information regarding the conditions of the permanency plans were relayed to Larry. He was put on notice as to the conditions for return of the children as well as the grounds that would invoke a TPR. The clerical mistake was appropriately corrected and Larry was not harmed.

¶12 Further, even assuming the circuit court modified the order in violation of WIS. STAT. § 48.365, Larry has not shown that this affected his substantial rights. WISCONSIN STAT. § 805.18 governs harmless error. Section 805.18(2) states:

No judgment shall be reversed or set aside or new trial granted in any action or proceeding on the ground of ... error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure a new trial.

¶13 For an error to affect the party's "substantial rights," there must be a "reasonable possibility that the error contributed to the outcome of the action or proceeding at issue." *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶28, 246 Wis. 2d 1, 629 N.W.2d 768. In *Evelyn C.R.*, the court found that although the circuit court erred in granting default judgment that provided grounds for a TPR, based on prior records, it did not undermine the court's confidence in the outcome of the

termination proceeding. *Id.*, ¶¶34-35. There, the circuit court entered a default judgment of abandonment against a mother and scheduled a TPR hearing without hearing evidence sufficient to support a finding of abandonment. *Id.*, ¶¶9, 19. However, the court was able to examine the circuit court’s records and find sufficient facts to support a ruling of abandonment. *Id.*, ¶33. Therefore, the court held that the procedural error was harmless. *Id.*, ¶36.

¶14 In this case, if Larry had been offered a hearing regarding the expiration date of the dispositional order, there is no indication that the circuit court would have upheld the incorrect expiration date. During the dispositional hearing on February 22, 2007, the court identified several conditions that Larry had to meet in order to have the children returned to him. At a review hearing on October 1, 2007, the guardian ad litem noted that Larry was “making the effort” to follow the permanency plans’ conditions, but the court did not find that Larry satisfied the conditions for return of the children. Instead, the court only set a goal of reunification in addition to continued approval of the permanency plans. Finally, on September 25, 2008, the court found that the TPR petitions were appropriate because Larry had not contacted his children for nine months.

¶15 After examining the record, there is no indication that the court at any time would have granted Larry return of his children and terminated the permanency plans for adoption. The amended dispositional orders were corrected orders. Moreover, even assuming error, it would be harmless because Larry has failed to demonstrate that the amended dispositional orders affected his substantial rights.

By the Court.—Orders affirmed.

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

