COURT OF APPEALS
DECISION
DATED AND FILED

October 7, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1678 **Cir. Ct. No. 2009TP11**

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

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

GRANT COUNTY DEPARTMENT OF SOCIAL SERVICES,

PETITIONER-RESPONDENT,

V.

STACY K. S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Grant County: ROBERT P. VANDEHEY, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] Stacy K.S. appeals from an order terminating her parental rights to her son, Shaw S. Stacy argues that the circuit court improperly accepted her admission by telephone, instead of in person before the court, to grounds for termination of her parental rights reflected in a filed petition. She claims that her personal presence was required by WIS. STAT. § 48.422(7)(a), which requires the court to "[a]ddress the parties present" as part of the admission process, and also that her appearance by telephone was not permitted under WIS. STAT. § 807.13, which generally governs appearances by telephone or videoconference.

¶2 Because a parent entering an admission to grounds for termination is not required by the plain language of WIS. STAT. § 48.422(7)(a) to be personally present before the court, we conclude that the circuit court did not violate § 48.422(7)(a) in accepting Stacy's admission by telephone. We also conclude that the circuit court's decision to allow the parties to stipulate to Stacy's appearance by telephone was consistent with WIS. STAT. § 807.13(2)(b) because this was an evidentiary hearing under Chapter 48. Accordingly, we affirm.

BACKGROUND

¶3 On July 30, 2009, the State of Wisconsin filed a petition to terminate Stacy K.S.'s parental rights to her son, Shaw S. The State asserted that grounds for termination existed due to abandonment and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(1), (6).

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

¶4 Stacy contested the petition and requested a jury trial. The circuit court scheduled a final pretrial hearing and sent Stacy notice that her personal appearance was mandatory.

¶5 Instead of personally appearing before the court on the final pre-trial hearing date, Stacy and her attorney appeared by telephone after the parties stipulated on the record that she could do so. While Stacy was not placed under oath, she responded to each question posed by the court and a contemporaneous record was made of all statements made during this hearing. The record does not indicate why Stacy did not appear in person.

¶6 The circuit court extensively questioned Stacy and her attorney before and after Stacy entered an admission to the grounds for termination. The circuit court accepted her admission and found Stacy unfit.

¶7 At the dispositional hearing, the circuit court ordered Stacy's parental rights terminated because Stacy had admitted to grounds of unfitness and it was in the best interests of Shaw to terminate Stacy's parental rights.

DISCUSSION

¶8 A termination of parental rights proceeding (TPR) has two phases. *See* ***Kenosha County DHS v. Jodie W.***, 2006 WI 93, ¶10 n.10, 293 Wis. 2d 530, 716 N.W.2d 845. The first is the grounds phase, at which a circuit court determines whether grounds exist to terminate a parent's rights. *See* ***id.*** If the court finds grounds for termination, the parent is determined to be unfit and the court then moves to the second phase, holding a dispositional hearing, at which the court determines whether it is in the child's best interest to terminate the parental rights. *See* ***id.***

¶9 A parent who contests the grounds alleged in the petition for termination of parental rights is entitled to a jury trial. WIS. STAT. § 48.422(1), (2). A parent may, however, voluntarily admit to the grounds and waive all rights involved in a trial. Section 48.422(7).

¶10 Before accepting a parent's admission of the alleged facts in a petition to terminate parental rights, a court is required to: (1) "[a]ddress the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions"; (2) determine whether any threats or promises were made to elicit the admission; (3) "[e]stablish whether a proposed adoptive parent of the child has been identified"; (4) determine whether any individual has coerced a birth parent; and (5) "[m]ake such inquiries as satisfactorily establish that there is a factual basis for the admission." WIS. STAT. § 48.422(7).[2]

[2] WISCONSIN STAT. § 48.422(7) provides, in relevant part:

> Before accepting an admission of the alleged facts in a petition, the court shall:
>
> (a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.
>
> (b) Establish whether any promises or threats were made to elicit an admission ….
>
> (bm) Establish whether a proposed adoptive parent of the child has been identified….
>
> (br) Establish whether any person has coerced a birth parent or any alleged or presumed father of the child in violation of s. 48.63(3)(b)5.
>
> (c) Make such inquires as satisfactorily establish that there is a factual basis for the admission.

¶11 Stacy asks this court to vacate the circuit court order terminating her parental rights because she appeared by telephone instead of in person at the grounds hearing. She does not assert that she was denied her due process right to meaningfully participate in the hearing.[3]

¶12 While Stacy alludes to the possibility that there may have been a brief lack of audibility during the course of the hearing, she does not claim that she was not able to hear and understand everything that was said during the hearing, nor that the circuit court failed to follow any requirement to accept her admission aside from the alleged requirement of her personal appearance. Our independent review of the record confirms that any initial audibility problem was immediately addressed and did not appear to have interfered with Stacy's ability to understand all aspects of the hearing and to participate fully. Stacy does not assert that she suffered any specific prejudice or harm as a result of appearing by telephone, or that her admission was not made voluntarily, intelligently, and knowingly.

¶13 Instead, Stacy argues that the statutory requirement that the court "address the parties present" in WIS. STAT. § 48.422(7)(a) is a direction that a parent entering an admission to grounds must be personally present before the court, and that the circuit court's failure to adhere to this alleged direction was

[3] Our analysis in this case is therefore limited to interpretation of WIS. STAT. §§ 48.422(7)(a) and 807.13(2)(b). Due process analysis calls for an evaluation of multiple factors to determine whether the physical presence of a parent in a termination of parental rights proceeding may be required. *See* ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 701-03, 530 N.W.2d 34 (parent's appearance by telephone did not deprive parent of due process in contested fact-finding hearing on grounds for termination because parent was able to "meaningfully participate" in hearing); *see also* ***State v. Lavelle W.***, 2005 WI App 266, ¶8, 288 Wis. 2d 504, 708 N.W.2d 698 ("[A]ny alternative to a parent's personal presence at a proceeding to terminate his or her parental rights *must*, unless either the parent knowingly waives this right or the ministerial nature of the proceedings make personal-presence unnecessary, *be functionally equivalent to personal presence*[.]").

reversible error that renders her admission void. She also argues that WIS. STAT. § 807.13, which permits testimony by telephone in identified circumstances, does not apply in this case. We disagree on both points.

¶14 Determination of whether either WIS. STAT. § 48.422(7)(a) or WIS. STAT. § 807.13 requires a parent's physical presence before the court presents two questions of statutory interpretation. Statutory interpretation is a question of law that we review de novo. ***Kimberly S.S. v. Sebastian X.L.***, 2005 WI App 83, ¶3, 281 Wis. 2d 261, 697 N.W.2d 476.

¶15 "The goal of interpreting a statute is to ascertain the legislature's intent." ***Cynthia E. v. LaCrosse County Human Serv. Dep't***, 172 Wis. 2d 218, 225, 493 N.W.2d 56 (1992). We look first to the statute's language to determine that intent. ***Id.*** If the statute's plain words unambiguously reveal the legislature's intent, we look no further. ***Id.*** That is the case here.

¶16 Addressing first the requirements of WIS. STAT. § 48.422(7)(a), the plain import of the requirement that the court "[a]ddress the parties present" is that the court engage in an on-the-record discussion, before all those appearing at the hearing, focused on the topics addressed in § 48.422(7)(a), namely the adequacy and clarity of a purported admission. The import of "[a]ddress the parties present" is not that all who make appearances at a grounds hearing must be personally present. There is no suggestion in the language of the statute that presence by telephone is prohibited. Stacy made an appearance at the grounds hearing. The fact that she elected to appear by telephone instead of in person does not mean that she did not make an appearance.

¶17 In addition, we may look to other, related statutes to find the language that is employed when personal appearance is necessary. *See* ***Beard v.***

Lee Enterprises, Inc., 225 Wis. 2d 1, 11, 591 N.W.2d 156 (1999) ("When construing a statute, the entire section and related sections are to be considered in its construction or interpretation.").

¶18 The legislature specifically requires personal presence for voluntary consent to termination of parental rights. *See* WIS. STAT. § 48.41(2)(a), (b) (court may only accept a voluntary consent to termination of parental rights when "parent *appears personally* at the hearing" unless it would be "difficult or impossible for the parent to *appear in person* at the hearing") (emphasis added). Had the legislature intended that the parent be personally present before the court in the admission context, it could easily have so provided. *See* ***Brauneis v. LIRC***, 2000 WI 69, ¶27, 236 Wis. 2d 27, 612 N.W.2d 635 ("We should not read into the statute language that the legislature did not put in.").

¶19 Turning to the requirements of WIS. STAT. § 807.13, we conclude that the circuit court did not violate its terms by permitting the stipulation to a telephone appearance by Stacy. *See* § 807.13(2)(b). [4] The circuit court properly

[4] WISCONSIN STAT. § 807.13 provides, in pertinent part:

> **Telephone and audiovisual proceedings**.
>
> ....
>
> (2) EVIDENTIARY HEARINGS. In civil actions and proceedings, including those under chs. 48, 51, 54, and 55, the court may admit oral testimony communicated to the court on the record by telephone or live audiovisual means, subject to cross-examination, when:
>
> (a) The applicable statutes or rules permit;
>
> (b) The parties so stipulate; or
>
> (c) The proponent shows good cause to the court.

admitted Stacy's voluntary admission to grounds by telephone because the hearing was an evidentiary hearing under WIS. STAT. Ch. 48 and the parties stipulated to allowing the circuit court to admit such testimony, which was presumably subject to cross-examination if anyone had elected to cross-examine Stacy.

¶20 Stacy argues that a hearing to accept an admission to TPR grounds by telephone is not an evidentiary hearing because in her hearing no witnesses were sworn.

¶21 To the contrary, the admission procedure at the grounds phase of a TPR proceeding is an evidentiary hearing for the purposes of WIS. STAT. § 807.13(2) because such hearings contemplate "testimony." *See* WIS. STAT. § 48.422(3) ("If the petition is not contested the court shall hear testimony in support of the allegation in the petition, *including testimony as required in sub.(7)*") (emphasis added).

¶22 The legislature characterized an admission to grounds as involving "testimony," which is the qualifying standard under WIS. STAT. § 807.13(2) ("the court may admit oral testimony"). Accordingly, we presume that the legislature intended to permit a court to admit a parent's testimony required for admissions to grounds by telephone, pursuant to § 807.13(2). It is not significant for these purposes that Stacy was not in fact placed under oath. She could have been placed under oath, she could have been cross-examined, and WIS. STAT. § 48.422(3) contemplates findings based on "testimony" at admission hearings.

¶23 Stacy also asserts that there was not a stipulation of the parties as required by WIS. STAT. § 807.13(2)(b). This is incorrect.

¶24 A stipulation between parties regarding proceedings in an action is not binding unless the stipulation is made in court or during a telephone proceeding under WIS. STAT. § 807.13 and is "entered in the minutes or recorded by the reporter, or made in writing." WIS. STAT. § 807.05. That occurred in this case. The court made an explicit record of stipulations by all parties to Stacy's appearance by telephone at the outset of the hearing.

¶25 In sum, we conclude that WIS. STAT. § 48.422(7)(a) does not, by its plain terms, require a parent entering an admission to grounds to be personally present before the court. Further, an admission to grounds in a TPR may be permitted by telephone when stipulated, under the terms of WIS. STAT. § 807.13(2)(b). We therefore affirm.

By the Court.—Order affirmed.

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