COURT OF APPEALS
DECISION
DATED AND FILED

December 14, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal Nos. 2010AP1979
2010AP1980
2010AP1981

Cir. Ct. Nos. 2008TP55
2008TP56
2008TP57

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

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARQUITA R.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARQUITA R.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MARQUITA R.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed*.

¶1 CURLEY, P.J.[1] Marquita R. appeals the orders terminating her parental rights to three of her children: Ziear R., Samara R., and Marquita R. Marquita R. contends that the trial court violated her due process rights when, after she was found incompetent in another court, the trial court entered a default judgment against her as a result of Marquita R.'s conduct during the pendency of the case, thereby eliminating her right to a jury trial during the fact-finding stage. She also claims that she was prejudiced by the trial court's failure to inform her of her rights pursuant to WIS. STAT. § 48.422(1) (2007-08).[2] Because Marquita R.'s conduct and statements made to others before she was found incompetent, during the period of her incompetency, and after she regained competency all support the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2007-08).

[2] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

trial court's findings that Marquita R. intentionally delayed the proceedings by appearing at various emergency rooms and hospitals on court dates with bogus or suspect claims of illness and these multiple attempts were egregious, the trial court properly exercised its discretion in sanctioning her. In addition, Marquita R.'s due process rights were not violated because she was represented by both an attorney and a guardian ad litem and her actions, despite her mental illness, were both premeditated and intentional. Finally, Marquita R. claims she was prejudiced by the trial court's failure to formally advise her of her rights pursuant to WIS. STAT. § 48.422(1); however, the case law she cites for support has been overruled. Moreover, Marquita R. exercised all the rights that would have been given to her had a formal advisal occurred. Thus, any error is harmless. This court affirms.

I. BACKGROUND.

¶2 On February 26, 2008, a petition to terminate the parental rights of Marquita R. to her three children: Ziear R. (DOB 4/1/06), Samara R. (DOB 6/16/03), and Marquita R. (DOB 3/22/05), was filed in Milwaukee County Children's Court. At the time of the filing, all three children were living in foster homes as the children had been found in need of protection or services on August 1, 2006, and had been previously removed from Marquita R.'s home. Annual extension orders were issued after the original dispositional order was entered in 2006.

¶3 The petition seeking to terminate Marquita R.'s parental rights listed several grounds for termination. It alleged that the children continued to be in need of protection or services, pursuant to WIS. STAT. § 48.415(2), and that despite reasonable efforts by the Bureau of Family Child Welfare (Bureau) to provide appropriate services to Marquita R., she had failed to meet the conditions

established for the children's return. According to the petition, Marquita R. had also failed to assume parental responsibility for the children as defined by WIS. STAT. § 48.415(6).[3]

¶4 Approximately one month after the petition was filed, March 19, 2008, the trial court learned that Marquita R. was being held at a mental institution for a competency evaluation in a criminal prosecution. Marquita R. was produced from the mental institution and appeared before the Children's Court where she was served with the petition to terminate her parental rights. On the adjourned date, April 16, 2008, Marquita R. appeared, as did her then-attorney. Marquita R.'s attorney requested a substitution of judge, the matter was again adjourned, and the case was transferred to a different judge. On the next adjourned date, May 14, 2008, Marquita R. appeared by telephone as she was hospitalized. She was given a new date and cautioned that she must appear in person. She appeared in court on the next adjourned date, May 22, 2008, and filed a medical excuse for her absence at the last hearing date. On the next scheduled date, June 30, 2008, Marquita R. did not appear and the trial court was advised that she was again at a hospital. The court was unsuccessful in reaching Marquita R. at the hospital, but she called the court later. The trial court again told her that she needed to personally appear at the next court date and that she was required to bring a medical excuse. On the next scheduled date, approximately five months after Marquita R. was served with the petition to terminate her parental rights, Marquita R. appeared and filed a medical excuse for the last

[3] Petitions to terminate the parental rights of the known father of Marquita and Samara and the unknown father of Ziear were also filed. The father of Marquita and Samara voluntarily terminated his rights to the children. The unknown father of Ziear was found to be in default and his parental rights were also terminated. Those matters are not a part of this appeal.

hearing. At this hearing, a different judge was presiding in place of the judge who was assigned to the case. The judge was told that Marquita R. sought to have a different attorney. The judge deferred the attorney withdrawal issue and several pending motions until the next hearing date in front of the assigned judge. Marquita R. was told she must personally appear at the next hearing.

¶5 On September 11, 2008, the next hearing date in front of the judge who was assigned to this matter, Marquita R. appeared. At this time the trial court allowed Marquita R.'s attorney to withdraw pursuant to Marquita R.'s request and directed Marquita R. to go to the State Public Defender's Office to obtain new counsel. Marquita R. was advised that she must appear personally at the next hearing date. On the adjourned date, September 18, 2008, Marquita R.'s new attorney appeared in court, but Marquita R. appeared by phone, claiming that she was once again in the hospital. The trial court set a pretrial date of December 5, 2008, as well as a jury trial date of December 15, 2008. The trial court ordered Marquita R. to appear in person on the adjourned dates. On the pretrial date, Marquita R.'s attorney appeared, as did Marquita R., who was in custody. At that time, Marquita R.'s attorney requested to withdraw from the case. Marquita R.'s attorney asked to withdraw from representation of Marquita R. after an altercation occurred at the jail where Marquita R. pulled down her pants and told her attorney that she could kiss her posterior. The trial court permitted her to withdraw and the trial court communicated with the State Public Defender's Office, who agreed to appoint new counsel for Marquita R. As a result, the jury trial date of December 15, 2008, was removed from the calendar and a new status conference date of January 14, 2009, was set in a new court. This adjourned date was a month short of the one-year anniversary of the filing of the petition of the termination of parental rights of Marquita R.'s children.

¶6 Marquita R. was present at the new status conference. The trial court was informed that the State Public Defender had not yet appointed new counsel for Marquita R. This new status conference was adjourned to February 25, 2009. On this date, Marquita R. appeared with her new attorney. The trial court set a pretrial date of May 22, 2009, and a jury trial date of June 1, 2009. The trial court cautioned Marquita R. that she must appear personally at the next scheduled date and all subsequent scheduled dates.

¶7 The scheduled pretrial date was cancelled due to a congested court calendar and a status conference was held on what had been the jury trial date. At that conference, Marquita R. appeared, as did an attorney representing her newly-appointed attorney. The jury trial was rescheduled to August 17, 2009. The trial court ordered Marquita R. to appear on that date. On August 17, Marquita R. did not appear, but called the court and stated that she had been in the emergency room of a local hospital until 4:00 a.m. that day. The court attempted to call Marquita R. at the number she gave, but was unable to contact her. The trial court was advised that another court had ordered a competency examination of Marquita R. in a different case. The trial court stated it would contingently appoint a guardian ad litem for Marquita R. after one was located and rescheduled the matter to September 29, 2009.

¶8 On September 29, Marquita R.'s attorney and her proposed guardian ad litem appeared. The trial court was informed that while the competency report had not yet been received, the report found Marquita R. incompetent. The trial court then formally appointed a guardian ad litem for Marquita R. and adjourned the matter for a final pretrial conference set for November 19, 2009, and a jury trial date of November 30, 2009. On the pretrial date of November 19, Marquita R. and her attorney, as well as her guardian ad litem, appeared.

Marquita R.'s attorney asked to withdraw, but the request was denied. Marquita R. also asked to represent herself. That request was also denied. After being informed that Marquita R.'s deposition was set for the next day, the trial court advised Marquita R. that she must attend it or risk being found in default.

¶9 On November 24, 2009, Marquita R.'s attorney, her guardian ad litem and others advised the trial court that Marquita R. was so late coming to the deposition on November 20, 2009, that the court reporter had already left when Marquita R. arrived. The parties also told the trial court that they then adjourned the deposition to 8:30 a.m. on November 24, but Marquita R. called at that time and said she was in the hospital emergency room. At the State's request, and over the objection of Marquita R.'s attorney and guardian ad litem, the trial court struck Marquita R.'s request for a jury trial and prohibited her from participating in the grounds phase of the trial. The trial court found that:

> [D]espite [Marquita R.'s] mental health problems, the pattern and timing of invoking medical problems established that she was capable of, and was, in fact, using invalid medical excuses to interfere with the process. Hence, … [Marquita R.'s] behavior was persistently egregious and in bad faith. Noting that it had already "cost" two trial dates, … the ultimate sanction was necessary and appropriate.

The trial court then set a date of November 30, 2009, for a prove-up of the grounds for terminating Marquita R.'s parental rights to her three children. On November 30, 2009, Marquita R. did not attend. Her attorney told the court that Marquita R. had the flu. The trial court proceeded with the grounds phase and, after taking testimony from a witness, determined that grounds existed to terminate Marquita R.'s parental rights o her three children based on their continuing needs. This witness, a case manager, testified that Marquita R. told her she would do anything to prevent the termination of parental rights suit from proceeding.

¶10 In January 2010, Marquita R. filed a motion seeking to vacate the default hearing. In mid-February 2010, the trial court received a psychiatric report which stated that Marquita R. had regained competence. In late February, the trial court heard Marquita R.'s motion to vacate the default hearing. At this hearing, the trial court heard from an emergency room medical social worker and a doctor, both of whom attended to Marquita R. on November 24, 2009. This was the date set for the rescheduled deposition of Marquita R. The medical social worker advised the trial court that Marquita R. presented with no visible injuries or complaints but Marquita R. gave the nurse the fax number for the court and requested that the nurse fax the court a form that explained the patient has been in the emergency room. The doctor told the court that Marquita R. appeared to be in good health on November 24, 2009. The doctor also explained that Marquita R. is on a list of people who misuse emergency services:

> … We make referrals to the Social Worker for people – for a care plan. And those are people that misuse emergency services or over-use emergency services, so that we can try and direct their care in the appropriate manner. For example, to a primary-care doctor, a clinic setting, or something like that.
>
> And [Marquita R.] had more visits to an Emergency Room in one year than most of us have in a lifetime.

In March, after ordering a transcript of the previous hearing, the trial court denied the motion.

¶11 A dispositional hearing was held in May 2010, which Marquita R. attended. After hearing from several witnesses including Marquita R., the trial court found that it was in the best interest of all three children to terminate the parental rights of both their fathers and mother. The custody of the children was then transferred to the Bureau for the purpose of adoption. Several days later,

Marquita R.'s attorney filed a notice that Marquita R. intended to pursue post-dispositional relief. Several months later, a notice of appeal was filed on Marquita R.'s behalf.

II. ANALYSIS.

¶12 Marquita R. raises two issues in this appeal. First, she argues that her due process rights were violated when the trial court entered a default judgment against her as a sanction because she was incompetent and no proof was presented that she understood the court's orders and consequences if she failed to obey the court's orders. Second, she argues that she was prejudiced by the court failing to inform her of her rights pursuant to WIS. STAT. § 48.422(1).

A. Marquita R.'s due process rights were not violated.

¶13 Wisconsin has a two-part procedure for the involuntary termination of parental rights. ***Steven V. v. Kelley H.***, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. At the first, or "grounds" phase of the proceeding, the petitioner must prove that one or more of the statutory grounds for termination of parental rights exist. ***Id.***; *see also* WIS. STAT. § 48.31(1). There are twelve statutory grounds of unfitness for an involuntary termination of parental rights under WIS. STAT. § 48.415(1)-(10), and if a petitioner proves one or more of the grounds for termination by clear and convincing evidence, "the court shall find the parent unfit." WIS. STAT. § 48.424(4); ***Steven V.***, 271 Wis. 2d 1, ¶25 (citation omitted). "A finding of parental unfitness is a necessary prerequisite to termination of parental rights, but a finding of unfitness does not necessitate that parental rights be terminated." ***Steven V.***, 271 Wis. 2d 1, ¶26. "Once the court has declared a parent unfit, the proceeding moves to the second, or dispositional phase, at which the child's best interests are paramount." ***Id.*** "At the dispositional phase, the

court is called upon to decide whether it is in the best interest of the child that the parent's rights be permanently extinguished." ***Id.***, ¶27.

¶14 A trial court has both inherent authority and statutory authority under WIS. STAT. §§ 802.10(7), 804.12(2)(a), and 805.03 (2003-04) to sanction a party for failing to obey a court order. *See* WIS. STAT. §§ 802.10(7), 804.12(2)(a), and 805.03. Trial courts "have the power, both inherent and statutory, to prevent unwarranted delay and the proliferation of stale lawsuits." ***Hlavinka v. Blunt, Ellis, & Loewi, Inc.***, 174 Wis. 2d 381, 395, 497 N.W.2d 756 (Ct. App. 1993). However, before a circuit court may enter a default on the ground that a party failed to comply with a court order, the party's conduct must be egregious or in bad faith. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768; ***Johnson v. Allis Chalmers Corp.***, 162 Wis. 2d 261, 275, 470 N.W.2d 859, 864-65 (1991), *overruled on other grounds by* ***Indus. Roofing Servs., Inc. v. Marquardt***, 2007 WI 19, ¶61, 299 Wis. 2d 81, 726 N.W.2d 898. Our standard of review is "whether there was a reasonable basis for the circuit court's determination that the party's conduct ... was egregious, even if there may not be a clear and justifiable excuse" for the conduct. ***Johnson***, 162 Wis. 2d at 276.

¶15 Remarkably, despite the statutory proviso found in WIS. STAT. § 48.422(2) that "[i]f the petition is contested the court shall set a date for a fact-finding hearing to be held within 45 days of the hearing on the petition," the fact-finding hearing in this case was not heard until over two-and-one-half years after the initial hearing. At it, the trial court determined after the taking of testimony that Marquita R. was unfit.

¶16 Before this court reviews the facts, it is important to note that two of the purposes for the termination of parental rights scheme found in WIS. STAT. § 48.01 include:

> (gg) To promote the adoption of children into safe and stable families rather than allowing children to remain in the impermanence of foster care.
>
> (gr) To allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued in accordance with this chapter and termination of parental rights is in the best interest of the child.

Thus, both society and children languishing in foster care have an interest in a speedy resolution of termination of parental rights litigation. Here, between the initial hearing and the delayed fact-finding hearing, Marquita R. was provided with three lawyers, all of whom she attempted to discharge, as well as a guardian ad litem. There were over twelve court proceedings in this case prior to the court entering a fact-finding default judgment. At four of these court dates, Marquita R. claimed to either be at a hospital or have just returned from a hospital. Marquita R. also missed several scheduled depositions. At one, Marquita R. also said she was in a hospital emergency room. As noted, the doctor who saw Marquita R. on the date of the last scheduled deposition testified that Marquita R. was a known abuser of emergency services and on this occasion she presented herself to the emergency room with no medical or psychiatric problems. After the trial court entered the default judgment, there were approximately five more court dates. Eventually, the trial court held a dispositional hearing at which several witnesses, including Marquita R., testified. At the conclusion, the trial court found that it was in the best interest of the children if Marquita R.'s parental rights were terminated.

¶17 At the hearing at which the trial court granted the State's motion to strike Marquita R.'s contest posture and enter a default fact-finding judgment, the trial court made extensive findings concerning Marquita R.'s absences. The State's attorney recited the history of Marquita R.'s failing to appear at both court hearings and depositions claiming to have been hospitalized or ill at the time of the proceedings. After the State recited the dates and times of Marquita R.'s absences, the trial court found that:

> Egregious bad faith requires intent. Egregiousness can result from persistent violations of court orders. Case law [sic] specifically tells you to look at the persistency of behavior. Her behavior has been persistent and it has totally impeded our ability to litigate this case.
>
> ….
>
> At this point I have no doubt that she is engaged in a conscious pattern of behavior in an effort to prevent this litigation from getting to the point where the merits can be addressed.
>
> ….
>
> It's egregious. It's bad faith. It's persistent. It wholly impedes our ability to litigate this case on its[] merits on the protection, the interests of other parties in a timely resolution of this case.
>
> I'm granting the State's motion. I'm striking her contest posture and/or prohibiting her from participating in either through presentation of evidence or through cross[-] examination of the witnesses in the grounds phase of this litigation.

Thus, the trial court made the necessary findings to support a conclusion that Marquita R.'s conduct was both egregious and in bad faith. As explained earlier, the record supports the trial court's findings.

¶18 The next question is whether due process requires that Marquita R. be relieved of these findings because of her mental illness. Application of the due

process clause to undisputed facts presents an issue of law reviewed independently. *See* ***State v. Patricia A.P.***, 195 Wis. 2d 855, 862, 537 N.W.2d 47 (Ct. App. 1995). In termination of parental rights cases, this court is respectful of the fact that a parent's right to a child is a substantive right, requiring both substantive and procedural due process protections. *See* ***D.G. v. F.C.***, 152 Wis. 2d 159, 167, 448 N.W.2d 239 (Ct. App. 1989).

¶19 Marquita R. argues that since no proof was presented that she understood the court's orders and consequences if she failed to obey the court's orders, the sanction violated due process. Marquita R. cites no case law for support of this proposition. In any event, ample evidence was presented to support a determination that Marquita R. purposefully missed court appearances and feigned illness to delay the proceedings. This court concludes that after considering the totality of the circumstances of this case, the case law and the competing interests of all the parties in a termination of parental rights case, the trial court did not violate Marquita R.'s due process rights when it properly exercised its discretion in sanctioning Marquita R.

¶20 Several of the cases cited by Marquita R. in support of her contention that her due process rights were violated deal with criminal proceedings. Convicting an accused person of a crime while he or she is incompetent is a violation of due process. ***Pate v. Robinson***, 383 U.S. 375, 378 (1966). However, our supreme court has held that termination of parental rights cases are civil in nature. ***M.W. v. Monroe Cnty. Dep't of Human Servs.***, 116 Wis. 2d 432, 442, 342 N.W.2d 410 (1984). No Wisconsin case has extended the ruling in criminal cases concerning incompetent defendants to termination of

parental rights actions.[4] Indeed, "the jury trial right … is entirely statutory, not mandated by constitutional due process, and is therefore generally subject to the provision of the civil procedure code, including the summary judgment statute, WIS. STAT. § 802.08, unless the TPR statutes provide otherwise." *See* WIS. STAT. § 801.01(2). "The TPR statutes do not provide otherwise, either explicitly or implicitly." ***Steven V.***, 271 Wis. 2d 1, ¶4.

¶21 Additionally, it should be noted that WIS. STAT. § 48.415(3) lists as a ground for involuntary termination of parental rights "continuing parental disability," which includes a parent who suffers from a mental illness and has been institutionalized for a cumulative total period of at least two years within the last five years immediately prior to the filing of the termination of parental rights petition. While the State did not proceed on that ground against Marquita R., the statute provides proof that the legislature clearly contemplated the possibility that the State may bring termination of parental rights actions against parents who are incompetent as a result of a mental illness. Further, WIS. STAT. § 48.235(1)(g) requires that the trial court appoint a guardian ad litem for a "parent who is the subject of a termination of parental rights proceeding, if any assessment or examination of a parent … shows that the parent is not competent to participate or

[4] In addition, Marquita R. has argued that because a parent is entitled to "an opportunity to meaningfully participate" in a TPR proceeding, *see* ***Waukesha Cnty. Dep't of Health & Human Servs. v. Teodoro***, 2008 WI App 16, ¶10, 307 Wis. 2d 372, 745 N.W.2d 701, Marquita R. either cannot or should not be sanctioned as she was deprived of her right to be heard. Marquita R. submits a parent must be afforded the meaningful opportunity to be heard. *See* ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 701, 530 N.W.2d 34 (Ct. App. 1995). However, Marquita R. had both adversary counsel and a guardian ad litem who could present her opinions, and in fact, Marquita R. testified at the dispositional hearing.

assist his or her counsel or the court in protecting the rights in the proceeding."[5] Extrapolating from these statutes, this court concludes that a termination of parental rights suit may be maintained against an incompetent person if the person has been appointed a guardian ad litem. In addition, common sense dictates that every litigant is expected to comply with the trial court's orders to attend the proceedings. Given the restrictive time limits set by the statutes in these actions, a trial court must have the authority to "prevent undue delay" and bring closure to litigation. As applied here, the trial court had the authority to sanction a parent with a mental illness who intentionally and purposefully avoided court proceedings by appearing at emergency rooms with phony medical complaints.

¶22 As verified by the record, Marquita R. has persistently failed to appear in court claiming to be ill on the date of court appearances in both pending criminal court cases and another termination of parental rights case. As the trial court noted:

> I have gained the impression with Marquita that despite her mental health problems she has the capacity to figure out how she can impede the process and that her goal every time a critical juncture has come up with respect to her obligation to appear in court at significant hearings, or her obligation to comply with discovery requirements, a medical issue has come up, [a] medical issue that is on its face … very questionable.

This court agrees. The record reflects that Marquita R. may be mentally ill and thus incompetent in some respects, but she was clearly aware of the need to appear in court. Instead, she regularly visited emergency rooms on the dates of crucial

[5] A guardian ad litem was not appointed until several months after the commencement of this termination of parental rights case. The trial court appointed a guardian ad litem after the trial court was advised of a psychiatric report in a different case that found Marquita R. incompetent.

court proceedings, going so far as to bring the court's fax number with her so the nurse could fax an excuse to the court. This is not a situation where a mental illness so distorts the reality of a person with a mental illness that the person unknowingly or unintentionally fails to appear in court.

¶23 Given the history of this case, along with the other litigation pending against Marquita R. and the testimony of a witness that Marquita R. revealed that it was her intent to delay matters as long as possible, the trial court properly exercised its discretion when it found that Marquita R.'s conduct was both intentional and egregious. In addition, based on the record before this court, Marquita R.'s due process rights were not violated.

B. Marquita R., although not formally advised of her rights pursuant to WIS. STAT. § 48.422(1), knew and exercised those rights.

¶24 The State and the guardian ad litem both concede that Marquita R. was not formally advised of her rights as required by WIS. STAT. § 48.422(1). Nevertheless, neither believes Marquita R.'s argument has any merit because Marquita R. was not prejudiced by the omission.[6]

¶25 WISCONSIN STAT. § 48.422(1) obligates the trial court to determine "whether any party wishes to contest the petition and inform the parties of their

[6] Much of Marquita R.'s argument relies on the holdings in ***Burnett Cnty. Dep't of Soc. Servs. v. Kimberly M.W.***, 181 Wis. 2d 887, 512 N.W. 2d 227 (Ct. App. 1994). This case has, however, been overruled in part by ***Steven V. v. Kelley H.***, 2004 WI 47, 271 Wis. 2d 1, 678 N.W. 2d 856. As a result of the directive by our supreme court in ***Blum v. 1st Auto & Cas. Ins. Co.***, 2010 WI 78, ¶57, 326 Wis. 2d 729, 786 N.W.2d 78, a Court of Appeals case loses all precedential value when it is overruled by the Supreme Court. Consequently, this court declines to consider any arguments based on ***Kimberly M.W.***

rights under sub. (4) and 48.423."[7] WISCONSIN STAT. § 48.422(4) permits a party to a termination of parental rights action to request a jury trial.[8] In ***M.W. v. Monroe Cnty. Dep't of Human Servs.***, 116 Wis. 2d 439, 342 N.W.2d 410, 415, the supreme court observed that:

> The statutory direction is unequivocal: A parent has the right to representation in court unless there is a waiver; and, in any case, the trial court has the duty to make a full explication of the statutory rights—the right to representation, the right to a continuance, the right to request a jury trial, and the right to request a substitution of judge.

Thus, the issue becomes whether Marquita R. was aware of these rights. A review of the record establishes that she was.

¶26 Marquita R. had three separate appointed lawyers representing her during the pendency of this action as well as a guardian ad litem. Her very first lawyer filed a substitution of judge. Marquita R. was presumably aware of the substitution of judge because she was in court with her attorney when the substitution was filed. Marquita R. was also advised by one of the trial courts that a jury trial had been scheduled. Her counsel also requested a jury trial and several jury trial dates were set. Further, given the multiple continuances in this case, Marquita R. was well aware of the right to a continuance. Thus, all the rights that the trial court is obligated to give were exercised by Marquita R.

[7] WISCONSIN STAT. § 48.423 is irrelevant to these proceedings as it sets forth the rights of men alleging paternity.

[8] The parties mention the right to counsel, but this right is found in WIS. STAT. § 48.23(2), not WIS. STAT. § 48.422(1).

¶27 As a result, this court concludes that although the trial courts erred in failing to formally advise Marquita R. of her statutory rights, the error was harmless. This court's harmless error analysis is guided by WIS. STAT. § 805.18, which states:

> (1) The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.
>
> (2) No judgment shall be reversed or set aside or new trial granted ... unless in the opinion of the court ... it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment.

¶28 WISCONSIN STAT. § 805.18 governs the rules for civil procedure and applies to WIS. STAT. ch. 48 proceedings. An error is not harmless if it affects the substantial rights of the parties. ***State v. Dyess***, 124 Wis. 2d 525, 547, 370 N.W.2d 222 (1985). An error affects the substantial rights of the parties if "there is a reasonable possibility that the error contributed to the outcome of the case." ***Estate of Hegarty v. Beauchaine***, 2006 WI App 248, ¶152, 297 Wis. 2d 70, 727 N.W.2d 857. If the error at issues is not sufficient to undermine the reviewing court's confidence in the outcome of the proceeding, the error is harmless. ***Evelyn C.R.***, 246 Wis. 2d 1, ¶28.

¶29 Applying those tests to the facts here yields a determination that although the trial court did not formally advise Marquita R. of her rights, she in fact exercised all the rights she was entitled to; therefore, the error was harmless. Accordingly, this court affirms the trial court's determination.

By the Court.—Orders affirmed.

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