

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 6, 2003

Cornelia G. Clark
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. 03-0114
03-0115
03-0116
03-0117**

**Cir. Ct. Nos. 02TP000353
02TP000354
02TP000355
02TP000356**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

No. 03-0114

CIR. CT. No. 02TP000353

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LATASHA J.,

RESPONDENT-APPELLANT.

No. 03-0115

CIR. CT. No. 02TP000354

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LATASHA J.,

RESPONDENT-APPELLANT.

NO. 03-0116

CIR. CT. NO. 02TP000355

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LATASHA J.,

RESPONDENT-APPELLANT.

NO. 03-0117

CIR. CT. NO. 02TP000356

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LATASHA J.,

RESPONDENT-APPELLANT.

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

¶1 WEDEMEYER, P.J.¹ Latasha J. appeals from an order terminating her parental rights to Takeiah J., Debreill J., DeaJane J., and Deveon J. She also appeals from an order denying her post-termination motion seeking to vacate the default entered against her. Latasha claims that the trial court erred when it granted the State's motion for default and entered judgment terminating her parental rights based on her failure to appear for scheduled court dates. She presents two bases for her argument: (1) the default judgment violated her due process rights because she did not receive proper notice of the motion for default and did not receive a fair explanation necessary to understand the consequences of failing to appear in court; and (2) her failure to appear in court was not egregious and therefore did not warrant granting the default judgment terminating her parental rights. This court concludes that the trial court did not err in granting the State's motion for default because Latasha's due process rights were not violated, and because her conduct satisfied the egregious standard. Accordingly, this court affirms.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

I. BACKGROUND

¶2 On May 20, 2002, the State of Wisconsin filed a petition to terminate the parental rights of Latasha to her four children. On June 14, 2002, Latasha appeared without counsel at her initial hearing. At this time, the State provided evidence of attempts to provide notice. Latasha requested counsel; the court adjourned the hearing and referred her to the state public defender's office so that counsel could be appointed. At that time, the court tolled time limits and set the next hearing for July 24, 2002. In addition, the court reminded Latasha that she had to attend all future court appearances or a default judgment could be entered against her.

¶3 On July 24, 2002, Latasha appeared before the court with her appointed attorney, Deborah Strigenz. The court then adjourned the case until September 5, 2002, so that Latasha could speak with her attorney and decide how to proceed. Again, the court reminded Latasha that she had to attend all future court appearances or risk being found in default.

¶4 On September 5, 2002, the court called the case approximately ninety minutes late. Latasha failed to appear and her attorney stated that she had no explanation for her client's absence and had had no contact with her client. As a result, the court found Latasha in default. The State then presented evidence supporting the petition to terminate parental rights.

¶5 The evidence presented showed that since April 1998, the four children had been living in the foster home of an adoptive resource. Pursuant to the extension of a CHIPS dispositional order, Latasha had been warned that her parental rights could be terminated. Latasha had also failed to meet many of the

requirements necessary for the return of her children during this time frame. At the conclusion of the evidence, the court terminated Latasha's parental rights. The children were placed in the custody of the bureau of Milwaukee child welfare so that they could be adopted.

¶6 In mid-October 2002, Latasha filed a notice of intent to appeal and a post-termination motion. On February 24, 2003, the trial court entered an order denying her motion and affirmed the order terminating her parental rights. Latasha now appeals.

II. DISCUSSION

A. *Due Process*

¶7 Latasha contends that the order terminating her parental rights was entered without due process of law. She argues that she did not receive sufficient notice of the consequences of failing to appear in court because any such notice failed to give a good explanation of the meaning of default judgment. Stated another way, she claims that she was never served with a copy of the summons containing a warning of the consequences for failing to appear, which she could reasonably understand. This court rejects her contentions.

¶8 The court record clearly shows that Latasha was provided with sufficient and repeated warnings that her failure to appear in court could result in default judgment being entered against her. Pursuant to WIS. STAT. § 48.42(2)(b) (2001-02),² the State made numerous efforts to serve Latasha with the petition and

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

summons to appear at the initial hearing on June 14, 2002. Those attempts at notice were evidenced by an affidavit of publication, affidavit of attempt at personal service, and returned/unclaimed certified mail. All three attempts at service included both a summons and clear warnings of the consequences for failure to appear in court.

¶9 Moreover, the court had twice reminded Latasha to appear at all future court appearances. In addition, at the initial appearance on June 14, 2002, the court clearly warned her that failure to appear at any future court appearance would result in a default judgment being entered against her.

¶10 This evidence demonstrates that adequate notice was provided, both oral and written, warning Latasha that her failure to appear could result in a default judgment being entered against her, and ultimately a termination of her parental rights. Therefore, her argument that due process was not complied with must be rejected. She was provided with adequate due process and therefore her argument fails.

B. Egregious Conduct

¶11 Latasha also contends that the trial court erroneously exercised its discretion in granting default judgment against her because her failure to appear before the court did not constitute egregious conduct. This court cannot agree.

¶12 This court reviews a trial court's decision regarding default judgments subject to the erroneous exercise of discretion standard. ***Oostburg State Bank v. United Sav. & Loan Ass'n***, 130 Wis. 2d 4, 11-12, 386 N.W.2d 53 (1986). This court will affirm the trial court's ruling as long as the trial court

considered the pertinent facts, applied the correct law, and reached a reasonable conclusion. *Id.* Here, the trial court's decision did not constitute an erroneous exercise of discretion.

¶13 Pursuant to WIS. STAT. §§ 805.03 and 804.12(2)(a), a trial court may grant default judgment if a party fails to obey an order of the court. The sanction of dismissal or judgment is drastic and, therefore, should only be imposed when a party's nonappearance constitutes egregious conduct or bad faith. See *Johnson v. Allis Chalmers Corp.*, 162 Wis. 2d 261, 275-76, 470 N.W.2d 859 (1991).

¶14 As mentioned earlier, the record in this case clearly demonstrates that the attempted notice stated the consequences for failure to appear in court, the court verbally warned Latasha to appear for all future court proceedings, and the court verbally instructed her at the initial hearing that default judgment could be entered against her for failure to appear in person. Despite these warnings, Latasha ignored her obligation to appear in court. Her conduct was substantial and delayed this case unnecessarily. Subsequent to the appointment of counsel, Latasha never attempted to contact her attorney to discuss her possible options, including the possibility of entering a voluntary termination of her parental rights. This conduct is even more offensive when one considers the fact that this was the specific purpose for which her attorney had adjourned the case. Latasha failed to contact the court or her attorney when she decided not to attend the hearing. Further, she failed to respond to repeated contact attempts by her attorney. In addition, Latasha made no attempt to arrange transportation to her September 5, 2002 court appearance, and never attempted to obtain a new court date subsequent to missing that appearance. Finally, after her initial appearance she failed to actively participate in this case and never sought answers to her questions in this

very important matter. In the wake of all this, Latasha's failure to appear on September 5, 2002, clearly demonstrated the egregiousness of her conduct. As a result, the trial court's decision to enter default judgment was reasonable and will not be disturbed by this court.

By the Court.—Orders affirmed.

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

