

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 15, 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 No. 03-0976
STATE OF WISCONSIN**

Cir. Ct. No. 02TP000185

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

CAMELLIA D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KEVIN E. MARTENS, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Camellia D. appeals from an order terminating her parental rights to Keyma D. Camellia claims the trial court erred

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

when it entered a default judgment against her and refused to grant her motion to vacate the judgment. Because the trial court did not erroneously exercise its discretion in either respect, this court affirms.

I. BACKGROUND

¶2 On February 21, 1999, Camellia, then fourteen years old, gave birth to Keyma. At the time of Keyma's birth, Camellia was the subject of a CHIPS petition. Keyma was placed in a foster home with Camellia. On July 26, 1999, Keyma was found to be a child in need of protection or services.

¶3 In April 2002, Camellia ran away from the foster home, leaving Keyma there. Between April 2002, and June 2002, Camellia had no contact with Keyma. On March 18, 2002, the State filed a petition seeking to terminate Camellia's parental rights. At the initial appearance on April 11, 2002, Camellia was instructed that she needed to attend each and every court hearing. She was told that her failure to appear could result in a default judgment against her and that the case would proceed without her involvement. Camellia signed a written order confirming the oral instructions. The case was then adjourned until June 4, 2002, so that Camellia could retain counsel.

¶4 On June 4, 2002, Camellia failed to appear in court. At the hearing, the case worker advised the court that she had spoken with Camellia on June 3rd, reminded her of the hearing the next day, and provided her with bus tickets. The trial court found Camellia to be in default, heard testimony, and entered an order terminating Camellia's parental rights.

¶5 On July 12, 2002, the trial court heard Camellia's motion to vacate the default finding. Camellia appeared for the hearing with counsel and, after no

objections, the trial court granted the motion. The court set the pre-trial for October 10, 2002, at 8:30 a.m., and the trial for October 14, 2002, at 8:30 a.m. Then, the court specifically ordered Camellia to appear for those dates and made her sign a written acknowledgement of the order. The court again advised that if she did not appear, she could be found in default and the case could proceed without her involvement.

¶6 At the pre-trial on October 10, 2002, Camellia, by her counsel, indicated she might be willing to voluntarily agree to termination of her parental rights. The trial court indicated that Camellia should reach a final decision and advise the court on October 14. On October 14, Camellia, by her counsel, stated that she wanted to contest the termination petition. A new pre-trial was set for December 10, 2002, at 10:00 a.m. and the new trial date was set for January 6, 2003, at 8:30 a.m.

¶7 Camellia failed to appear for the pre-trial on December 10, 2002. The case worker informed the court that she had not been able to reach Camellia, that Camellia had been kicked out of her mother's home, and she was living in an unknown hotel. Counsel for Camellia indicated that he had not had any contact with Camellia since the date of the last hearing in the matter. The State moved to strike Camellia's posture contesting the petition. The trial court granted the motion, accepted evidence on the petition, and terminated Camellia's parental rights. A written order to this effect was entered on December 18, 2002.

¶8 On December 19, 2002, Camellia filed a notice of motion and motion to vacate the default judgment, indicating that she did not attend the December 10 court date because she forgot. The hearing on the motion was scheduled for April 16, 2003, at 2:00 p.m.

¶9 On April 16, 2003, at 3:30 p.m., the court called Camellia's case. She was not present in the courtroom. Counsel advised the court that he spoke with Camellia by phone shortly before 2:00 p.m., and she indicated she would be late because the hearing had "slipped her mind." Camillia told her attorney she thought she could be in court by 3:00 p.m. The trial court denied the motion to vacate. Shortly thereafter, Camillia appeared in court and the trial court allowed argument on the motion. Counsel argued that Camellia had forgotten about the December 10, 2002 date due to mistake or inadvertence. The trial court ruled that Camellia's "forgetfulness" excuse was insufficient to satisfy the standard:

Ms. [D] was on notice that she needed to be here each and every date and how important it was for her to be here for each and every hearing....

[I]f this was a first occasion perhaps I'd give this a little more careful consideration, but two failures to appear, we're at the point now, of course, where we're almost a year, perhaps even just after a year after the original petition was filed. Two default findings made based on nonappearance, I don't believe, "I forgot the court date", satisfies the statutory requirements under these circumstances.

Camellia now appeals.

II. DISCUSSION

¶10 Camellia makes two claims: (1) the trial court erroneously exercised its discretion by entering default against her for failure to appear; and (2) the trial court erroneously exercised its discretion by failing to grant her motion to vacate the default judgment. This court's review of both claims is 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). If the trial court reached a reasonable conclusion based on the pertinent facts and the correct law,

this court will affirm. *Id.* Here, the trial court’s decision did not constitute an erroneous exercise of discretion.

¶11 Camellia contends that the trial court erred in granting judgment against her as a sanction because her conduct was not “egregious.”² This court rejects her contention.

¶12 Pursuant to WIS. STAT. §§ 805.03 and 804.12(2)(a) (2001-02)³ 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).

¶13 The record reflects that Camellia was provided with ample and repeated warnings that her failure to appear could result in a finding of default, wherein the case would proceed without her involvement. She was provided with notice via the summons that if she failed to appear, “an Order may be entered terminating your parental rights to the above named child.” Camellia was personally advised by the court that she had to appear at all court dates or she could be found in default, which meant that the case would proceed without her. A written order was given warning her that a failure to appear could result in

² This court is not persuaded by Camellia’s companion argument that the default judgment entered here conflicted with WIS. STAT. § 806.02 (2001-02). The trial court’s decision was a sanction as a result of Camellia’s refusal to obey an order of the court; therefore, analysis under § 806.02 is inapplicable.

³ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

default, which would eliminate her right to contest the termination proceedings. Camellia acknowledged receipt of this notice two times by signing the acknowledgment.

¶14 A prior default judgment was entered against Camellia as a result of her failure to appear. The trial court vacated the first default in order to give her another chance to comply with the court's orders and contest the petition. Camellia again blatantly violated the court's order that she had to appear at all court hearings. Her only explanation was that "she forgot."

¶15 From this exposition, the record clearly demonstrates that Camellia was given both oral and written notices that her failure to appear could result in default judgment and termination of her parental rights. Her conduct was substantial and delayed this case beyond the time frame set for TPR cases by the legislature. Thus, her argument that her failure to appear was not "egregious" must be rejected. She was given chance after chance after chance. The trial court's decision was reasonable.

¶16 Camellia's second contention is that the trial court should have vacated the default finding. This court does not agree. Camellia argues that her failure to appear was "excusable" and, therefore, the trial court's refusal to grant her motion to vacate constituted an erroneous exercise of discretion.

¶17 Excusable neglect is "that neglect which might have been the act of a reasonably prudent person under the same circumstances." *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982). "It is 'not synonymous with neglect, carelessness or inattentiveness.'" *Id.* Here, Camellia's failure to appear does not constitute excusable neglect. A reasonably prudent person under the circumstances presented here would not simply "forget" about a court hearing.

This case involves issues of grave importance. The trial court repeatedly impressed upon Camellia the importance of attending court hearings. It made her acknowledge in writing twice the court's order in that regard. She had previously been allowed to vacate a default judgment for disobeying the order of the court. Her only excuse was that "she forgot." Finally, she was over an hour and a half late for the hearing on the motion to vacate. Under the particular circumstances and foregoing procedural history of this case, a reasonably prudent person would not have simply forgotten about a court date, particularly when the case involved termination of parental rights.⁴

By the Court.—Order affirmed.

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

⁴ Camellia also contends that the trial court's decision was unreasonable because there was no showing that her conduct caused any prejudice. This court is not persuaded by this argument. Camellia's failure to appear, or appear extremely late, inconvenienced numerous individuals but, more importantly, her conduct violated the time limits set by the legislature to ensure that children are not kept in a perpetual state of uncertainty.

