

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 16, 2011

A. John Voelker
Acting 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. 2011AP795

Cir. Ct. No. 2010TP11

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO TALIA I. H., A PERSON
UNDER THE AGE OF 18:**

RACINE COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

BOBBY G. H.,

RESPONDENT-APPELLANT,

ROSEANNAH M. H.,

RESPONDENT.

APPEAL from an order of the circuit court for Racine County:
RICHARD J. KREUL, Judge. *Affirmed.*

¶1 REILLY, J.¹ Bobby G.H. appeals from an order of the circuit court terminating his parental rights (TPR). Bobby seeks to vacate the TPR order on the grounds that WIS. STAT. § 48.415(6) is unconstitutionally vague and that the circuit court violated WIS. STAT. § 48.422(3) by not hearing testimony during the first part of the TPR proceedings. We reject both arguments and affirm the circuit court's order.

BACKGROUND

¶2 Bobby G.H. and Roseannah M.H. are the parents of Talia, born on February 6, 2007. On April 4, 2007, Talia was found to be a child in need of protection or services (CHIPS) and the circuit court entered an order placing Talia in foster care for ten months with conditions for her return. The CHIPS petition alleged that Bobby had abused Roseannah, and that both of them had abused Roseannah's three year-old daughter from another man. On February 15, 2008, the circuit court extended the order for another year, finding that Talia was still in need of protection or services. The order was extended once again the following February. On March 4, 2010, the Racine County Human Services Department filed a TPR petition against Bobby and Roseannah for failing to assume parental responsibility and because Talia was in continuing need of protection or services.

¶3 TPR proceedings are a two-step process. *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶18, 333 Wis. 2d 273, 797 N.W.2d 854. After the reasons for termination are pled, a fact finder first determines whether grounds exist to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

terminate parental rights. *Id.* If the fact finder determines that the facts alleged in the petition have not been proven, the petition is dismissed. *Id.* If however, a court or jury finds that the grounds for termination were met, the court shall find the parent unfit. *Id.* Only if this first step is met do the proceedings move to the second stage. *Id.*, ¶19. The second step—known as the “dispositional hearing”—is where the court determines whether termination of parental rights is in the child’s best interest. *Id.*

¶4 Bobby conceded at the first stage that grounds existed to terminate his parental rights as he had failed to assume parental responsibility in violation of WIS. STAT. § 48.415(6).² Bobby stated that he wanted to contest the second phase of the TPR proceedings. In accepting Bobby’s admission that grounds existed to terminate his parental rights, the circuit court read all of § 48.415(6) to him. The court then asked Bobby if anyone forced him to admit that grounds existed to terminate his parental rights or if he was promised anything in return for his decision. Bobby answered “no” to both questions. When Bobby was examined by his attorney, he conceded that the State could meet its burden of proof that grounds existed to terminate his parental rights. The court accepted Bobby’s admission, stating that it was satisfied that he reached his decision after considering the nature of the proceedings and that his stipulation was given freely, intelligently, and knowingly. At the subsequent disposition hearing, Bobby’s parental rights were terminated.

² As Roseannah is not a party to this appeal, we will not discuss her portion of the proceedings.

¶5 Bobby filed a postdisposition motion for relief, seeking to vacate the order terminating his parental rights on two grounds. First he argued that, in light of the Wisconsin Supreme Court’s *Tammy W-G.* decision, WIS. STAT. § 48.415(6) is unconstitutionally vague. He also argued that, as the circuit court failed to hear testimony during the first stage of the TPR proceedings, he should be permitted to withdraw his admission that he failed to assume parental responsibility. The circuit court denied the motion. Bobby now appeals.

STANDARD OF REVIEW

¶6 Bobby challenges both the constitutionality of WIS. STAT. § 48.415(6)(b) and that the circuit court violated WIS. STAT. § 48.422(3) by not hearing testimony to establish a basis for his admission that he had failed to assume parental responsibility. These are questions of law that we review de novo. See *Tammy W-G.*, 333 Wis. 2d 273, ¶16; *Xerox Corp. v. DOR*, 2009 WI App 113, ¶12, 321 Wis. 2d 181, 772 N.W.2d 677.

DISCUSSION

¶7 Bobby argues that the Wisconsin Supreme Court’s recent decision in *Tammy W-G.* provides a new interpretation of WIS. STAT. § 48.415(6)(b), which makes it unconstitutional. Bobby does not, however, flesh out this argument, aside from saying that the standard created in *Tammy W-G.* “makes no sense.” As we presume that statutes are constitutional, and as Bobby has not met his high burden of demonstrating how or why § 48.415(6)(b) is unconstitutional, we shall review it no further. See *Dane Cnty. DHS v. P.P.*, 2005 WI 32, ¶¶16, 18, 279 Wis. 2d 169, 694 N.W.2d 344.

¶8 Bobby’s second argument is that the circuit court violated WIS. STAT. § 48.422(3) by not hearing testimony before it accepted his admission that he had failed to assume parental responsibility. Bobby confuses the concept of pleading no contest to the facts in a TPR petition with admitting them. “Deciding not to contest the allegations of the [TPR] petition is not equivalent to admitting the allegations in a petition.” *Waukesha Cnty. v. Steven H.*, 2000 WI 28, ¶52, 233 Wis. 2d 344, 607 N.W.2d 607. Section 48.422(3) states “[i]f the [TPR] petition is not contested the court shall hear testimony in support of the allegations in the petition, including testimony as required in sub. (7).” Bobby did not, however, plead no contest; he admitted to the allegations in the TPR petition. Therefore, the applicable statute is § 48.422(7), which provides that “[b]efore accepting an admission of the alleged facts in a [TPR] petition, the court shall” *See Steven H.*, 233 Wis. 2d 344, ¶52. As the circuit court satisfied the standards of § 48.422(7), the court did not err in accepting Bobby’s admission that he failed to assume parental responsibilities.

CONCLUSION

¶9 The order terminating Bobby’s parental rights is affirmed.

By the Court.—Order affirmed.

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

