

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 31, 2004

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. 04-1552
STATE OF WISCONSIN**

Cir. Ct. No. 03TP000011

**IN COURT OF APPEALS
DISTRICT III**

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

PIERCE COUNTY,

PETITIONER-RESPONDENT,

v.

AMY F.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Amy F. appeals an order terminating her parental rights to Sierra P. Amy claims the order should be vacated and the petition

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

dismissed because she did not receive the last dispositional order with the required notices prescribed by WIS. STAT. § 48.356(2), the conditions for the child's return and the applicable grounds for terminating parental rights. We affirm the order.

¶2 The following facts are undisputed. Amy is the biological mother of Sierra. Sierra was found to be a child in need of protection or services and removed from Amy's home. A dispositional order was filed on June 27, 2002. As required by WIS. STAT. § 48.356(2), the order contained the written notice of grounds for terminating Amy's parental rights, which were abandonment and continuing need of protection or services, as well as the conditions for Sierra's return. It is undisputed that Amy received this order.

¶3 Almost a year later, on June 23, 2003, the CHIPS order was extended. The extension order did not alter any of the grounds concerning terminating Amy's parental rights nor did it change any of the previously imposed conditions for Sierra's return. However, Amy was not present at the hearing, as she arrived late, and there was no evidence that Amy received a copy of the written extension order.

¶4 Nearly five months later, on November 13, Pierce County filed a petition to terminate Amy's parental rights to Sierra.² Amy moved to dismiss the petition on the ground that she had not received the last CHIPS extension order

² A petition alleging a child is in continuing need of protection or services does not require the last CHIPS order be issued at least six months before the petition is filed. *Waushara County v. Lisa K.*, 2000 WI App 145, ¶11, 237 Wis. 2d 830, 615 N.W.2d 204. In that case, we held that WIS STAT. § 48.415(2), which lists the elements of when a child is in continuing need of protection or services, only requires "that a child has been outside the home for a cumulative period of six months pursuant to a CHIPS order." *Id.* Thus, there need not be a six-month window from the last CHIPS order to the time the petition is filed.

with the written notices required by WIS. STAT. § 48.356(2). Although the court acknowledged that Amy had not received the most recent order containing the § 48.356(2) notices, it denied Amy's motion. The court concluded that because Amy had the statutorily prescribed notices through the original CHIPS order, which was entered seventeen months before the petition was filed, the failure to provide Amy with the identical notices in the extension order amounted to merely a technical statutory violation.

¶5 After a jury trial, the jury found Sierra was in continuing need of protection or services and the court later terminated Amy's parental rights. Amy now appeals.

DISCUSSION

¶6 The sole issue on appeal is whether the trial court erred by denying Amy's motion to dismiss, despite finding that Amy did not receive the last CHIPS order that contained the identical WIS. STAT. § 48.356(2) notices. We conclude it did not.

¶7 Amy claims *Waukesha County v. Steven H.*, 2000 WI 28, 233, Wis. 2d 344, 607 N.W.2d 607, is controlling. In that case, the original CHIPS orders did not include notice to Steven that his parental rights were in danger of being terminated. A year later, the circuit court extended the CHIPS orders. This extension order, which included the WIS. STAT. § 48.356(2) notices, was sent to Steven. Just over a year after the extension order was entered, the county filed a petition to terminate Steven's parental rights. Steven moved to dismiss the petition on the grounds that the original CHIPS orders did not contain the required notices.

¶8 The supreme court held that not all orders removing a child from his or her home were required to have the WIS. STAT. § 48.356(2) written notices. *Id.*, ¶2. While § 48.356(2) required “any ... order” placing a child outside the home to include the required notices, WIS. STAT. § 48.415(2), the statute that describes the ground for terminating parental rights when a child is in continuing need of protection, only required “one or more ... orders” placing a child outside the home to include the statutorily prescribed notice. *Id.*, ¶29. The court additionally observed that the written notices are “meant to ensure that a parent has adequate notice of the conditions with which the parent must comply for a child to be returned to the home. The notice is also meant to forewarn parents that their parental rights are in jeopardy.” *Id.*, ¶37. Thus, the court concluded that a parent “will be given adequate notice of the conditions for return and time to make any necessary changes to forestall the termination of parental rights if the last order issued at least six months before the filing of the petition involuntarily terminating parental rights contains the written notice.” *Id.*, ¶31.

¶9 The court hypothesized that “[h]ad Steven H. received an order without the statutorily prescribed written notice after receiving the order with the proper notice, he might be able to complain that he was confused by the lack of notice and that it was unfair to allow the termination proceedings to continue.” *Id.*, ¶35. However, the court reserved deciding that issue for a later day. Analogizing her failure to receive the extension order with an order’s failure to contain the required notices, Amy claims that day has come. We disagree.

¶10 Although Amy argues she was confused by receiving the initial order with the notices and not the extension order, her argument is conclusory. Instead of presenting evidence at the trial court to establish her confusion, Amy merely argued that “maybe [she] forgot about the order from a year before,

knowing that if [she didn't] comply [she] could lose [her] rights to ... the child ... because [she] didn't receive this [extension] order." Thus, we do not have any factual findings that Amy was actually confused when proceedings were initiated to terminate her parental rights after she did not receive the extension order. As the trial court stated in its oral decision:

[E]ven though it is questionable ... whether [Amy] received the written notice of the TPR warnings or the conditions contained in the extension order back in June of last year ... there is no factual basis to suggest that [she] had any idea or [it was] ever suggested to [her] that somehow [the] conditions had been waived or that [she was] okay, that TPR wasn't being done anymore so [she] can somehow not try to comply with any of the conditions of the original order.

Therefore, the trial court did not err by denying Amy's motion to dismiss, even though she did not receive the last CHIPS order with the required notices.

By the Court.—Order affirmed.

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

