

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 2005

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. 04-2967
STATE OF WISCONSIN**

Cir. Ct. No. 03TP000152

**IN COURT OF APPEALS
DISTRICT IV**

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

v.

CHERYL E.,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: ANGELA B. BARTELL, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Cheryl E. appeals a default judgment and an order terminating her parental rights to her daughter, Cierrena S. Cheryl's

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2003-04).

minimal nonspecific arguments contend the circuit court erroneously exercised its discretion in finding her in default and terminating her parental rights. We disagree and affirm the judgment and order.

FACTS

¶2 Now fourteen years old, Cierrena and her older sister were both placed in foster care on February 21, 1991; to date Cierrena has remained in the same foster home since she was six-months-old. Cheryl suffers from some form of schizophrenia. The Dane County Department of Human Services (the Department) filed this TPR petition on October 30, 2003. On November 25, 2003, an initial plea hearing was held. At that hearing a private bar attorney appointed by the State Public Defender's office appeared on behalf of Cheryl; Cheryl refused to speak with this attorney and refused to have this attorney represent her. Cheryl entered a denial to the petition's allegations and requested a jury trial. At the conclusion of this hearing, Cheryl also sought a judicial substitution.

¶3 After another judge was assigned, a second private bar attorney appointed by the SPD's office appeared on Cheryl's behalf at a December 22, 2003 hearing. A three-day jury trial was set for March 8, 2004.

¶4 On February 16, 2004, a hearing was held addressing the parties' motions in limine and discovery issues. On March 8, 2004, the parties, including Cheryl, appeared for the jury trial; however, at that time Cheryl's attorney moved to withdraw from the case. After Cheryl implicitly threatened her attorney, her attorney hinted Cheryl might not be competent to rationally aid in the preparation of her defense. The circuit court allowed Cheryl's attorney to withdraw and asked the SPD to appoint a third lawyer for Cheryl. As Cheryl continued to display

some mental illness symptoms, the circuit court also appointed Cheryl a guardian ad litem and postponed the jury trial.

¶5 On April 5, 2004, a status conference was held; while Cheryl did not personally appear, her third private bar SPD-appointed attorney appeared on her behalf. This attorney informed the court he needed a minimum of four weeks to familiarize himself with the file and prepare for trial. The circuit court set a trial date of June 28, 2004, almost three months later.

¶6 At an April 26, 2004 pretrial conference, Cheryl's attorney informed the court Cheryl was in jail but all parties agreed her presence at this pretrial conference was unnecessary. Cheryl's attorney acknowledged Cheryl had been upsetting his office staff. The circuit court ordered Cheryl's personal appearance for the June 28, 2004 trial and for all future court proceedings; this order was later memorialized in writing and signed on May 20, 2004. At the May 24, 2004 pretrial conference, Cheryl was present and was given actual notice of the circuit court's order that she appear for trial beginning June 28, 2004. This order compelled Cheryl's physical appearance at all future court proceedings and the order was discussed at some length in Cheryl's presence. Cheryl's attorney acknowledged her receipt of the written order.

¶7 On June 9, 2004, a hearing was held related to the Department's motion to compel a continued deposition of Cheryl. Cheryl's attorney reported that Cheryl was acutely psychiatrically symptomatic and homeless, living out of her car, and continued to harass his office staff. The Department's motion to continue Cheryl's deposition was granted. However, because of Cheryl's absence from this hearing, her attorney could not promise to produce Cheryl for the deposition as Cheryl had provided no information to her attorney to enable him to

maintain contact and she would simply periodically stop in his office, unannounced, only to upset his staff. The circuit court ordered her attorney to make reasonable efforts to give Cheryl actual notice of the deposition.

¶8 On June 24, 2004, a hearing was held on the Department's motion for default predicated on Cheryl's failure to appear for the June 15, 2004 scheduled deposition. The Department presented evidence that notice was sent to Cheryl's last known address and argued, along with Cierrena's guardian ad litem, that the continuing delay and inability to prepare for trial was prejudicial to both the Department and to Cierrena and her right to permanence. The circuit court denied this motion in the absence of actual notice to Cheryl. However, the circuit court noted, and her attorney agreed, that Cheryl did have actual notice of the June 28, 2004 jury trial date.

¶9 On June 28, 2004, after Cheryl failed to appear for the jury trial, the Department renewed its motion for default. The Department supported its motion with the testimony of Cheryl's social worker who indicated Cheryl was in violation of court-ordered conditions of return barring criminal convictions and incarceration, requiring stable housing, requiring cooperation with the Department and managing her mental illness. The Department offered testimony that Cheryl would not meet the conditions of return within the next twelve months and that it had made a reasonable effort to provide Cheryl with services.

¶10 The circuit court, considering the entire record, found Cheryl was in default and entered judgment against her. The circuit court found Cheryl had violated conditions of return, specifically those related to maintaining and stable home, avoiding law violations, avoiding incarceration, cooperating with the Department and managing her mental illness. The circuit court found there was a

substantial likelihood Cheryl would not meet the conditions of return within the next twelve months, especially given her unstable mental health. The circuit court also found the Department had made reasonable efforts to provide services to Cheryl. However, the circuit court gave Cheryl one additional chance to avoid the default judgment; it denied the Department's motion to proceed directly to disposition, postponing the hearing until the following day to allow Cheryl's counsel and her guardian ad litem a final opportunity to locate her.

¶11 The dispositional hearing was held the following day, June 29, 2004, and again, despite attempts to locate her, Cheryl did not appear. The circuit court terminated Cheryl's parental rights and entered a written order of termination on July 9, 2004. Cheryl appeals.

DISCUSSION

¶12 Cheryl argues the circuit court erroneously exercised its discretion in finding her in default and terminating her parental rights. Cheryl concedes the circuit court reviewed all the facts relating to her unfitness as a parent but insists she "was prejudiced by the default because she lost her basic Due Process right to put on a defense to the petition." Cheryl does not elaborate on this position; she does not explain how or why the entry of the default judgment specifically violated her due process rights. This argument is undeveloped and we refuse to develop it for her. See *State v. Gulrud*, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987). We may decline to address issues that are inadequately briefed. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶13 The decision whether to enter a default judgment is a matter within the sound discretion of the circuit court. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768. We will not reverse a circuit court's

discretionary decision if the circuit court applied the relevant facts to the correct legal standard in a reasonable way. *See Brandon S.S. v. Laura S.*, 179 Wis. 2d 114, 150, 507 N.W.2d 94 (1993). Here, the record clearly shows that Cheryl was provided with sufficient warning that her failure to appear at the trial could result in a default judgment being entered against her.

¶14 At the time of the default judgment, the TPR matter had been pending for approximately eight months and Cierrena had been languishing in foster care for nearly fourteen years. Nearly every delay in the case was attributable to Cheryl, by her refusal to speak or cooperate with her first two appointed attorneys, by the harassment of her third appointed counsel, by her wholesale failure to communicate with him and by her continuing failure to appear at scheduled court appearances. At the May 24, 2004 pretrial conference, Cheryl was verbally informed of the circuit court's order that she appear in person at all future court proceedings. This order was memorialized in writing and a written copy was provided to Cheryl at this hearing. Despite all these warnings, Cheryl failed to appear for any further proceedings. Cheryl was provided with due process, the circuit court was well within its discretion and Cheryl's arguments fail.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4 (2003-04).

