

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 1, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1152

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**In the Interest of Stephanie S.,
Connie C. and Whitney J.,
children under the age of 18:**

Milwaukee County,

Petitioner-Respondent,

v.

Veronica J.,

Respondent-Appellant.

APPEAL from orders of the circuit court for Milwaukee County:
MEL FLANAGAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Veronica J. appeals from an order granting an extension of a CHIPS (child in need of protection or services) dispositional order and from an order denying her motion for immediate return of her children, Stephanie S., Connie C. and Whitney J. Veronica claims that she was denied a hearing as required by § 48.365, STATS., and that the trial court lost competency

to extend the order because it failed to conduct a hearing. Because Veronica waived her right to raise these issues when she agreed to the order extending the dispositional order with regards to her children, we affirm.

I. BACKGROUND

On June 29, 1994, Milwaukee County filed a petition for extension and revision of a dispositional order and for review of the permanency plan regarding Veronica's three children. The petition alleged that the three children were in need of protection or services pursuant to § 48.13(2), STATS., because certain court-ordered conditions, which needed to be satisfied before Veronica's children could be returned to their parental home, had not been fulfilled.

A summons notifying Veronica of a July 11, 1994, hearing date was sent via certified mail to her last known address. Veronica did not appear for the July 11 hearing. At the July 11 hearing, the court commissioner adduced that the certified mail receipt had been returned, but that it had not been signed by Veronica. The State requested that the commissioner find Veronica in default for failing to appear. The commissioner granted the request. The commissioner also extended the previous dispositional order for thirty days in order to properly notify the father, David C., of the hearing because the father's first summons was sent to the wrong address.

The case was adjourned until August 9, 1994. On that date, both David C. and Veronica appeared in court. Veronica stated that she had never received notice of the earlier hearing. Both parents agreed to a one year extension of the dispositional order. The commissioner extended the order for one year. Subsequently, Veronica obtained counsel and filed a motion for immediate return of the children and a petition for revision of the dispositional order and change of placement.

A hearing was set for October 21, 1994. At the hearing, Veronica withdrew her motion for revision and change of placement because she was incarcerated, but went ahead with the motion for immediate return of the children. The basis for the motion was that no hearing as required under

§ 48.365, STATS., was conducted and that as a result, the court lost competency to extend the order. The court denied the motion. Veronica now appeals.

II. DISCUSSION

Veronica makes three related arguments: (1) that the notice of the July 11 hearing and summons was not effective because it was served in violation of §§ 48.27 and 48.273, STATS.; (2) that she was denied a hearing as required by statute; and (3) that as a result of the failure to comply with the statutes, the court lost competency to extend the order.

We need not address the merits of Veronica's arguments, however, because she waived her right to raise these issues. During the August 9 court hearing, the following colloquy occurred:

THE COURT: Ms. J.[], this case is here in regards to the extension for the current custody order, in regards to Stephanie, Connie, and Whitney.

At the last hearing, the Court found you in default; in other words, the Court found that you did get notice of the hearing and proceeded in your absence.

The real question in this case is whether or not you're in agreement with continuing the Order with the placement as -- I assume the placement would be as it is and as it has been -- or whether you're disagreeing with that and want an opportunity to present to the Court evidence why the Court should not extend the Order.

Are you in agreement with the Order, with the extension; or are you in disagreement with that?

MS. VERONICA J.[]: I agree to it.

THE COURT: Pardon?

MS. VERONICA J.[]: I'll agree.

We conclude from this excerpt that Veronica waived her right to assert the arguments she raises in this appeal because she voluntarily agreed to the one year extension of the dispositional order. *State v. Mendez*, 157 Wis.2d 289, 294, 459 N.W.2d 578, 580 (Ct. App. 1990); *State v. Goodrum*, 152 Wis.2d 540, 549, 499 N.W.2d 41, 46 (Ct. App. 1989); *State v. Fawcett*, 145 Wis.2d 244, 256, 426 N.W.2d 91, 96 (Ct. App. 1988). Her voluntary agreement to the extension was sufficient to give the court competency to extend the dispositional order and rendered moot the fact that she may not have been properly served with notice of the July 11 hearing. Moreover, the court advised Veronica that if she wanted to move to revise the dispositional order, she should obtain an attorney who could file a motion to reopen the case. Her failure to seek a revision forecloses her right to seek relief on these grounds. Accordingly, we affirm the orders.

By the Court. – Orders affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.