

WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES January 2024

The cases listed below will be heard in the Supreme Court Hearing Room, 231 East, State Capitol. The cases listed below originated in the following counties:

Milwaukee

Sheboygan

WEDNESDAY, January 24, 2024

9:45 a.m.	2023AP441	State v. R.A.M.
11:00 a.m.	2021AP2105-CR	State v. Michael Gene Wiskowski

Note: The synopses provided are not complete analyses of the issues presented. The Supreme Court calendar may change between the time you receive it and when a case is heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. If your news organization is interested in providing any type of camera coverage of Supreme Court oral argument, you must contact the Public Information Office of the Wisconsin Court System at communications@wicourts.gov.

WISCONSIN SUPREME COURT

January 24, 2024

9:45 a.m.

2023AP441

State v. R.A.M.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee) that reversed the Milwaukee County Circuit Court order, Judge Ellen R. Brostrom, presiding, that terminated R.A.M.'s parental rights to P.M.

R.A.M. is the mother of P.M., who was removed from his mother's care in November of 2017, due to allegations of physical child abuse. R.A.M. was convicted of physical abuse of a child and was sentenced to 12 months in prison and 24 months extended supervision. P.M. was placed in foster care and was later placed with his paternal uncle in July 2019. In July 2021, the State filed a petition to terminate R.A.M.'s parental rights to P.M., alleging (1) that P.M. continued to be a child in need of protection or services (CHIPS); and (2) that R.A.M. failed to assume parental responsibility for P.M.

R.A.M. contested the petition. She appeared for the first three dates of the scheduled court trial, and the court scheduled three more days. R.A.M. failed to appear on one of the days at which the State's cross-examination of her was scheduled to continue. R.A.M.'s counsel informed the court that R.A.M. was having a custody dispute over her younger daughter and she was attempting to clear a bench warrant issued for interference with custody. The court saw the warrant in reviewing court records, but expressed displeasure because the warrant had been issued almost two weeks earlier and R.A.M. had waited until the court date to attempt to resolve it. The court stated that R.A.M.'s decision to clear the warrant seemed "conveniently timed" and that R.A.M.'s actions showed a lack of prioritization over P.M.'s situation. After discussion with the prosecutor and the family case manager, the court decided R.A.M. may not have been candid with her attorney and concluded that R.A.M.'s story was not credible. The court concluded that R.A.M.'s conduct was "egregious" and without justification. The court granted the State's motion for default, struck R.A.M.'s contest posture, and decided to use the remainder of the hearing to "prove up" the grounds in the TPR petition. The court allowed R.A.M.'s counsel to cross-examine the remaining State's witnesses and to make closing arguments, but did not permit counsel to present evidence. The court concluded the State proved both grounds for termination alleged in the petition and again concluded that R.A.M.'s failure to appear was "egregious." The court said it would entertain a motion to reopen the default if R.A.M. appeared the next day, but only if she had a "really good reason with solid documentation."

The circuit court then proceeded immediately to the dispositional stage. After hearing testimony from the family case manager and allowing counsel to make closing arguments, the court concluded that it was in P.M.'s best interests that the court "terminate R.A.M.'s rights," and entered an order.

R.A.M. appealed, arguing the circuit court lacked competency to proceed to the dispositional stage because it made the findings required for a presumption of waiver of counsel

and failed to wait the statutory two days before proceeding to the dispositional stage. R.A.M. did not challenge the circuit court's finding that her nonappearance was "egregious."

The court of appeals reversed the circuit court's order terminating R.A.M.'s parental rights. It said the circuit court implicitly found that R.A.M. waived her right to counsel, and that the circuit court failed to comply with the two-day waiting period under Wis. Stat. § 48.23(2)(b)3. The court of appeals further determined that even though the circuit court allowed R.A.M.'s counsel to participate in the prove-up and dispositional stages, it did not "negate that the court considered trial counsel's role to be reduced and R.A.M. not to have the full right to counsel." The court of appeals concluded that the circuit court violated R.A.M.'s due process rights by moving to the dispositional stage in violation of the statutory mandate. The court of appeals remanded the case back to the circuit court with directions.

P.M., through his guardian ad litem, filed a petition for review with the Wisconsin Supreme Court. The issues this court is to decide are:

1. Does a circuit court striking a parent's contest posture and entering default judgment after a finding of bad faith and egregious behavior by the respondent parent automatically trigger a waiver of counsel under Wis. Stat. § 48.23?
2. Does an automatic waiver of counsel under Wis. Stat. § 48.23 without an explicit finding of waiver and discharge of counsel by the circuit court lead to absurd results?
3. Does any limitation of appointed counsel's participation in a TPR proceeding as a sanction after entering default judgment against a parent amount to "total deprivation" of counsel under Torrance P., Jr. v. Shirley E., 2006 WI 129, 298 Wis. 2d 1, 724 N.W. 623?

WISCONSIN SUPREME COURT
January 24, 2024
11:00 a.m.

2021AP2105-CR State v. Michael Gene Wiskowski

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha) that summarily affirmed the Sheboygan County Circuit Court judgment convicting Michael Wiskowski of operating a motor vehicle while under the influence, 4th offense, Judge Kent R. Hoffmann, presiding.

Shortly before 1 p.m. on September 6, 2019, police dispatch received a call reporting a red truck was stopped in a McDonald's drive thru and the driver was sleeping. A Village of Plymouth police officer arrived at the scene shortly after receiving the call and saw a truck matching the description about to turn out of the parking lot. The officer followed the truck, activated his emergency lights and siren and pulled the truck over to conduct a "welfare check." The officer asked the driver, Michael Wiskowski, for his driver's license and proof of insurance card. The officer said that Wiskowski handed him two different insurance cards, which the officer noted as odd behavior. Wiskowski said he had been working and was awake for 24 hours. The officer asked Wiskowski to step out of the truck and Wiskowski stumbled as he did so. The officer said he smelled alcohol on Wiskowski's breath and asked Wiskowski how much alcohol he had consumed. Wiskowski said he had a couple of beers a few hours before. The officer took Wiskowski to the police station, administered field sobriety tests and arrested Wiskowski for OWI, 4th offense.

Wiskowski was charged in Sheboygan County Circuit Court with fourth offense OWI. His attorney filed a motion to suppress because, he argued, there was no reasonable basis for the officer to conduct the traffic stop and no probable cause for arrest. The circuit court denied the motion after holding an evidentiary hearing. The court found that the stop was lawful under the community caretaker exception to the Fourth Amendment's warrant requirement. A year later, the circuit court held what it characterized as a hearing to reconsider its decision on the suppression motion after Wiskowski's attorney received police body camera footage from the stop. The circuit court declined to reconsider its decision, concluding that under the totality of the circumstances, the officer acted reasonably pursuant to the community caretaker exception. Wiskowski entered a no-contest plea to the charge and a judgment of conviction was entered.

Wiskowski appealed to the court of appeals. The court of appeals affirmed the circuit court, noting that the community caretaker exception allows police to conduct a seizure without first obtaining a warrant. The court of appeals went on to say that approaching a vehicle to determine if a driver needs assistance is a reasonable community caretaker activity and could only be accomplished by stopping the vehicle.

Wiskowski filed a petition for review with the Wisconsin Supreme Court. The issues for this court to decide are:

1. When the report of a person sleeping in a car while waiting in line at a drive thru is contradicted by the officer's observation of the car driving on the road without any traffic violations, is there reasonable suspicion to stop the car or can police justify the stop based on the community caretaker doctrine?

2. After the stop, when the driver provides a reasonable explanation, can the officer use the community caretaker doctrine to extend the stop to perform field sobriety tests?