COURT OF APPEALS
DECISION
DATED AND FILED

November 20, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1437 **Cir. Ct. No. 2013TP87**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE TERMINATION OF PARENTAL RIGHTS TO AIDEN G-L., A PERSON UNDER THE AGE OF 18:

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

CHRISTINA L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: C. WILLIAM FOUST, Judge. *Affirmed*.

¶1 BLANCHARD, P.J.[1] Christina L. appeals a circuit court order terminating her parental rights to Aiden G-L., based on Christina L.'s no contest plea to grounds for termination under WIS. STAT. § 48.415(10). This provision creates grounds for termination when the child at issue has been adjudged to be in need of protection or services (CHIPS) and, within three years prior to the date the court adjudged the child to be CHIPS, a court has ordered termination with respect to a different child of the same parent. Christina L.'s sole argument on appeal is that there is not a factual basis to support her plea, because Aiden G-L. was not "adjudged" CHIPS, under the terms of § 48.415(10), within three years of the involuntary termination of her parental rights to another child, Shaun L. For the following reasons, I conclude that Aiden G-L. was adjudged CHIPS within three years of the involuntary termination of Christina L.'s parental rights to Shaun L. Accordingly, I affirm the decision of the circuit court terminating Christina L.'s parental rights to Aiden G-L.

BACKGROUND

¶2 The following facts are not in dispute. On July 8, 2009, Christina L.'s parental rights to Shaun L. were involuntarily terminated.

¶3 A CHIPS proceeding was later initiated in Milwaukee County for a different child of Christina L.'s, Aiden G-L. On March 23, 2012, the circuit court found grounds for the CHIPS petition regarding Aiden G-L. by default.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 On May 25, 2012, the court held a dispositional hearing on Aiden G-L.'s CHIPS case, and at this hearing the court placed various conditions on Christina L. However, a written dispositional order memorializing these conditions was not entered until November 1, 2012.[2] The written order provided that the date of the dispositional hearing, May 25, 2012, "is the effective date of this order."

¶5 On August 28, 2013, the Dane County Department of Human Services (the County) filed a petition for the termination of Christina L.'s parental rights to Aiden G-L. In its final, amended version, the petition alleged two grounds for termination: (1) abandonment pursuant to WIS. STAT. § 48.415(1); and (2) prior involuntary termination of parental rights to another child of Christina L. pursuant to § 48.415(10).

¶6 At a subsequent plea hearing in the termination of parental rights (TPR) proceeding, Christina L. entered a no contest plea to the second ground alleged, and, on this basis, the court found her unfit. After a dispositional hearing, the court terminated Christina L.'s parental rights to Aiden G-L.

¶7 Christina L. filed a postjudgment motion requesting that the court vacate the order terminating her parental rights, arguing that there was not a factual basis for her plea because Aiden G-L. was adjudged CHIPS more than three years after her parental rights to Shaun L. had been terminated. This argument was based on the fact that, while both the March 23 default finding of CHIPS and the May 25 CHIPS dispositional hearing occurred within the three-

[2] The CHIPS dispositional order was entered by the Honorable Joseph Donald.

year period following termination of rights to Shaun L., the November 1 written CHIPS dispositional order as to Aiden G-L. was entered more than three years after termination of rights to Shaun L. The court denied the postjudgment motion. Christina L. now appeals the order terminating her parental rights to Aiden G-L.

DISCUSSION

¶8 As referenced above, Christina L.'s sole argument on appeal proceeds as follows. Aiden G-L. was not adjudged CHIPS until the written dispositional order was entered on November 1, 2012. For this reason, Aiden G-L. was not adjudged CHIPS within three years of the circuit court's termination of Christina L.'s parental rights to Shaun L. Since three years lapsed before Aiden G-L. was adjudged CHIPS, no factual basis existed to support Christina L.'s no contest plea based on WIS. STAT. § 48.415(10).[3] The County responds that there was a factual basis for the plea because Chapter 48 "clearly contemplate[s] that a child is 'adjudged' CHIPS prior to the dispositional hearing," which was held on May 25, 2012, within three years of the TPR as to Shaun L. I agree with the County for the following reasons.

¶9 This appeal turns on the meaning of the term "adjudged" in WIS. STAT. § 48.415(10). Statutory interpretation is a question of law decided

[3] Christina L. entered a no contest plea in the TPR proceeding based on the implicit premise that Aiden G-L. had been adjudged CHIPS within the required three-year period, and a transcript of the no contest plea reveals that she did not suggest to the contrary at her plea hearing. This raises the possibility that she forfeited the only argument she makes on appeal. *See* ***State v. Ndina***, 2009 WI 21, ¶30, 315 Wis. 2d 653, 761 N.W.2d 612. However, the County does not argue forfeiture on appeal, and I do not consider the question of whether I should apply the forfeiture doctrine to Christina L.'s argument.

independently of the circuit court but benefitting from the circuit court's analysis. ***State v. Bobby G.***, 2007 WI 77, ¶42, 301 Wis. 2d 531, 734 N.W.2d 81.

¶10 Statutory interpretation begins with the plain language of the statute, read in the context of the statutory scheme. ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110.

> "If the meaning of the statute is plain, we ordinarily stop the inquiry." Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.
>
> Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results…. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning."

Id. (citations and quoted sources omitted). The "scope, context, and purpose" of a statute are "relevant to a plain-meaning interpretation of an unambiguous statute as long as [they] are ascertainable from the text and structure of the statute itself, rather than extrinsic sources." ***Id.***, ¶48.

¶11 WISCONSIN STAT. § 48.415(10) provides:

> PRIOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS TO ANOTHER CHILD. Prior involuntary termination of parental rights to another child, which shall be established by proving all of the following:
>
> (a) That the child who is the subject of the petition has been *adjudged to be in need of protection or services* under s. 48.13(2), (3), or (10) ….
>
> (b) That, *within 3 years prior to the date the court adjudged the child to be in need of protection or services* as

> specified in par. (a) … a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

(Emphasis added.)

¶12 I begin with observations that highlight how narrow Christina L.'s argument is on appeal. Christina L., the appellant, has not caused to be transmitted to this court, as part of the appellate record, the following record items: the Milwaukee County CHIPS petition for Aiden G-L.; a transcript of the March 23 hearing at which the court found grounds for the CHIPS petition by default; or a transcript of the May 25 CHIPS dispositional hearing. Therefore, I am to assume that the record would support a conclusion that the circuit court correctly followed all of the required statutory procedures for a CHIPS proceeding. *See* WIS. STAT. § 809.11; *see also* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993). Moreover, I understand Christina L.'s only argument on appeal to be premised on the following assumptions, favorable to the County: the circuit court found Aiden G-L. to be CHIPS by default on March 23, 2012, then held a dispositional hearing setting conditions for Christina L. on May 25, 2012, and there were no defects or irregularities in either of these proceedings.

¶13 With that background, Christina L. argues that, while there were no defects in the March 23 finding of CHIPS, nor in the May 25 disposition hearing, these events were insufficient to accomplish CHIPS adjudication, as the term "adjudged" is used in WIS. STAT. § 48.415(10), because Aiden G-L. could not have been "adjudged" CHIPS within the meaning of § 48.415(10) until the court entered a written dispositional order in the CHIPS proceeding. Thus, her

argument depends on multiple premises, one of which is that CHIPS adjudication cannot occur prior to the hearing on CHIPS disposition.

¶14 I conclude that her argument fails for at least the reason that, under a plain meaning interpretation, the term "adjudged" within the context of Chapter 48 contemplates that the child at issue has already been adjudged CHIPS before the court addresses disposition at the CHIPS dispositional hearing. *See, e.g.*, WIS. STAT. § 48.335(1). As the County points out, in the context of Chapter 48, the term "adjudged" has a specific meaning relating to CHIPS proceedings, which I now briefly outline, consistent with the ***Kalal*** standards cited above.

¶15 When a child is alleged to be CHIPS, the court holds a plea hearing "to determine whether any party wishes to contest an allegation that the child … is in need of protection or services…." WIS. STAT. § 48.30(1). If the petition is contested, the court holds a fact-finding hearing to determine whether the allegations that a child is CHIPS are "proved by clear and convincing evidence." WIS. STAT. §§ 48.30(7), 48.31(1). If the petition is not contested and the court has established that there is a factual basis for the allegations in the petition, or after the allegations are proven after a fact-finding hearing, the court holds a dispositional hearing. Secs. 48.30(6)(a), (8)(c), 48.31(7)(a). The purpose of the dispositional hearing is "to determine the disposition of a case *in which a child is adjudged to be in need of protection or services*…." WIS. STAT. § 48.335(1) (emphasis added). This language plainly contemplates that a child has already been adjudged CHIPS before the court addresses disposition at the CHIPS dispositional hearing. Here, it is undisputed that grounds were found by default on March 23, 2012, and the dispositional hearing was held on May 25, 2012, within three years of the termination of Christina L.'s parental rights to Shaun L.

¶16 The word "adjudged" is used in a similar context in other statutes relating to the CHIPS procedure in Chapter 48. For example, WIS. STAT. § 48.33(1) provides that "[b]efore the *disposition* of a child … *adjudged* to be in need of protection or services the court shall designate an agency, as defined in s. 48.38(1)(a), to submit a report…." (Emphasis added.) WIS. STAT. § 48.345 further provides that "[i]f the judge finds that the child is in need of protection or services … the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section…." Sec. 48.345. In this context, the term "adjudged" plainly contemplates that a child is "adjudged" CHIPS prior to the court deciding disposition of the CHIPS proceeding.

¶17 Moreover, a decision of this court, ***Dane County DHS v. Dyanne M.***, 2007 WI App 129, ¶¶5-15, 301 Wis. 2d 731, 731 N.W.2d 360, supports the conclusion that Aiden G-L. was adjudged CHIPS no later than the close of the May 25 dispositional hearing.

¶18 In ***Dyanne M.***, the court addressed whether the circuit court lost competency over a TPR proceeding when it failed to "'enter' a TPR disposition" within ten days after taking evidence related to disposition, as mandated by WIS. STAT. § 48.427(1). ***Dyanne M.***, 301 Wis. 2d 731, ¶6. Whether the court lost competency turned on "whether the circuit court's oral decision and order at the close of the dispositional hearing brought to an end the critical stages within the adjudication process." ***Id.***, ¶10. In concluding that the circuit court did not lose competency, this court explained that the circuit court had "fully adjudicated the TPR proceeding and made all the decisions it was required to make in its oral decision and order prior to expiration of the 10-day time limit." ***Id.***, ¶11. Thus, after the oral decision, "there was nothing left for the circuit court to adjudicate." ***Id.***, ¶14.

¶19 While ***Dyanne M.*** is not exactly on point, its reasoning is instructive here. As in ***Dyanne M.***, in addressing the postdisposition motion here, the circuit court noted that the court which heard the CHIPS proceeding addressed all of the necessary aspects of disposition in its oral dispositional decision, which were then memorialized in the written order. Thus, at the close of the dispositional hearing, "there was nothing left for the court to adjudicate." *See* ***id.***, ¶14.

¶20 In response to the County's arguments, Christina L.

> concedes there are statutes in Chapter 48 where the term adjudged [is used] expansively to include the oral pronouncement of a judge finding grounds for a child to be in need of protection or services and the oral pronouncement of a judge regarding the disposition in a case where grounds have already been found for a child to be in need of protection or services.

Despite that concession, Christina L. proceeds with a series of undeveloped or thinly developed arguments for the proposition that a child is not adjudged CHIPS until a written dispositional order is entered.

¶21 Christina L. cites WIS. STAT. § 48.35(1)(a), which provides that, in CHIPS proceedings, "[t]he judge shall enter a judgment setting forth his or her findings and disposition in the proceeding." However, Christina L. merely cites this provision, without a word of argument explaining how it might shed light on the meaning of the term "adjudged" in WIS. STAT. § 48.415(10). The court here did enter a judgment setting forth its findings and disposition. I will not act as an advocate for Christina L., developing her arguments for her. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶22 Christina L. cites to a number of sources outside of the context of Chapter 48. She apparently means to argue from these citations that the term

"adjudged" in WIS. STAT. § 48.415(10) means "final adjudication," as that term is used in WIS. STAT. § 809.30(1)(a), which requires the entry of a written order. *See, e.g.*, § 809.30(1)(a) (defining "final adjudication" as "the entry of a final judgment or order by the circuit court," including in a Chapter 48 case); WIS. STAT. § 806.06(1)(b) ("A judgment is entered when it is filed in the office of the clerk of court."). The problem with this argument is that Christina L. cites to statutes defining "final adjudication" without explaining why those statutes compel an interpretation of the term "adjudged" as requiring the entry of a written order as that term is used in WIS. STAT. § 48.415(10). The legislature chose to use the term "adjudged" in § 48.15(10), and not the term "final adjudication," and it did not include any language in § 48.415(10) specifically requiring entry of a written order. "'[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.'" ***Kalal***, 271 Wis. 2d 633, ¶39 (quoted source omitted). As the County points out, if the legislature had intended to require that a written dispositional order had to be entered in order to initiate a TPR pursuant to § 48.415(10), the legislature could have used language instituting that requirement. Given the legislature's use of the term "adjudged" in the context of a Chapter 48 CHIPS proceeding, Christina L. fails to persuade me that the legislature intended that term to require the entry of a written order in § 48.415(10).

¶23 Christina L. cites to Black's Law Dictionary, which includes one definition of "adjudge" as "[i]mpl[ying] a judicial determination of a fact, *and the entry of a judgment*." BLACK'S LAW DICTIONARY 42 (6th ed. 1990) (emphasis added). However, there are other definitions in Black's Law Dictionary that do not include reference to entry of a judgment. Moreover, Christina L. does not develop this citation into an argument regarding the term "adjudged" within the

context of Chapter 48. As explained above, the term "adjudged" in this context has a particular meaning.

¶24 Christina L. argues that an interpretation of the term "adjudged" that does not require entry of a written order produces absurd results because

> To allow an oral pronouncement of a finding of CHIPS, or an oral pronouncement of a CHIPS disposition to be the unassailable proof of grounds to terminate parental rights, without any opportunity for the parent to seek review of that finding by an appellate process, is oppressive. An appeal to the court of appeals cannot occur in the absence of a written order.

However, Christina L. points to nothing in the statutory language of WIS. STAT. § 48.415(10) that could be read to require that a TPR proceeding can only be initiated after a parent has the ability to appeal a CHIPS dispositional order. Christina L.'s argument that this is an "oppressive" statutory scheme is a policy matter for the legislature to address, not this court.

¶25 Christina L. argues that the rule of lenity should apply here, citing ***State v. Kittilstad***, 231 Wis. 2d 245, 603 N.W.2d 732 (1999). This is the rule that penal statutes should be subject to strict construction to safeguard the rights of accused persons. ***Id.*** at 266-67. Christina L. argues that "[w]hile this is not a criminal case, in termination of parental rights cases, court[s] have afforded parents protections derived from criminal procedure" and, thus, I should apply this rule in her favor here. However, assuming without deciding that the rule of lenity applies in the TPR context, the rule would have no application here. I explain above a plain language construction of WIS. STAT. § 48.415(10) that defeats the only argument advanced by Christina L. *See* ***Kittilstad***, 231 Wis. 2d at 267 (courts will not strictly construe a penal statute "unless [it] is ambiguous, and [the rule] cannot be used to circumvent the purpose of the statute").

¶26 In sum, there is a factual basis for Christina L.'s no contest plea to WIS. STAT. § 48.415(10) because Aiden G-L. was adjudged CHIPS within three years of the termination of Christina L.'s rights to Shaun L.

CONCLUSION

¶27 For the forgoing reasons, I affirm the order of the circuit court terminating Christina L.'s rights to Aiden G-L.

By the Court.—Order affirmed.

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