**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**October 8, 2015**

**Diane M. Fremgen**
**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 Nos. 2014AP2405**
**2014AP2406**

**Cir. Ct. Nos. 2013TP24**
**2013TP25**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS**
**DISTRICT I**

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

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**L. M.-N.,**

**RESPONDENT-APPELLANT.**

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APPEALS from orders of the circuit court for Milwaukee County: JOHN J. DiMOTTO, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] L.M.-N. appeals orders terminating her parental rights to her two daughters and challenges the denial of post-dispositional relief.[2] L.M.-N. argues that the circuit court's entry of default judgment against her was improper for multiple reasons, that her trial counsel was ineffective, that she was denied the opportunity to meaningfully participate in the dispositional hearing in violation of her due process rights, and that she is entitled to a new trial in the interests of justice. For the reasons discussed below, I affirm and decline to remand for a new trial.

## BACKGROUND

¶2 In May 2011, when L.M.-N.'s daughters were seven and four years old, the Bureau of Milwaukee Child Welfare received a referral that L.M.-N. and her husband, T.N., were neglecting the children. The children were reportedly living in "deplorable conditions." Following up, bureau social workers found the home to be "uninhabitable" and reported receiving numerous accounts of drug dealing and "all night partying" at the home. Police on the scene with the social workers arrested both L.M.-N. and T.N., and the children were removed from the home.

¶3 The State filed Child in Need of Protection or Services (CHIPS) petitions in June 2011, and the circuit court subsequently entered dispositional

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] The Hon. John DiMotto presided over the termination of parental rights proceedings throughout the grounds and dispositional phases of the trial. Following a remand from this court for a hearing challenging trial counsel's effectiveness, the Hon. Rebecca Bradley presided over post-dispositional proceedings.

orders that outlined the conditions L.M.-N. needed to meet to regain custody of the children.[3] After determining that the parents had not made substantial progress toward meeting the conditions for the return of the children to their custody, the State filed petitions in January 2013 for termination of parental rights (TPR) of the parents to the daughters. The TPR petition against L.M.-N. alleged that the daughters remained children in need of protection or services. *See* WIS. STAT. § 48.415(2).

¶4 L.M.-N. appeared in person at the initial appearance and hearing on the TPR petitions. At this hearing, the court advised L.M.-N. of her rights, including her right to an attorney, discussed the grounds alleged in the petition, explained the two phases of a TPR case, and laid out her options to contest or not contest the petition at each trial phase. The court then specifically ordered that L.M.-N.: appear at all subsequent court proceedings; communicate and cooperate with her attorneys; and cooperate with discovery that might be taken. In ordering L.M.-N. to appear at proceedings and to cooperate, the court gave the following explanation of possible consequences for violations of the orders:

> Once you get your lawyers, you got to make sure you stay in touch with and cooperate with your lawyers, because your lawyers are skilled in these cases, but they are going to need your assistance.
>
> To the extent that any discovery goes on, depositions, written interrogatories, requests to admit or deny, you got to cooperate in that.

[3] The children were also removed from their father T.N.'s care and, ultimately, the circuit court also terminated his parental rights to the two daughters. Although many background facts overlap, there are differences in the procedural background of the two cases and the issues raised on appeal by L.M.-N. and T.N. L.M.-N. appeals the circuit courts' judgments and orders separate from T.N.'s issues on appeal, which have been separately decided by this court. *See* ***State v. T.N.***, Nos. 2014AP2407 and 2014AP2408, unpublished slip op. (WI App Sept. 10, 2015).

> You got to follow all court orders. Make all court appearances.
>
> Here is the down side. If you don't do these things, particularly if you don't come to court, the D.A., or the guardian ad litem, or both may say judge, take away their right to a trial in the grounds phase. And if they're not even here, if that's the violation, go right to dispositional hearing. I would have the power--I could do that, but I don't want to. I want to give you every opportunity to exercise all your rights. But with rights come responsibilities and obligations to stay in touch with and cooperate with your lawyer--once you get the lawyer--to make all court appearances, follow all court orders, cooperate in all discovery.

Prior to adjourning the initial hearing, the court announced the date for the next court proceeding on the TPR petitions.

¶5 L.M.-N. failed to appear for two scheduled dates for her deposition. The State filed a motion for default judgment against L.M.-N., alleging that this represented a failure to comply with the court's orders to cooperate in discovery. The court denied the State's motion after concluding that L.M.-N. had a "clear and justifiable excuse" for missing each deposition.

¶6 The parties rescheduled L.M.-N.'s deposition. In this connection, the court ordered L.M.-N. to attend the next scheduled deposition, and explained the consequences for failure to attend: "So be here on time for the deposition, because the thing is this. If you don't show up then, I'll probably end up granting a default judgment against you." L.M.-N. replied that she would be at the deposition. The court reiterated the specific orders requiring L.M.-N. "to stay in touch with and cooperate with" her attorney, to "[f]ollow all court orders," and to "[m]ake all court appearances." The court also informed L.M.-N., once again, that if L.M.-N. failed to comply with the orders, it could "grant a default judgment,"

and "take away [L.M.-N.'s] right to a contest in the grounds phase." L.M.-N. said that she understood.

¶7 L.M.-N. failed to appear for the rescheduled deposition. L.M.-N.'s attorney was present, as well as the attorney for the State and the guardian ad litem. L.M.-N. had surrendered to police custody on various outstanding warrants the day before the rescheduled deposition, but had failed to inform her attorney or the court of her whereabouts.

¶8 The deposition was rescheduled yet again, this time to take place at the correctional facility where L.M.-N. was being held. Again present were L.M.-N.'s attorney, the State's attorney, and the guardian ad litem.

¶9 L.M.-N. was also present at the fourth scheduled deposition. That is, L.M.-N. received sufficient notice of the fourth scheduled deposition to make a physical appearance, with her attorney, at the time and place when it was scheduled to begin. However, L.M.-N. declined to be sworn in or to provide testimony, and asked to be returned to her cell. She explained her position by saying that she was angry because she had not received a letter that her attorney had sent to her notifying her of the deposition, and therefore she lacked sufficient notice. Unable to depose L.M.-N. yet again, the State filed a second motion for a default judgment.

¶10 Referencing pertinent legal standards, the court granted the State's motion for default judgment. The court found that L.M.-N. had refused to cooperate with discovery and had repeatedly failed to communicate with her attorney in violation of the court's orders. Based on those findings, the court concluded that L.M.-N.'s conduct was "glaring," "flagrant," and "extreme" and that the circumstances warranted the entry of a default judgment. The court found

that no excuse justified L.M.-N.'s refusal to testify at the fourth deposition, observing that her "[b]eing angry" about alleged insufficient notice "is not a clear and justifiable excuse." The court explained that the default judgment remained subject to the "prove-up," and if the prove-up produced evidence to support the grounds alleged in the petition, then L.M.-N. could participate fully in proceedings in the dispositional phase.

¶11 The court allowed L.M.-N. to testify on her own behalf at the prove-up hearing. Based on the evidence received at the prove-up hearing, the court determined that, "by clear, convincing, and satisfactory evidence," the State had established grounds to support the termination of L.M.-N.'s parental rights and had proven that L.M.-N. was an unfit parent and not likely to meet the conditions for the return of the children.

¶12 L.M.-N. was present for, and was allowed to participate in, the first day of the dispositional hearing. She was not present for the second day of the hearing, although her attorney was present. L.M.-N.'s attorney represented that the attorney had been unsuccessful in contacting L.M.-N. prior to the second day of the hearing, and that the attorney had not been informed of L.M.-N.'s whereabouts. Observing that TPRs are civil rather than criminal proceedings, and noting the court's repeated prior admonitions to L.M.-N. that the case would move forward even if she did not personally appear, the court proceeded in L.M.-N.'s absence. After hearing all evidence at the dispositional phase of the trial, and applying pertinent statutory factors, the court concluded that it was in the best interests of the children to terminate L.M.-N.'s parental rights.

¶13 Following a remand from this court for a ***Machner***[4] hearing on alleged ineffectiveness of L.M.-N.'s trial counsel, the circuit court denied L.M.-N.'s motion for post-dispositional relief. The court concluded that L.M.-N. failed to establish that her attorney's representation was ineffective.

## DISCUSSION

¶14 L.M.-N. argues that the circuit court lacked authority to enter a default judgment, following the State's second request for a default, because the court did not first enter an order to compel discovery. In the alternative, L.M.-N. argues that the court erroneously entered a default judgment because she did not receive notice of the fourth scheduled deposition. L.M.-N. further argues that the court erred in concluding that L.M.-N.'s trial counsel was not ineffective, and that she was deprived of the opportunity to participate in the TPR proceedings in a meaningful manner. For the following reasons, I reject each of L.M.-N.'s arguments.

### A. Default Judgment

#### *1. The Authority of the Circuit Court*

¶15 L.M.-N. argues that the circuit court lacked authority to enter a default judgment against L.M.-N. for her failure to participate in discovery because the court had not issued a formal order to compel discovery under WIS. STAT. § 804.12(1)(a),[5] and therefore there was not a valid order upon which

[4] ***State v. Machner***, 101 Wis. 2d 79, 303 N.W.2d 633 (1981).

[5] WISCONSIN STAT. § 804.12(1)(a) provides in pertinent part that "[i]f a deponent fails to answer a question propounded or submitted under s. 804.05 or 804.06 ... the discovering party (continued)

default could rest. I reject this argument because an order to compel is not a necessary precondition to a default judgment in this context.

¶16 A TPR is a civil proceeding. Therefore, the rules of civil procedure found in chapters 801-847 of the Wisconsin Statutes apply, unless a different procedure is prescribed by statute or rule. WIS. STAT. § 801.01. WISCONSIN STAT. § 804.12(2)(a)[6] permits courts to enter default judgments for failure to comply with court orders regarding discovery. *See also* ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768.

¶17 Under the terms of WIS. STAT. § 804.12(2)(a), the potential sanction of default is not limited to cases in which a court has first issued a formal order to compel discovery, as a court is authorized to do under § 804.12(1)(a). While a court has the authority to impose sanctions on a party for failure to comply with an order to compel issued under subsection (1), a court has the authority to sanction a party for failure to comply with any discovery order, regardless of whether there has been an order to compel. *See* § 804.12(2)(a) (court may sanction a party for

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may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request."

[6] WISCONSIN STAT. § 804.12(2)(a) provides in pertinent part that

> [i]f a party ... fails to obey an order to provide or permit discovery, including an order made under sub. (1) or s. 804.10, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> ….
>
> 3. An order … rendering a judgment by default against the disobedient party ….

failure "to obey an order to provide or permit discovery, including an order under sub. (1) or s. 804.10").

¶18 Our supreme court has concluded that circuit courts have the authority to sanction parties who do not comply with court orders, including by entering default judgments. The court in ***Evelyn C.R.*** stated, in pertinent part:

> [A] circuit court has both inherent authority and statutory authority under Wis. Stat. §§ 802.10(7), 804.12(2)(a), and 805.03 to sanction parties for failing to obey court orders. *See* ***Johnson v. Allis Chalmers Corp.***, 162 Wis. 2d 261, 273-74, 470 N.W.2d 859 (1991) (noting the same, but citing a prior version of the Wisconsin Statutes). Pursuant to this authority, a circuit court may enter a default judgment against a party that fails to comply with a court order. *See* Wis. Stat. §§ 802.10(7), 804.12(2)(a), 805.03; *see generally* ***Chevron Chem. Co. v. Deloitte & Touche LLP***, 207 Wis. 2d 43, 557 N.W.2d 775 (1997).

***Evelyn C.R.***, 246 Wis. 2d 1, ¶17. The court explicitly refers to WIS. STAT. § 804.12 in recognizing the authority of courts to issue enforceable orders requiring parents to appear for and cooperate with discovery.

¶19 L.M.-N. fails to cite authority supporting her argument that a circuit court can only require cooperation with discovery by issuing an order to compel under WIS. STAT. § 804.12(1)(a). Based on ***Evelyn C.R.'s*** recognition of a circuit court's "inherent" *and* "statutory authority" to issue orders and to sanction parties for failure to comply with those orders, I conclude that § 804.12(2)(a) does not deprive a circuit court of its inherent authority both to order parents to appear at depositions without first entering an order to compel discovery and to sanction them for failure to comply with such orders.

*2. Entry of the Default Judgment in L.M.-N.'s Case*

¶20 L.M.-N. argues that, even if the circuit court had authority to sanction her for failure to comply with discovery, the court erroneously exercised its discretion in entering the default judgment. In support, L.M.-N. argues that "it was fundamentally unfair" to sanction L.M.-N. for her failure to submit to discovery because she did not receive notice of the fourth scheduled deposition. Separately, she argues that her conduct did not support the entry of a default judgment against her because her conduct was not egregious and she was unaware of the consequences for a failure to comply with discovery. I address each argument in turn.

¶21 As an initial matter, I reject as meritless L.M.-N.'s argument that she did not have notice of the deposition that she terminated through a complete and explicit refusal to cooperate. L.M.-N. was aware that the deposition had been cancelled three times before and that each time it was rescheduled because, as the court explained to L.M.-N., the "chances are [that the State will] want you to take a deposition." L.M.-N. was present at the correct date and time, and at the correct location, for the fourth scheduled deposition. It is true that she was confined at that time, but she was brought to the place of the deposition and through her conduct showed that she understood that this was the time and place for a scheduled deposition. Based on this evidence, I conclude that L.M.-N. had actual notice of the deposition.

¶22 In addition, L.M.-N. does not dispute that her attorney received written notice in advance of the deposition, and was present along with L.M.-N. Under WIS. STAT. § 804.05(1), providing notice of a deposition to a party's

attorney is sufficient to constitute notice to the party, and has "the force of a subpoena addressed to the deponent."

¶23 With respect to L.M.-N.'s related notice argument that she was unaware that her refusal to cooperate in discovery could result in a default judgment, I conclude that the orders and admonitions provided by the court were adequate to put L.M.-N. on notice of their meaning and import, specifically including the potential consequences for violating them.

¶24 First, L.M.-N. fails to acknowledge the self-evident logic of the court's approach: if L.M.-N. intentionally refused to participate in aspects of the proceedings, she might as a result lose basic rights in the proceedings. In other words, there was nothing counterintuitive or complicated about the orders and admonitions that the court gave L.M.-N.

¶25 Second, as summarized at length above, the court unambiguously, using appropriately simple language, explained to L.M.-N. from the start of the proceedings what the court described as both L.M.-N.'s "rights" and her accompanying "responsibilities" to cooperate. Moreover, by the time of the fourth scheduled deposition, L.M.-N. had once avoided a default order and the court ordered her again, for the third time, to participate in depositions, and of the potential consequences if she did not comply.

¶26 I now turn to L.M.-N.'s second contention, which is that, even if the notice was adequate, the circuit court erroneously exercised its discretion in granting default judgment because her failure to cooperate with discovery did not constitute egregious conduct.

¶27 Whether to enter a default judgment is a matter within the sound discretion of the circuit court. ***Evelyn C.R.***, 246 Wis. 2d 1, ¶18. Similarly, a circuit court's determination to grant or deny a motion seeking to vacate a default judgment is also a discretionary act that we will not overturn absent an erroneous exercise of discretion. ***Dugenske v. Dugenske***, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). "A proper exercise of discretion requires the circuit court to apply the correct standard of law to the facts at hand." ***Darryl T.-H. v. Margaret H.***, 2000 WI 42, ¶32, 234 Wis. 2d 606, 610 N.W.2d 475.

¶28 As already discussed, the court's orders and admonitions were clear. I conclude that the circuit court did not erroneously exercise its discretion, either in entering a default judgment or in denying L.M.-N.'s motion to vacate the default judgment. L.M.-N. repeatedly and, as to the fourth scheduled deposition at least, unjustifiably failed to comply with clear orders. This could reasonably be characterized as egregious conduct under the circumstances.

¶29 Our supreme court has explained that a circuit court may make a finding of egregiousness if "a circuit court concludes that a party's failure to follow court orders, though unintentional, is 'so extreme, substantial and persistent' that the conduct may be considered egregious." ***Dane Cnty. DHS v. Mable K.***, 2013 WI 28, ¶70, 346 Wis. 2d 396, 828 N.W.2d 198 (quoted source omitted). A court may make the same finding if it concludes that a party has acted "in bad faith, which by its nature cannot be unintentional conduct." ***Id.*** "To find that a party acts in bad faith, the circuit court must find that the noncomplying party 'intentionally or deliberately' delayed, obstructed, or refused to comply with the court order." ***Id.*** (quoted source omitted).

¶30 Briefly recapping, the circuit court did not enter default judgment against L.M.-N. until after she expressly refused to testify at the fourth scheduled attempt to depose her. After her second missed deposition, the court denied the State's motion for default judgment against L.M.-N., but repeated the orders and admonitions for L.M.-N. to make all court appearances, communicate and cooperate with her attorney, and participate in discovery. Despite the court's orders and admonitions, L.M.-N. did not appear for the third scheduled deposition, nor did she inform her attorney that she would not be present. Finally, L.M.-N. refused to testify at the fourth scheduled deposition.

¶31 The circuit court did not erroneously exercise its discretion in making the pertinent findings and in determining that L.M.-N.'s conduct was sufficiently egregious to merit default. Her repeated failures to abide by the court's orders to remain in contact with her attorney and to comply with discovery support this determination. The record supports the court's finding that L.M.-N.'s explicit refusal to cooperate at the deposition for which she was present was "glaring," "flagrant," and "extreme" in the context of this case and that it was in direct violation of the court's orders.

**B. Ineffective Assistance**

¶32 A parent is entitled to the effective assistance of counsel in termination of parental rights proceedings. ***A.S. v. State***, 168 Wis. 2d 995, 1004-05, 485 N.W.2d 52 (1992). In order to establish that she did not receive effective assistance of counsel, L.M.-N. must prove: (1) that her lawyer's performance was deficient; and (2) that "the deficient performance prejudiced" her. *See* ***Strickland v. Washington***, 466 U.S. 668, 687(1984); ***A.S.***, 168 Wis. 2d 995, 1005 (***Strickland*** test created in criminal law context, but also applies to involuntary TPR

proceedings). A lawyer's performance is not deficient unless the attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." ***Strickland***, 466 U.S. at 687. Even if L.M.-N. can show that her counsel's performance was deficient, she is not entitled to relief unless she can also prove prejudice. *See* ***id.*** To satisfy the prejudice prong, a "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996) (quoting ***Strickland***, 466 U.S. at 694).

¶33 L.M.-N. argues that her trial counsel's performance was deficient because the attorney did not maintain regular contact with her, did not provide her with notice of the fourth scheduled deposition, and failed to object to the lack of notice when the court entered the default judgment for failure to cooperate with the attorney and comply with discovery requests. The record does not support these arguments.

¶34 As to L.M.-N.'s argument that trial counsel's performance was ineffective because she failed "to communicate with L.M.-N," the evidence is to the contrary. L.M.-N. does not dispute that her attorney prepared with L.M.-N. for her deposition on three separate occasions, followed up one of the deposition preparation sessions with a memo to L.M.-N., spoke with L.M.-N. on the phone several times, and attempted unsuccessfully to contact L.M.-N. by phone several other times.

¶35 Turning to the topic of notice, L.M.-N. fails to point to authority that the attorney was obligated, in advance of the fourth scheduled deposition, to

provide L.M.-N. with any particular document as a form of notice at any particular time. To repeat, the record establishes extensive efforts by the attorney to assist L.M.-N. in preparing for the deposition and also establishes that L.M.-N. was present at the fourth scheduled deposition with her attorney. L.M.-N.'s attorney represented to the court that she had sent L.M.-N. a letter at the correctional facility where L.M.-N. was being housed notifying L.M.-N. of the fourth scheduled deposition. All inferences support the conclusion that the attorney did not make serious, unprofessional errors in taking reasonable steps to alert L.M.-N. to the fourth scheduled deposition. In addition, L.M.-N. fails to explain on what legitimate basis her attorney could or should have objected to a purported lack of notice.

¶36 I could stop here, having concluded that L.M.-N. fails to show deficient performance. However, I also note that, even if L.M.-N.'s attorney's performance was deficient, I would separately reject L.M.-N.'s ineffective assistance of counsel claim because she has failed to demonstrate that, but for trial counsel's alleged deficient performance, the results of her TPR proceedings would have been different.

¶37 L.M.-N. fails to point to evidence that, if trial counsel had made superior efforts to communicate with L.M.-N., L.M.-N.'s parental rights would not have been terminated. L.M.-N. suggests that, had trial counsel provided L.M.-N. with more clear or earlier notice of the deposition, L.M.-N. would have testified at the fourth scheduled deposition. This argument is speculative at best. L.M.-N. provides no evidence that even repeated notices starting weeks before the scheduled date would have inspired cooperation from L.M.-N. L.M.-N. does not point to clear error in the court's finding that her refusal to testify at the fourth

scheduled deposition was part of a pattern of disobeying the court's orders and admonitions.

¶38 Similarly, L.M.-N. fails to point to evidence that the results of the dispositional phase would have been different if she had not been defaulted. L.M.-N. actively participated in the prove-up hearing and the first day of the dispositional phase. Her attorney called her to testify, cross-examined the State's witnesses, and argued that the court should dismiss the TPR. The court heard evidence that the children had been out of the home for over three years, that the children's mental health was affected by trauma they endured under L.M.-N.'s purported care, and that the children were afraid to return to a parental home. At the close of the evidence, the court applied the correct legal standards and, after evaluating the evidence in terms of the best interests of the children, terminated L.M.-N.'s parental rights.

¶39 In sum, I conclude that L.M.-N. fails to show that trial counsel performed deficiently in connection with the events leading up to the default judgment, and note that if I were required to reach the issue I would separately conclude that she also fails to show that she was prejudiced in connection with the default judgment by any assumed deficient performance.

**C. Opportunity to Meaningfully Participate**

¶40 L.M.-N. argues that the circuit court denied her the opportunity to meaningfully participate in the TPR proceedings when it proceeded with the second day of the two-day dispositional phase of the trial without L.M.-N. being present. I disagree.

¶41 Procedural due process requires "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" ***Mathews v. Eldridge***, 424 U.S. 319, 333 (1976) (quoted source omitted). A parent has the right to "meaningfully participate" in TPR proceedings against her. ***D.G. v. F.C.***, 152 Wis. 2d 159, 167, 448 N.W.2d 239 (Ct. App. 1989). But meaningful participation does not always require that a parent be physically present at a hearing. ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 701-02, 530 N.W.2d 34 (Ct. App. 1995). "Rather, ... whether a respondent in a TPR proceeding can meaningfully participate without being physically present depends on the circumstances of each case." ***Id.***

¶42 L.M.-N. argues that the State had a duty to produce her for the second day of the dispositional hearing because she was in custody at the time of the hearing. It is true that L.M.-N. was in custody at that time. In fact, she had been in custody for approximately five weeks prior to the date of the hearing. However, what presents a problem for L.M.-N.'s argument is that the record reflects no evidence that she attempted to contact her attorney or the court to inform them of her availability while in custody at any point throughout this five week period. Again, she failed to take such simple steps despite the court's clear orders and admonitions of her responsibility to keep in contact with her attorney and that the court could proceed to hear evidence without her being present in court if she failed to appear for the dispositional hearing. I have no reason to conclude that prompt arrangements would not have been made for L.M.-N.'s appearance for purposes of discovery and court proceedings while she was in custody had she complied with the court's repeated orders and admonitions.

¶43 L.M.-N. fails to establish how she was denied the opportunity to meaningfully participate in the TPR proceedings. She testified at the prove-up hearing and was present at and allowed to participate in one day of the

dispositional hearing. Her attorney appeared on her behalf on the second day of the hearing and argued against termination of L.M.-N.'s parental rights or for an alternative guardianship to L.M.-N.'s mother. I conclude that the circuit court did not deny L.M.-N. the opportunity to meaningfully participate in the TPR proceedings.[7]

## CONCLUSION

¶44 For the foregoing reasons, I affirm the decision of the circuit court terminating L.M.-N.'s parental rights and deny her request to remand the case for a new trial in the interests of justice.

*By the Court*.—Orders affirmed.

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

[7] Arguing that the "full controversy was not fully and fairly tried," L.M.-N. asks this court to grant a new trial in the interests of justice pursuant to WIS. STAT. § 752.35. However, L.M.-N. fails to develop an argument in support of this request that does not repeat an argument rejected above.