

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 30, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 99-0366

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE TERMINATION OF PARENTAL RIGHTS OF
TERRANCE B., A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DENISE B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MARTIN J. DONALD, Judge. *Cause remanded with directions.*

FINE, J. Denise B. appeals from the trial court's order terminating her parental rights to Terrance B. The trial court's order was entered on Denise B.'s default. We remand for further proceedings.

I.

Denise B. was served personally with a summons, which informed her that the State was seeking to terminate her parental rights to her son Terrance B. The summons read, in material part:

You are hereby summoned to appear before the Circuit Court Children's Division, Judge Joseph Donald presiding, for a hearing into a petition regarding Termination of Parental Rights on the day and at the time and place stated above. A copy of the petition is attached.

In the case of your failure to appear as summoned herein, you may be proceeded against by default, and the court may proceed to hear testimony in support of the allegations in the petition and grant the relief requested by the petitioner.

You may appear alone or with an attorney of your choice.

Although Denise B. did not appear on the return date, an attorney representing her did appear. Nevertheless, the State moved for an order of termination on default. Denise B.'s lawyer explained that she had sent a letter to Denise B. six days earlier, but did not hear from her. The attorney also told the trial court that she had "no assurance that she actually received" the letter. Denise B.'s lawyer then asked the trial court to give her a chance to determine why Denise B. was not in court:

If the Court does consider a default, I would ask for a day for a hearing on the default so that I can have the opportunity to try again to contact my client to see if there is some reason why she has not appeared today.

The State told the trial court that Denise B. was personally served at an address in Milwaukee, and, when Denise B.'s lawyer indicated in response to the trial court's question that the address was where she had sent the letter to Denise B., the trial court granted the State's motion:

THE COURT: Then at this time, based on the proof of personal service, Court at this time will grant the State's request with respect to default of the mother, Denise [B.], as well as [the alleged father] and any unknown father.

The trial court then heard testimony supporting the State's petition, and, as noted, entered the order terminating Denise B.'s parental rights to her son.

II.

Whether to grant a default judgment is within the trial court's discretion. *Oostburg State Bank v. United Savings & Loan Ass'n*, 130 Wis.2d 4, 11, 386 N.W.2d 53, 57 (1986). Discretionary determinations by the trial court are immune from appellate-court second-guessing if what the trial court has done within the ambit of its discretion is a reasonable product of a demonstrated rational mental process based upon facts of record and the applicable law. See *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20–21 (1981). The record on appeal, however, “must reflect the circuit court's reasoned application of the appropriate legal standard to the relevant facts in the case,” because “the exercise of discretion is not the equivalent of unfettered decision-making.” *Hedtcke v. Sentry Ins. Co.*, 109 Wis.2d 461, 471, 326 N.W.2d 727, 732 (1982) (citation omitted).

The trial court did not explain why it refused to accede to Denise B.'s lawyer's request for time to find out why her client was not in court. Although we will uphold a decision vested in the trial court's discretion if there are any facts of record that support it, *State v. Kirschbaum*, 195 Wis.2d 11, 21, 535 N.W.2d 462, 465 (Ct. App. 1995), the record here is devoid of any facts that would support the trial court's decision not to give to Denise B.'s lawyer the opportunity to show that Denise B. had a legitimate reason for not appearing.

Accordingly, we remand this matter to the trial court so that Denise B.'s lawyer can file a motion, with a supporting affidavit or supporting affidavits executed by those with personal knowledge of the matters averred, to reopen the default. *See* RULE 806.07, STATS.; § 48.46(2), STATS. Given the need for expeditious consideration of cases involving the welfare of children, *see* § 809.107(6), STATS., and under our general supervisory authority over the circuit courts and proceedings in those courts, *see* § 752.02, STATS., the motion and supporting documentation shall be filed within ten days of this order. The State shall have five days to submit to the trial court whatever opposing material it may have, and Denise B. shall have five days to respond. Upon receipt of the materials, the trial court shall either hold an evidentiary hearing on Denise B.'s motion, or explain, for whatever further review either Denise B. or the State may seek, why an evidentiary hearing on the default is not required.

By the Court.—Cause remanded with directions.

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

