

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 20, 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. 99-1224

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JOHNNY K.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Reversed and cause remanded.*

CURLEY, J.¹ Johnny K. appeals an order terminating his parental rights to his daughter, Tammy M. Johnny K. claims that the trial court failed to

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

establish that Johnny K. knowingly, voluntarily and intelligently waived his right to a jury trial. The state confesses error and admits that the trial court failed to determine whether Johnny K. entered his “no contest” admission to the facts in the petition voluntarily. The State also notes that the trial court never inquired of Johnny K. whether any promises or threats were made to him to elicit a “no contest” admission. The guardian ad litem joins in the positions taken by the State. This court reverses. The trial court failed to make the necessary inquiries of Johnny K. required under § 48.422(7)(a) and (b), STATS. The matter is remanded to the trial court to permit the trial court to make the necessary inquiries of Johnny K. mandated by § 48.422(7)(a) & (b).

I. BACKGROUND.

Tammy M. was born in July of 1986 and, at the time of these proceedings, was twelve years old. Tammy is cognitively impaired. For the first six months of her life she lived with her mother, Anita M. After being found as a child in need of protection she was placed in foster care where she has remained throughout her life. The dispositional orders finding her to be a child in need of protection were extended yearly. Johnny K. was adjudicated as Tammy’s father in 1989 when she was approximately three years old.

The State began proceedings to terminate Johnny K.’s parental rights in August 1998. At that time, Johnny K. was incarcerated. He was served personally with the summons and petition seeking the termination of his parental rights on the grounds that he had abandoned Tammy. Johnny K. first appeared in court on August 28, 1998, at which time he contested the petition and requested that an attorney be appointed for him. The matter was rescheduled for a date in September 1998, but the case had to be adjourned because the State Public

Defender's Office had not yet appointed an attorney to represent him. Eventually Johnny K. obtained an appointed attorney and a jury trial was set to begin on January 19, 1999. Before the commencement of the jury trial, Johnny K.'s attorney advised the trial court that Johnny K. was no longer contesting the petition and that he would enter a "no contest" admission to the grounds phase of the termination proceeding. However, his lawyer told the trial court that it remained Johnny K.'s intent to contest the disposition.

Following Johnny K.'s attorney's statement, the trial court requested that the State provide an offer of proof. The State recited the pertinent facts surrounding the relationship between Johnny K. and Tammy M., which established the grounds of abandonment. The trial court then addressed several questions directly to Johnny K. concerning his contact with Tammy. Following this colloquy, the trial court found that Johnny K. had not seen Tammy since at least August 1996, and that there were grounds to terminate his parental rights. The trial court failed, however, to ever inquire whether Johnny K.'s decision not to contest the grounds for the termination of his parental rights was voluntary. Nor did the trial court elicit any information concerning whether Johnny K. understood the nature of the acts in the petition; knew the potential dispositions available; or inquired whether Johnny K. had been promised something or threatened into accepting the underlying factual support for the termination of his parental rights.

As noted by all three parties to this lawsuit, § 48.422, STATS., sets forth the procedure to be utilized when the state seeks to terminate the parental rights of a child. Section 48.422(7) requires the trial court, before accepting an admission of the alleged facts in the petition, to make several findings. Section 48.422(7), in pertinent part, reads:

(7) Before accepting an admission of the alleged facts in a petition, the court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.

(b) Establish whether any promises or threats were made to elicit an admission

It is conceded that the trial court failed to conduct a hearing or make findings that would satisfy the requirements of the statute. Therefore, this court remands this matter to the trial court for the purpose of complying with the mandates of § 48.422(7), STATS.

By the Court.—Order reversed and cause remanded.

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

