

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 14, 1998

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. 98-0071

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE TERMINATION OF PARENTAL
RIGHTS OF ALLEN K. AND NICOLE K.,
PERSONS UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

PAMELA T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL A. NOONAN, Judge. *Affirmed.*

WEDEMEYER, P.J.¹ Pamela T. appeals from an order terminating her parental rights to her two children, Allen K. and Nicole K. She claims: (1) the

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

circuit court lost jurisdiction over the case when the hearing on the petition to extend the dispositional order in 1993 was not held within the thirty-day time limit set forth in § 48.365(6), STATS.; (2) the circuit court never entered an order relative to the extension of the dispositional order in 1996; (3) the circuit court erroneously exercised its discretion when it denied Pamela T.'s motion to vacate the default judgment; and (4) the circuit court erroneously exercised its discretion by concluding that Pamela T. did not demonstrate substantial progress toward meeting the conditions established for the return of her children. Because Pamela T. did not challenge the thirty-day time limit violation that occurred in 1993 until four years later, because an order extending the 1996 dispositional order is a part of the record, and because the circuit court did not erroneously exercise its discretion in denying Pamela T.'s motion to vacate the default judgment or in concluding that Pamela T. did not demonstrate substantial progress toward meeting the conditions for return of her children, this court affirms.

I. BACKGROUND

On November 17, 1992, the State filed a petition alleging that Pamela T.'s two children, Allen and Nicole, were in need of protection and services because they had been victims of physical and sexual abuse and because they had been neglected. On June 8, 1993, the circuit court entered an order finding the children in need of protection or services pursuant to § 48.13(10), STATS. The children were placed in foster care and the dispositional order in effect until June 8, 1994, was entered outlining various conditions to be met by Pamela T. for the return of her children.² On June 6, 1994, the State filed a

² The children's father was also a party to the order. He will not be discussed because he has not appealed.

petition requesting an extension and revision of the dispositional order and review of the permanency plan. The dispositional order was extended for an additional year, until June 8, 1995. On March 17, 1995, the State filed another petition requesting an extension and revision of the dispositional order. The dispositional order was again extended for another year, until June 8, 1996. On April 23, 1996, the State again filed a request to extend the current dispositional order. The current order was once again extended until June 8, 1997.

In March 1997, the State filed an action seeking to terminate Pamela T.'s parental rights on the grounds that the children were in continuing need of protection or services. The case was scheduled for a jury trial on July 28, 1997. Pamela T. failed to appear. The circuit court granted the State's motion to find Pamela T. in default. The circuit court heard testimony from a social worker regarding whether Pamela T. had met the conditions necessary for return of her children.

Pamela T. filed a motion seeking to vacate the default judgment alleging that she had attempted to attend the trial, but got lost on the Milwaukee County Transit System. The trial court denied the motion and entered a dispositional order terminating Pamela T.'s parental rights. Pamela T. now appeals.

II. DISCUSSION

A. Violation of Thirty-day Time Limit.

Pamela T. first argues that the circuit court lost competency to proceed because the State's motion to extend the 1993 dispositional order was not heard by the circuit court until forty-two days after the original dispositional order

expired on June 8, 1994. Pamela T. argues that § 48.365(6), STATS., only allows an extension for a period of thirty days and, if the hearing does not take place, the circuit court loses jurisdiction.³

Compliance with the thirty-day time limit of this statute has been the subject of several cases that offer conflicting conclusions regarding whether a party waives an objection to violation of the time limit by failing to object. *See In Interest of B.J.N.*, 162 Wis.2d 635, 657, 469 N.W.2d 845, 854 (1991) (competency of circuit court cannot be waived); *In re Paternity of C.A.S.*, 185 Wis.2d 468, 482-83, 518 N.W.2d 285, 289 (Ct. App. 1994) (concluding circuit court did not lose competency); *In Interest of G.L.K.*, 153 Wis.2d 245, 248, 450 N.W.2d 498, 499 (Ct. App. 1989) (failure to object waives the issue); *In Interest of L.M.C.*, 146 Wis.2d 377, 380, 430 N.W.2d 588, 589-90 (Ct. App. 1988) (failure to object to court's competency waives right to raise issue).

In reviewing each of these decisions, this court concludes that the facts pertinent here are most analogous to *L.M.C.* Pamela T. failed to challenge the competency of the circuit court at the dispositional hearing held forty-two days after the expiration of the current dispositional order, and she failed to appeal from that order. Instead, she stipulated to the extension of the order for another year until June 8, 1995. The following year, she again stipulated to the extension of the order for another year until 1996. There was no objection the following year when the order was extended until 1997. There was no objection until the appeal

³ Section 48.365(6), STATS., provides: "If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days."

following the termination of her parental rights, almost four years after the challenged error.

In accord with the public policy considerations enunciated in *L.M.C.* regarding the interest in protecting adoptions, that adoptions “should be free from the possibility that a CHIPS extension granted many years ago was invalid and a termination of parental rights was therefore improperly granted because a gap of a few days intervened between a dispositional order’s termination and its extension,” Pamela T. cannot now complain about an issue that was not timely raised in the circuit court or this court. *See L.M.C.*, 146 Wis.2d at 395, 430 N.W.2d at 596-97.

The facts present here lead this court to conclude that Pamela T. cannot now rely on an argument she failed to raise almost four years ago. She repeatedly submitted to the jurisdiction of the circuit court. The circuit court continued to preside over this matter and enter orders relative to the case for four years after the alleged error. But most importantly, these two children are entitled to some stability and permanency in accord with the purposes of Chapter 48. To allow Pamela T. to raise this issue now would be contrary to the best interests of the children, the controlling case law and the public interest considerations discussed in *L.M.C.* Therefore, this court declines to consider the issue that she raises for the first time in this appeal.

B. 1996 Dispositional Order.

Pamela T. argues the circuit court failed to enter a dispositional order in 1996 because it was not a part of the appeal record. The State, however, supplemented the record with the August 9, 1996 order. Therefore, Pamela T.’s argument on this ground fails.

C. Motion to Vacate Default Judgment.

Next, Pamela T. argues the circuit court erroneously exercised its discretion in denying her motion to vacate the default judgment entered against her when she failed to appear at the jury trial on the petition for termination of her parental rights. She claims she demonstrated “excusable neglect.”

A circuit court’s decision to deny a motion to vacate a default judgment is reviewed subject to the erroneous exercise of discretion standard. *See Marotz v. Marotz*, 80 Wis.2d 477, 483, 259 N.W.2d 524, 528 (1977). This court will not reverse a discretionary decision of the circuit court if the court considered the pertinent facts, applied the proper law and reached a reasonable conclusion. *See Hartung v. Hartung*, 102 Wis.2d 58, 66, 301 N.W.2d 16, 20 (1981).

In reviewing the record relative to the circuit court’s decision to deny Pamela T.’s motion, this court concludes that the circuit court did not erroneously exercise its discretion. The circuit court reasoned in pertinent part:

[T]he Court is obligated under the statute to look at it through the eyes of the children. And here you have a mother who supposedly knew and did know--had actual notice of a jury trial date, and for the reasons you stated in your motion--....

Now you’re telling me that your client was riding around a bus for two and a half hours. In fact she never did show up at the courthouse downtown. And to my knowledge made no effort through the clerk of court system here or downtown to make her presence known at that point and time. This all comes after the fact and substantially so. So I have to question whether or not she intended to appear that day.

....

Now are we supposed to perhaps chance another delay that works to the injustice of the children and to the-- to the detriment of the children. And let me quote a portion

of the statute that says children under 48.01 of the statute under (1)(a), the last paragraph, the courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships are contrary to the welfare of the children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for the parents to correct the conditions that prevent their return to the family. If I grant your motion, it's in my view that's what I would be doing is creating more instability and more impermanence for these children who are waiting for just that, a resolution.

....

I find it unacceptable in view of the fact that she did not once contact this court through my clerk or anyone else out at the juvenile center on that entire day.

It is evident from this passage that the circuit court considered the pertinent facts, applied the correct law and reached a reasonable conclusion. The circuit court's decision was logical and well-reasoned. Although the circuit court does not use the term "excusable neglect," it is clear that the court concluded that Pamela T.'s explanation did not constitute excusable neglect primarily because she made no effort to contact the court by phone to inform it that she was attempting to attend the hearing but had lost her way. Even if this court or another court may have accepted Pamela T.'s explanation for failure to appear and granted her motion to vacate, this court cannot reverse the circuit court's decision because the decision did not constitute an erroneous exercise of discretion.

D. Decision to Terminate Parental Rights.

Finally, Pamela T. argues the trial court erroneously exercised its discretion in failing to conclude that she met all the conditions necessary for the return of her children. Again, our review is subject to the erroneous exercise of discretion standard enunciated above.

After reviewing the record, this court cannot say that the circuit court erroneously exercised its discretion in terminating Pamela T.'s parental rights because there is evidence to support the court's findings that Pamela T. failed to meet many of the conditions set forth in the dispositional order.

The circuit court heard the testimony of the social worker who was working with Pamela T. and considered the record as a whole in reaching its conclusion. The social worker testified that Pamela T. only met one of the twelve conditions required for the return of her children. There is evidence in the record that Pamela did not have the mental capacity to parent the children, and that she is not capable of understanding the special needs of the children, specifically Allen's hearing and language difficulties.

Based on the foregoing, this court cannot say that the circuit court erroneously exercised its discretion.

By the Court.—Order affirmed.

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

