COURT OF APPEALS
DECISION
DATED AND FILED

JUNE 17, 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.

Nos. 98-1020
98-1021
98-1022

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

No. 98-1020

IN THE INTEREST OF TIMOTHY S.,
A PERSON UNDER THE AGE OF 18:

MANITOWOC COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

NANCY K.,

RESPONDENT-APPELLANT.

No. 98-1021

IN THE INTEREST OF JEFFREY S.,
A PERSON UNDER THE AGE OF 18:

MANITOWOC COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

NANCY K.,

RESPONDENT-APPELLANT.

No. 98-1022

IN THE INTEREST OF BRYAN S.,
A PERSON UNDER THE AGE OF 18:

MANITOWOC COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

v.

NANCY K.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Manitowoc County: FRED H. HAZLEWOOD, Judge. *Affirmed.*

ANDERSON, J. Nancy K. appeals from orders terminating her parental rights to three of her children. On appeal, Nancy does not contest the sufficiency of the evidence supporting the jury's verdict nor does she question the trial court's determination at the dispositional hearing to terminate her parental rights. Rather, Nancy makes two procedural claims: (1) the summonses were defective and (2) the petitions to extend the underlying children in need of protection or services orders were invalid and deprived the court of competency to proceed. We reject these arguments and we therefore affirm.

The following facts are undisputed. In 1997, petitions for termination of parental rights (TPR) were filed alleging that Nancy's three children, Bryan S., Timothy S. and Jeffrey S., were children in continuing need of protection or services (CHIPS).[1] Prior to the initial appearance, Nancy filed a motion to dismiss the petitions for failure to comply with statutory time limits, which was denied. Nancy then contested the petitions and requested a jury trial on all three matters. The circuit court consolidated the petitions for trial.

During the pendency of the TPR proceedings, petitions for an extension of the underlying CHIPS orders were filed. Nancy filed a motion to dismiss the extension petitions arguing that they were invalid. The circuit court denied the motion and instead granted the extension petitions. A jury trial was held on November 19 and 20, 1997. The jury returned verdicts that Bryan, Timothy and Jeffrey were in need of protection or services with continued placement outside of their parents' home and that grounds existed for the termination of Nancy's parental rights. Dispositional reports were filed with the court pursuant to § 48.425, STATS. Following a dispositional hearing on January 8, 1998, the court ordered the termination of Nancy's parental rights to all three children.

Nancy appealed all three orders. In an unpublished order dated April 17, 1998, this court consolidated the three cases. Additional facts will be included within the body of the decision as necessary.

[1] The petitions also sought the termination of the parental rights of the father Jeffrey S., Sr. At the initial appearance, the father voluntarily terminated his right to Timothy and Jeffrey and he voluntarily terminated any parental interest in Bryan, although he had never been adjudicated Bryan's father. This portion of the orders are not before this court on appeal.

We now turn to Nancy's claim that "[t]his matter should be dismissed because of a jurisdictional defect in the initiation of the proceedings." In this case, the summonses were signed by the judge on August 15, 1997, and recite:

> A petition for the termination of parental rights to the above named child, a person under the age of 18, *has been filed* and is hereby incorporated by reference. [Emphasis added.]

The petitions, however, were not actually filed with the clerk of courts until August 19, 1997. Nancy was served with the summonses and petitions on August 20, 1997. The summonses notified Nancy that the initial hearing would be on September 16, 1997. By virtue of the discrepancy in the signature date of August 15, 1997, indicating that a petition had been filed and the actual filing date of August 19, 1997, Nancy argues that she was misled into believing that she might have possible grounds to make a timeliness argument.

TPR proceedings are initiated by the filing of a summons and petition. *See* § 48.42(1), STATS. Section 48.422(1), STATS., requires:

> The hearing on the petition to terminate parental rights shall be held within 30 days *after the petition is filed*. At the hearing on the petition to terminate parental rights the court shall determine whether any party wishes to contest the petition and inform the parties of their rights under sub. (4) and s. 48.423. [Emphasis added.]

It is clear that the initial appearance on September 16, 1997, was conducted within thirty days of the *filing* of the petition on August 19, 1997, and no timeliness argument exists. Nancy virtually concedes this point. Nevertheless, she also contends that the summonses "[were] blatantly false in representing that a petition had been filed when in fact a petition had not yet been filed." She insists that the petitioners should have been bound by their own pleadings with the August 15, 1997 date, and that the matter should have been dismissed because the

hearing was conducted outside of the thirty-day time period. We disagree on this point as well.

It seems obvious that the summonses were presented to the judge for signature on August 15, 1997, prior to the filing of the petitions, even though the summonses stated that the TPR petitions had been filed. Assuming on this basis that the summonses are defective, this does not require automatic dismissal of the summonses. Rather, we must determine whether the defects are a "fundamental error" that deprives the court of personal jurisdiction over Nancy, or if the defects are merely a "technical error."[2] *See* ***Burnett v. Hill***, 207 Wis.2d 110, 121, 557 N.W.2d 800, 805 (1997). Whether a defect is fundamental or technical is a question of law that we review de novo. *See* ***id.*** If the error is merely technical, we look to see whether the petitioner established that Nancy was not prejudiced by the error. *See* ***id.***

When considering the nature of defects in the form or service of summons, we must keep in mind the purpose of the statute and the type of action to which the statute relates. *See* ***id.*** at 123, 557 N.W.2d at 805. The supreme court has determined that "a summons is a form document which simply gives notice to the defendant that an action has been commenced against him or her." ***Id.*** at 124, 557 N.W.2d at 806. The summons also confers personal jurisdiction on the circuit court. *See* ***id.*** at 123, 557 N.W.2d at 805. We conclude that the summonses with

[2] We recognize that ***Burnett v. Hill***, 207 Wis.2d 110, 120, 557 N.W.2d 800, 804 (1997), involved the interpretation of § 801.02(3)(a), STATS., which requires a publication summons be authenticated before publication and mailing. However, our supreme court has assumed that chs. 801 to 847, STATS., generally apply to ch. 48, STATS., proceedings. *See* ***Waukesha County Dep't of Soc. Servs. v. C.E.W.***, 124 Wis.2d 47, 53, 368 N.W.2d 47, 50-51 (1985). Because no statute or rule in ch. 48 provides guidance on fundamental or technical defects in a summons, we will look to ***Burnett*** for assistance in the issue before us.

the signature date of August 15, 1997, indicating filing had been completed and a subsequent filing date of August 19, 1997, although not in strict compliance, fulfilled the purpose of § 48.422(1), STATS. *See* ***Burnett***, 207 Wis.2d at 125, 557 N.W.2d at 806. The error was merely a technical error and not a fundamental error.

Thus, we must now consider whether the State has established a lack of prejudice to Nancy. *See* ***id.*** "In determining whether a technical error has prejudiced a defendant, we bear in mind the legislature's instruction that we disregard a defect which does not affect the substantial rights of the party asserting error." ***Id.*** at 126, 557 N.W.2d at 807.

In ***Burnett***, the complainant failed to comply with the authentication requirement for a publication summons. *See* ***id.*** at 114-15, 557 N.W.2d at 802. The supreme court concluded that the mailing of an unauthenticated copy of the publication summons fulfilled the purpose of the statute and was therefore merely a technical error. *See* ***id.*** at 125, 557 N.W.2d at 806. The court also held that the substantial rights of the defendant were not affected by the technical failure of the complainant to comply with the authenticated publication requirement. The court noted that despite the technical error, the defendant acquired all of the information necessary for him to timely respond to the complainant's complaint such that his attorney appeared in the suit. *See* ***id.*** at 127, 557 N.W.2d at 807.

Similarly, the substantial rights of Nancy were not affected by the technical error in the summonses. The initial hearing was conducted within thirty days of the actual filing of the summonses and petitions on August 19, 1997, in compliance with § 48.422(1), STATS. Moreover, Nancy was served with the summonses and petitions on August 20, 1997, well within seven days of the filing

as required by § 48.42(4)(a), STATS. Nancy had acquired all of the information necessary to contest the petitions and had ample time to prepare for the initial hearing. We conclude that even though the petitioner's summonses incorrectly stated that the petitions had been filed at the time the judge signed them on August 15, 1997, it nevertheless fulfilled the purpose of notice and the circuit court was competent to proceed.

Nancy also questions the validity of the petitions for the extension of the underlying CHIPS orders originally entered on October 12, 1994. After the TPR proceedings had been initiated, extension petitions were filed to extend the dispositional orders for 120 days. A few days earlier, a court report was filed. *See* § 48.365(2g)(a), STATS. The court report failed to include a copy of the report of the administrative panel which conducts a review of the permanency plan, a statement of when termination of parental rights was recommended or why adoption would be in the best interest of the child, and whether the child should be registered with the adoption information exchange. *See* § 48.365(2g)(b)1 & 3.

Section 48.365(2g), STATS., provides in relevant part:[3]

> **(2g)**(a) At the hearing the person or agency primarily responsible for providing services to the child shall file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the child's rehabilitation or care and treatment.…
>
> (b) If the child is placed outside of his or her home, the report *shall* include all of the following:
>
> 1. A copy of the report of the review panel under s. 48.38(5), if any, and a response to the report from the agency primarily responsible for providing services to the child.

[3] Section 48.365(2g)(a), STATS., has been amended by 1997 Wis. Act 27, § 1587. The amendment does not affect our analysis.

> ….
>
> 3. If the child has been placed outside of his or her home for 2 or more years, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the child. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the child and whether or not the child should be registered with the adoption information exchange.… [Emphasis added.]

Nancy argues that the use of the word "shall" makes this a mandatory provision and the failure to include the requisite information deprived the court of competency to proceed. Whether a circuit court loses competency to act if the court report fails to strictly comply with § 48.365(2g), STATS., presents a question of law. *See* ***State v. Kywanda F.***, 200 Wis.2d 26, 32, 546 N.W.2d 440, 444 (1996). We review questions of law de novo. *See* ***id.*** at 32-33, 546 N.W.2d at 444.

While we agree that the term "shall" is presumed to be mandatory when it appears in a statute, "the mandatory nature of [a] statute does not necessarily mean that noncompliance requires the loss of competence." ***Id.*** at 33, 546 N.W.2d at 444. In general, courts have interpreted various time limits in ch. 48, STATS., to be mandatory. *See* ***Kywanda F.***, 200 Wis.2d at 34, 546 N.W.2d at 445. Those courts which have held that noncompliance with ch. 48 time limits results in the loss of the court's competency to proceed have relied on legislative history to support such a result. *See* ***Kywanda F.***, 200 Wis.2d at 34, 546 N.W.2d at 445.

However, unlike the legislative history relevant to time limits in ch. 48, STATS., Nancy does not cite any legislative history to support her argument that the legislature intended that noncompliance with § 48.365(2g), STATS., would result in the court losing competency to proceed.[4] Our own review reveals none either. Because no legislative history supports Nancy's argument, this claim fails. *See* ***Kywanda F.***, 200 Wis.2d at 35, 546 N.W.2d at 445. We conclude that the court had competency to proceed with the CHIPS extension orders.

Nancy further insists that the error warrants dismissal of the TPR petitions because the "[CHIPS] statute serves the function of providing notice to individuals who might contest the petition of what the basis of the petition is." Nancy cites to no authority for her proposition that a TPR proceeding should be dismissed because a CHIPS extension petition does not strictly comply with § 48.365(2g)(b), STATS. Arguments unsupported by references to legal authority will not be considered. *See* ***State v. Pettit***, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). Nancy, however, claims "fundamental fairness and due process is involved," again without recitation to any case law. We do not decide the validity of constitutional claims that are broadly stated but not specifically argued. *See* ***State v. Scherreiks***, 153 Wis.2d 510, 520, 451 N.W.2d 759, 763 (Ct. App. 1989).

In spite of any technical error with the court report, we note that the review of the permanency plan was conducted, Nancy attended the review and she

[4] The case cited by Nancy, ***Green County Department of Human Services v. H.N.***, 162 Wis.2d 635, 469 N.W.2d 845 (1991), involved time limits mandated in ch. 48, STATS., and is distinguishable. In ***H.N.***, the supreme court determined that the time limits involving the thirty-day extension of CHIPS orders were ordered mandatory by the legislature, that the time limits had elapsed and that the circuit court was no longer competent to proceed. *See* ***H.N.***, 162 Wis.2d at 654, 469 N.W.2d at 852.

was given a copy of the report of the review panel. Thus, there is no prejudice resulting from the administrative report not being attached to the court report. In addition, the CHIPS extension orders were entered after the TPR petitions were filed, after Nancy contested them and after she requested a jury trial. Thus, it is difficult to discern any prejudice Nancy suffered by the court report not containing specific statements about the TPR and the adoption as Nancy had notice of (and was even contesting) the county's intentions regarding her children.

Moreover, Nancy, by her own admission, "does not claim that the verdict rendered by the jury was not supported by the evidence," nor does she "argue that [the court's] decision at the dispositional hearing was an erroneous exercise of discretion." Even though Nancy does not contest the evidentiary basis of the TPR proceedings, she nevertheless insists that a technical error in the underlying CHIPS extension petitions warrants dismissal of the TPR orders. For the above-stated reasons, we disagree.

By the Court.—Orders affirmed.

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