

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 13, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

**Nos. 00-0233
00-0234**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

No. 00-0233

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

LA CROSSE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

DEBRA J.A.,

RESPONDENT-APPELLANT.

No. 00-0234

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

LA CROSSE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

DEBRA J.A.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for La Crosse County:
DALE T. PASELL, Judge. *Affirmed.*

¶1 DYKMAN, P.J.¹ Debra J.A. appeals from trial court orders terminating her parental rights to her children, Brittany S. and Jesse F. She argues that the trial court lost competency to proceed by not complying with statutory time limit requirements when it rescheduled her initial hearing. We disagree and affirm.

I. Background

¶2 On May 17, 1999, La Crosse County filed petitions to terminate Debra J.A.'s parental rights to her children, Brittany S. and Jesse F. On June 1, 1999, the trial court held a hearing on the petitions. Debra J.A. was not present because she was out of town, but the attorney who had been appointed to represent her in her CHIPS cases appeared on her behalf. He explained that he was not making a formal appearance and that Debra J.A. would need to have a public defender appointed to represent her in the termination of parental rights (TPR) case. The attorney asked for a one-week continuance to allow her to do so. The county also explained that it had been unable to serve one of the fathers and requested a two-week continuance. The court rescheduled the hearing for June 15, 1999.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98).

¶3 The next hearing took place on June 22, 1999. Nothing in the record indicates why a hearing was not held on June 15. At the June 22 hearing, Debra J.A. appeared with her new attorney and entered a denial to the allegations in the TPR petitions. After a jury trial, the trial court ordered that Debra J.A.'s parental rights to Brittany S. and Jesse F. be terminated. Debra J.A. appeals.

II. Analysis

¶4 Debra J.A. argues that the trial court lost competency to proceed because it did not hold her initial hearing within thirty days after the filing of the petitions, as required by WIS. STAT. § 48.422(1) (1997-98).² She asserts that her initial hearing was not held until June 22, 1999, more than thirty days after the petitions were filed on May 17, 1999. She contends that the trial court did not comply with the provisions for extending time deadlines set forth in WIS. STAT. § 48.315 when it held the June 22 hearing.

¶5 WISCONSIN STAT. § 48.422(1) establishes a mandatory time limit for holding the initial hearing in a TPR case. *See State v. April O.*, 2000 WI App 70, ¶5, Nos. 99-2485, 99-2486, 99-2487. A trial court's failure to comply with such a mandatory time limit deprives it of competency to proceed. *See T.H. v. La Crosse County*, 147 Wis. 2d 22, 25, 433 N.W.2d 16 (Ct. App. 1988), *aff'd per curiam by an equally divided court*, 150 Wis. 2d 432, 441 N.W.2d 233 (1989). The Children's Code, WIS. STAT. ch. 48, "contains no provision for the waiver of time

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted. WISCONSIN STAT. § 48.422(1) provides:

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.

limits, and the only provisions for delays, continuances and extensions are set forth in § 48.315, STATS.” *Waukesha County v. Darlene R.*, 201 Wis. 2d 633, 640, 549 N.W.2d 489 (Ct. App. 1996).

¶6 WISCONSIN STAT. § 48.315 provides:

Delays, continuances and extensions. (1) The following time periods shall be excluded in computing time requirements within this chapter:

(a) Any period of delay resulting from other legal actions concerning the child or the unborn child and the unborn child’s expectant mother, including an examination under s. 48.295 or a hearing related to the mental condition of the child, the child’s parent, guardian or legal custodian or the expectant mother, prehearing motions, waiver motions and hearings on other matters.

(b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and his or her counsel or of the unborn child by the unborn child's guardian ad litem.

(c) Any period of delay caused by the disqualification of a judge.

(d) Any period of delay resulting from a continuance granted at the request of the representative of the public under s. 48.09 if the continuance is granted because of the unavailability of evidence material to the case when he or she has exercised due diligence to obtain the evidence and there are reasonable grounds to believe that the evidence will be available at the later date, or to allow him or her additional time to prepare the case and additional time is justified because of the exceptional circumstances of the case.

(e) Any period of delay resulting from the imposition of a consent decree.

(f) Any period of delay resulting from the absence or unavailability of the child or expectant mother.

(fm) Any period of delay resulting from the inability of the court to provide the child with notice of an extension hearing under s. 48.365 due to the child having run away or otherwise having made himself or herself unavailable to receive that notice.

(g) A reasonable period of delay when the child is joined in a hearing with another child as to whom the time for a hearing has not expired under this section if there is good cause for not hearing the cases separately.

(1m) Subsection (1) (a), (d), (e) and (g) does not apply to proceedings under s. 48.375 (7).

(2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

¶7 The good cause requirements of WIS. STAT. § 48.315(2) “control all extensions of time deadlines under the Children’s Code.” *J.R. v. State*, 152 Wis. 2d 598, 607, 449 N.W.2d 52 (Ct. App. 1989). A trial court may extend time deadlines under the specific circumstances listed in § 48.315(1), or may grant a continuance directly under § 48.315(2). See *M.G. v. La Crosse County Human Servs. Dep’t*, 150 Wis. 2d 407, 418, 441 N.W.2d 227 (1989). Whether the trial court complied with § 48.315 in this case is a question of law that we review de novo. See *Darlene R.*, 201 Wis. 2d at 639.

¶8 We conclude that the trial court did not lose competency to proceed because it complied with WIS. STAT. § 48.315 when it held Debra J.A.’s initial hearing on June 22, 1999. We agree with Debra J.A. that none of the circumstances listed in § 48.315(1) as requiring an extension of a time limit are present in this case. However, a trial court may also grant a continuance directly under § 48.315(2) as long as it is based on good cause. Debra J.A. concedes that the court had good cause to grant a two-week continuance to June 15, 1999 because she was not present at the June 1 hearing and had not yet obtained an attorney. By granting a two-week continuance, the trial court extended the time deadline under WIS. STAT. § 48.422(1) by two weeks. June 22 fell within that

extended time limit and the court did not need an additional showing of good cause to hold the continued hearing on that date instead of June 15.

¶9 Debra J.A. points out that a June 15 hearing would have been within thirty days of the date the petitions were filed and that the June 22 hearing was not. She argues that the trial court's continuance applied only to the scheduled June 15 hearing and that the court needed additional good cause to reschedule that hearing to June 22. We disagree. By continuing the initial hearing to June 15 based on good cause, the trial court tolled the time limit under WIS. STAT. § 48.422(1) for two weeks. The time between June 1 and June 15 did not count toward the thirty-day time limit because the delay was prompted by good cause. Since those two weeks did not count toward the time limit, June 22 fell within the statutorily required time period and the court did not need additional good cause to reschedule the hearing to that date.

¶10 Because we conclude that the trial court properly held Debra J.A.'s initial hearing on June 22, 1999, we need not address the County's contention that Debra J.A. waived her right to appeal the timeliness of the hearing by failing to raise the issue before the trial court. For the reasons set forth above, we affirm the trial court's termination of Debra J.A.'s parental rights.

By the Court.—Orders affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

