

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 6, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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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.

No. 00-1826

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

ALLEN L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
DAVID M. BASTIANELLI, Judge. *Affirmed.*

¶1 NETTESHEIM, J.¹ Allen L., the father of Shaliyah L., appeals from an order terminating his parental rights (TPR) for failure to assume parental responsibility pursuant to WIS. STAT. § 48.415(6). Allen contends that the termination order is invalid because he was not provided the warnings required by WIS. STAT. § 48.356. We reject Allen's argument because the warnings set out in the statute are not required when the grounds for the TPR are a failure to assume parental responsibility.

¶2 We combine our legal analysis with our recital of the relevant facts. Prior to the commencement of the instant TPR action, the State had commenced a proceeding alleging that Shaliyah was in need of protection or services (CHIPS) pursuant to WISCONSIN STAT. § 48.13. Shaliyah's mother, Debra F., was provided notice of, and participated in, these proceedings. *See* WIS. STAT. § 48.27. Allen, however, was not notified of the proceedings and did not participate. In due course, the juvenile court entered a CHIPS order placing Shaliyah outside Debra's home. Pursuant to WIS. STAT. § 48.356(1) and (2), the court advised Debra of the conditions she must satisfy for a return of Shaliyah to her home.²

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version.

² WIS. STAT. § 48.356 provides in relevant part:

(1) Whenever the court orders a child to be placed outside his or her home ... because the child ... has been adjudged to be in need of protection or services ... the court shall orally inform the parent or parents who appear in court ... of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child ... to be returned to the home....

(2) In addition to the notice required under sub. (1), any written order which places a child ... outside the home ... shall notify the parent or

(continued)

¶3 The State then filed the instant TPR action against Debra and Allen. As to Debra, the petition alleged two grounds: (1) that Debra had abandoned Shaliyah pursuant to WIS. STAT. § 48.415(1)(a)2; and (2) that Debra was an unfit parent because she had failed to satisfy the conditions established in the CHIPS order for the safe return of Shaliyah to her home pursuant to § 48.415(2). As required by both §§ 48.415(1)(a)2 and (2), the TPR petition alleged that the written order in the CHIPS proceeding had provided Debra with the notice required by WIS. STAT. § 48.356.

¶4 However, as to Allen, the TPR petition was not premised upon the prior CHIPS proceeding or order. Instead, the petition alleged that Allen had failed to assume his parental responsibilities for Shaliyah pursuant to WIS. STAT. § 48.415(6). Allen sought dismissal of the TPR petition, contending that he had not been provided the information and notice required by WIS. STAT. § 48.356. The juvenile court rejected this argument. A jury later determined that Allen had failed to assume his parental responsibilities and the court terminated Allen's parental rights at the dispositional hearing.

¶5 The premise of Allen's appeal is that he was entitled to the information, notice and warnings prescribed by WIS. STAT. § 48.356. His logic is as follows. The statute applies when the child has been placed outside the home pursuant to a CHIPS order. In that setting, the statute requires that the juvenile court orally inform the parent or parents of "any grounds for termination of

parents ... of the information specified under sub.
(1).

parental rights under s. 48.415 which may be applicable.” *Id.*³ Since a failure to assume parental responsibility is included among the grounds for termination of parental rights under WIS. STAT. § 48.415(6), Allen concludes that the court erred in failing to warn him that such a failure could result in the termination of his parental rights.

¶6 While we agree with Allen’s statements as to when WIS. STAT. § 48.356(1) applies and as to what the statute requires of the juvenile court, we disagree with his conclusion that the statute applies under the facts of this case. Rather, by its very terms, the statute applies to the parent or parents “who appear in court.” Here, the CHIPS proceeding involved only Debra and only Debra appeared in that action. True, when the court conducted the initial appearance on the TPR petition, it also conducted a simultaneous extension hearing in the CHIPS case. But the CHIPS aspect of the proceeding did not concern Allen and it did not entitle him to the advance information contemplated by § 48.356(1).

¶7 If we accept Allen’s argument that he can “piggy-back” on the CHIPS case involving Debra and invoke the warnings requirement of WIS. STAT. § 48.356 as a defense to the TPR action, we would necessarily have to also conclude that the State could have sought the termination of Allen’s parental rights based upon a claim that he had failed to satisfy the conditions for Shaliyah’s return as recited in the CHIPS order. That would clearly be improper and unfair to Allen because he was not privy to those proceedings and was not bound by the conditions set out in the CHIPS order. Just as we would not permit the State to

³ In addition to the oral notice required by WIS. STAT. § 48.356(1), subsec. (2) of the statute requires that any written order which places a child outside the home also recite the notice and warnings.

use the CHIPS order as a sword against Allen in this TPR proceeding, neither do we permit Allen to use the CHIPS warning as a shield.

¶8 A further reason supports our holding. The TPR petition directed at Debra alleged in part that she was an unfit parent because she had failed to satisfy the conditions established in the CHIPS order for the safe return of Shaliyah to her home pursuant to WIS. STAT. § 48.415(2). This statute requires that the CHIPS order contain the “notice required by s. 48.356(2).” Section 48.415(2)(a)1. But as to Allen, the TPR petition alleged a “failure to assume parental responsibility” pursuant to § 48.415(6)(a). This paragraph does not require any prior notice or warning.

¶9 We agree with the juvenile court’s ruling that Allen was not entitled to the statutory warnings set out in WIS. STAT. § 48.356. We affirm the TPR order.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

