

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 15, 2001

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. 00-2628
00-2629**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

No. 00-2628

**IN THE INTEREST OF AMY T-A.,
A PERSON UNDER THE AGE OF 18:**

**AMY T-A., BY GUARDIAN AD LITEM,
G. STEVEN KAMINSKI,**

APPELLANT,

V.

JUDY A.,

RESPONDENT.

No. 00-2629

**IN THE INTEREST OF SONNY T-A.,
A PERSON UNDER THE AGE OF 18:**

**SONNY T-A., BY GUARDIAN AD LITEM,
G. STEVEN KAMINSKI,**

APPELLANT,

V.

JUDY A.,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
THOMAS R. COOPER, Judge. *Dismissed.*

¶1 CURLEY, J.¹ G. Steven Kaminski, the guardian ad litem for Amy T-A. and Sonny T-A., appeals the trial court's order denying his and the State's request for an extension of a previously entered dispositional order that found his wards in need of protection and services (CHIPS order). Kaminski argues that the trial court erred by applying the wrong standard in declining to extend the CHIPS order, and that the trial court erroneously exercised its discretion in denying the extension because the circumstances prompting the trial court to enter the first order were still in existence at the time of the hearing. This court concludes that the matter is moot because at the time of the extension hearing the trial court had lost subject-matter jurisdiction. Therefore, this appeal is dismissed.

I. BACKGROUND.

¶2 Judy A.'s involvement with the Children's Court started in January 1998, when the police were sent to investigate a report of child abuse concerning

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

Peter T-A., another of Judy A.'s children. Peter T-A. told the police that his mother bit him, causing the bite mark on his arm. Peter T-A. also related that his mother became extremely angry and that she often spanked him and threw things at him. Judy A. admitted to the police that she bit her son. She related that she was not remorseful, in fact, she stated she was teaching Peter a lesson when she bit him because he refused to obey her. Peter was detained at school and eventually placed with his father. When Judy A. refused to discuss the abuse allegation with a social worker, a "pick-up" order was obtained for Judy A.'s other two children, Amy T-A. and Sonny T-A., because of concerns raised over the children's safety in Judy's care. No allegations ever surfaced that Judy A. actually abused Amy T-A. or Sonny T-A.

¶3 When the police attempted to execute the "pick-up" order, Judy A. became extremely uncooperative with the police, resulting in Judy A.'s arrest for disorderly conduct. While the matter was pending, Amy T-A. and Sonny T-A. were placed back in their mother's care. A CHIPS petition was filed, and on December 1, 1998, the trial court entered a dispositional order for one year giving custody of Amy T-A. and Sonny T-A. to the County, and placement of the children with Judy A. The order required Judy A. to fulfill certain conditions such as maintaining a suitable residence, cooperating with the authorities, etc., before the court would restore the children's custody to her. Shortly after the order was entered, Judy A. advised the court that she had moved to Arizona. The State sought to have Arizona supervise the matter, but was unsuccessful. Eventually, Judy A. returned to Wisconsin and began living in Green Bay with Amy T-A. and Sonny T-A.

¶4 In November 1999, the State petitioned the trial court, seeking a one-year extension of the order for all three children. At the hearing held on

November 22, 1999, the parties stipulated to toll the time limits, found in WIS. STAT. § 48.365(6),² in order to permit the guardian ad litem and Judy A.'s attorney to visit Judy A. at her home. A new hearing date of December 21, 1999, was scheduled. On December 21, 1999, Judy A. failed to appear. In light of her absence, the trial court entered an order extending the CHIPS order for one year for all three children. Later, Judy A.'s attorney advised the trial court by motion that Judy A. mistakenly believed the trial date was set for December 22, 1999, and that she had appeared on that date. On February 1, 2000, the trial court granted her motion to reopen, and at the same time vacated its earlier extension of the CHIPS order and set a hearing date. On March 27, 2000, the trial court held a hearing to determine whether the December 1, 1998 order should be extended. The trial court extended the order for Peter, but denied the guardian ad litem's and the State's request to extend the order for Amy T-A. and Sonny T-A. After the trial court signed an order denying the extension and revision of the dispositional order as it related to Amy T-A. and Sonny T-A., this appeal followed.

II. ANALYSIS.

¶5 The guardian ad litem argues that the trial court erred because the trial court applied a "safety standard" rather than a "best interest" standard in denying the request for an extension. Further, the guardian ad litem submits that the trial court erroneously exercised its discretion in deciding not to extend the order because the identical facts and circumstances which brought about the order still existed at the time of the hearing on the extension.

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶6 Judy A. submits that pursuant to WIS. STAT. §§ 48.365 and 48.315, and *Sallie T. v. Milwaukee County DHHS*, 219 Wis. 2d 296, 581 N.W.2d 182 (1998) (holding that the circuit court's competence to proceed expired on the same day as the dispositional order), this appeal is moot. Judy A. has also responded to the issues raised by the guardian ad litem. Judy A. contends that the trial court applied the correct standard in deciding not to extend the order and that the factual underpinnings for the original order had significantly changed and improved since the original hearing.

¶7 This court first addresses Judy A.'s challenge to the trial court's jurisdiction. This court concludes that the case is moot.³ The court determines that the appeal is moot because: (1) under WIS. STAT. § 48.365(2), when a petition is filed before the original CHIPS order expires, an extension of a CHIPS order can be granted only after a hearing; (2) under § 48.365(6), the trial court can extend the CHIPS order for the purpose of conducting a hearing for only thirty days; (3) under WIS. STAT. § 48.315, and case law interpreting the statute, a court loses competence to exercise jurisdiction to extend the CHIPS order if the hearing is not held within thirty days. *See Green County Dep't of Human Servs. v. H.N.*, 162 Wis. 2d 635, 650-58, 469 N.W.2d 845 (1991). Applying those rules to the facts presented here, this court determines that the trial court lost competence to proceed when the trial court vacated the December 21, 1999 extension order on February 1, 2000, and failed to conduct a hearing until March 27, 2000.⁴

³ Moreover, this court notes that the guardian ad litem failed to respond to Judy A.'s argument by failing to file a reply brief. *See Charolais Breeding Ranches, Ltd. v. FPC Securities*, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979 (an assertion not disputed is deemed admitted)).

⁴ The February 1, 2000 order of the trial court reopening the matter and vacating the extension does not appear in the record. However, the guardian ad litem has not challenged Judy A.'s contention that those events occurred on February 1, 2000.

Inasmuch as this matter is moot, this court declines to address the issues raised. Accordingly, the appeal is dismissed.

By the Court.—Appeal dismissed.

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

