COURT OF APPEALS
DECISION
DATED AND FILED

July 14, 2010

A. John Voelker
Acting Clerk of Court of Appeals

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.

Appeal Nos. 2009AP1034
2009AP1035

Cir. Ct. Nos. 2008TP7
2008TP12

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

NO. 2009AP1034
IN RE THE TERMINATION OF PARENTAL RIGHTS TO SAVANNAH K. K., A PERSON UNDER THE AGE OF 18:

SHEBOYGAN COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

VINCENT E. K.,

RESPONDENT-APPELLANT,

KATHRYN A. D.,

RESPONDENT.

NO. 2009AP1035
IN RE THE TERMINATION OF PARENTAL RIGHTS TO ANGELINA J. K., A PERSON UNDER THE AGE OF 18:

SHEBOYGAN COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

VINCENT E. K.,

RESPONDENT-APPELLANT,

KATHRYN A. D.,

RESPONDENT.

APPEAL from orders of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Affirmed.*

¶1 ANDERSON, J.[1] Vincent E. K. appeals from orders terminating his parental rights to his daughters. He challenges the circuit court's denial of his motions to dismiss the petitions for termination of parental rights because the underlying CHIPS orders did not contain a listing of specific services to be provided by Sheboygan County Department of Health & Human Services as required by WIS. STAT. § 48.355(2)(b)1.[2] We affirm the circuit court's orders

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] We ordered these appeals to be held in abeyance on June 10, 2009, pending a decision from the Supreme Court of Wisconsin in ***Sheboygan County DHHS v. William S.L.***, Nos. 2008AP3065, 2008AP3066, 2008AP3067, 2009AP136, 2009AP137, and 2009AP138, unpublished slip op. (WI App Apr. 29, 2009). A decision was released on June 29, 2010, ***Sheboygan County DHHS v. William S.L.***, 2010 WI 55, Nos. 2008AP3065, 2008AP3066, 2008AP3067, 2009AP136, 2009AP137, and 2009AP138 (Abrahamson, C.J., concurring).

because Vincent has forfeited his right to challenge the sufficiency of the CHIPS orders.

¶2 When CHIPS orders for both children were entered on May 18, 2006, Vincent was incarcerated in the Sheboygan county jail. Subsequent to the issuance of the orders, four court hearings were conducted over a period of approximately nineteen months culminating in the filing of petitions for termination of parental rights as to both of Vincent's daughters. The petitions alleged that they were in need of continuing protection or services. WIS. STAT. § 48.415(2)(a). The initial appearance was scheduled for May 9, 2008, and after a series of adjournments and continuances, Vincent entered a denial to all allegations on August 12, 2008, and requested a jury trial.

¶3 On September 23, 2008, Vincent joined in the motion filed by the children's mother challenging the sufficiency of the petitions for termination of parental rights. The challenge was based on the grounds that the underlying CHIPS orders did not contain "specific services to be provided to the children and the family by the Department as required by WIS. STAT. § 48.355(2)(b)1." On October 9, 2008, the circuit court found the petitions to be sufficient and denied the motions. On December 1, 2008, the first morning of the jury trial, Vincent

entered an admission to the allegations of the petition and the court found grounds for termination of his parental rights.[3] Vincent appeals.

¶4 The only issue Vincent raises on appeal is his contention

> that the underlying CHIPS orders failed to set forth court-ordered services for the Department to provide Vincent [E.]K. and therefore, the County could not, as a matter of law, establish the element that the Department had made reasonable efforts to provide Vincent [E.]K. with court-ordered services as required by Wis. Stats. § 48.415(2)(a).

¶5 We need not reach this issue. The court of appeals is a fast-paced, high-volume, error-correcting court, ***State ex rel. Swan v. Elections Bd.***, 133 Wis. 2d 87, 93, 394 N.W.2d 732 (1986); as such, it follows the unassailable principle of appellate review that an appellate court should decide cases on the narrowest possible grounds, ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989).

¶6 This case can be resolved by application of the forfeiture rule. We conclude that Vincent forfeited his objection to the CHIPS orders of May 18,

[3] Vincent's entry of an admission to the allegations of the petitions, after losing his motion to dismiss, raises the question of whether the guilty plea waiver rule would be applicable. The rule provides, "[A] plea of guilty, knowingly and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claimed violations of constitutional rights." ***County of Racine v. Smith***, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984). Whether the rule is applicable in a TPR case is a question of first impression. We will not address the question for three reasons. First, it would consume legal resources because we would require the parties to submit supplemental briefing on the application of the guilty plea waiver rule to the facts in this case. Second, it would consume precious judicial resources because a question of first impression would require consideration by a three-judge panel. *See* WIS. STAT. RULE 809.41. Third, it would further delay a final resolution in this case leaving Vincent and his children in legal limbo.

2006, by not voicing an objection for more than two years after the orders were entered.[4]

¶7 In ***State v. Ndina***, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612, the supreme court explains that, while courts often use "waiver" and "forfeiture" interchangeably, they are distinct concepts. When the right to make an objection or assert a right on appeal is lost because of failure to do so in the circuit court, the proper term is "forfeiture." *See* ***id.*** As the supreme court explained in ***State v. Huebner***, 2000 WI 59, ¶11, 235 Wis. 2d 486, 611 N.W.2d 727:

> The [forfeiture] rule is not merely a technicality or a rule of convenience; it is an essential principle of the orderly administration of justice. The rule promotes both efficiency and fairness, and "go[es] to the heart of the common law tradition and the adversary system." (Second alteration in original; citations omitted.)

¶8 In ***Huebner***, the court went on to explain the benefits of the forfeiture rule:

> The [forfeiture] rule serves several important objectives. Raising issues at the trial court level allows the trial court to correct or avoid the alleged error in the first place, eliminating the need for appeal. It also gives both parties and the trial judge notice of the issue and a fair opportunity to address the objection. Furthermore, the [forfeiture] rule encourages attorneys to diligently prepare for and conduct trials. Finally, the rule prevents attorneys from "sandbagging" errors, or failing to object to an error for strategic reasons and later claiming that the error is grounds

[4] By applying the forfeiture rule, we are embracing the concurring opinion of Chief Justice Abrahamson in ***William S.L.***, 2010 WI 55, and its admonition that cases should be decided "in accordance with sound appellate practices," ***id.***, ¶90 (Abrahamson, C.J., concurring), and avoid unnecessary "broad strokes, and mistaken ones at that." ***Id.***, ¶89 (Abrahamson, C.J., concurring).

> for reversal. For all of these reasons, the [forfeiture] rule is essential to the efficient and fair conduct of our adversary system of justice.

Id., ¶12 (citations omitted).

¶9 The CHIPS orders that Vincent asserts are deficient, because they lack a listing of specific services to be provided him and his children as required by WIS. STAT. § 48.415(2)(a), were entered on May 18, 2006. There is nothing in the record to show that Vincent filed a motion challenging the orders anytime after that date. Hearings were conducted on June 23, 2006, November 3, 2006, December 14, 2007, and February 8, 2008, and there is nothing in the record to establish that Vincent brought his concerns to the attention of the circuit court. For two years Vincent knew the contents of the CHIPS orders, he had frequent contact with the circuit court and did not alert the Department or the circuit court to his challenge to the sufficiency of the orders. If Vincent had made a timely objection, all of the benefits of the forfeiture rule described in ***Huebner***, 235 Wis. 2d 486, ¶12, would have accrued to correct any error and short circuit this appeal.

By the Court.—Orders affirmed.

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