

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 1997

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 97-2347

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

**IN RE THE TERMINATION OF PARENTAL RIGHTS OF
SUMMER A.D., A PERSON UNDER THE AGE OF 18:**

DOUGLAS COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SUSAN L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Douglas County:
JOSEPH MCDONALD, Judge. *Reversed and cause remanded.*

HOOVER, J. Susan L. appeals the order terminating her parental rights to Summer A.D. She contends that she was not provided adequate written notice of the grounds for termination of her parental rights as required by § 48.356, STATS. This court agrees and therefore reverses the order terminating Susan's parental rights.

On April 3, 1995, the court entered an original order finding Summer in need of protection and services. Three extensions followed that order, issued on October 31, 1995, April 9, 1996, and October 16, 1996. Further, a temporary order was issued September 27, 1996, effective until October 14, 1996. The original order contained the following notice:

Pursuant to Wis. Stats. Sec. 48.356, the parents were orally informed in Court and are hereby notified that grounds for involuntary termination of parental rights under Wis. Stats. Sec. 48.415(2) are applicable and that the conditions necessary for the child to be returned to the home are listed in this order.

While the order referenced § 48.415(2), STATS., it did not contain a copy of the statute or a substantive explanation of the subsection, which provides that a potential ground for terminating parental rights is a continuing need of protection or services. *Id.* The order went on to list conditions of the child's return.

The orders issued on October 31, 1995, and April 9, 1996, were substantially the same as the initial order. The temporary extension order also contained no warning. The order issued October 16, 1996, contained a copy of § 48.415, STATS., listing all applicable grounds for termination. However, this order failed to provide written notice of the conditions necessary for the child's return. On November 1, 1996, seventeen days after the last hearing, the State filed a petition to terminate Susan's parental rights.

The procedure for notifying parents of grounds for terminating parental rights is set forth in § 48.356, STATS., which reads:

(1) Whenever the court orders a child to be placed outside his or her home or denies a parent visitation because the child has been adjudged to be in need of protection or services under s. 48.345, 48.357, 48.363 or 48.365, 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 or for the parent to be granted visitation.

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

Section 48.356 requires both oral and written notification of both the applicable grounds for terminating parental rights and the conditions necessary for the child's return. The State contends that a numerical reference to the appropriate grounds is sufficient compliance with the written notification requirement.

This case involves a question of statutory interpretation that presents a question of law we review de novo. *State v. Michels*, 141 Wis.2d 81, 87, 414 N.W.2d 311, 313 (Ct. App. 1987). If the language is clear and unambiguous, the primary source of statutory interpretation is the language of the statute itself. *Robert Hansen Trucking v. LIRC*, 126 Wis.2d 323, 332, 377 N.W.2d 151, 155 (1985).

Sections 48.356(1) and (2), STATS., unambiguously require that an order placing a child out of the home or denying visitation notify the parent in writing of all information provided orally under § 48.356(1). Parents are to be orally informed of the *grounds* for termination, not the statute where such grounds are found. *See id.* They are entitled to the same notice in writing. *Id.* The trial court's duty to warn and inform the parent under § 48.356(2) is included in the "panoply of substantive rights and procedures [that] assure ... parental rights will not be terminated precipitously [or] arbitrarily' The statute is mandatory,

unequivocal and imperative.” *In re D.F.*, 147 Wis.2d 486, 495, 433 N.W.2d 609, 612 (Ct. App. 1988) (quoting *In re M.A.M.*, 116 Wis.2d 432, 441, 342 N.W.2d 410, 414 (1984)). “The importance of the notice required by sec. 48.356(2) is reflected in the fact that the legislature has required that the dispositional orders which establish the CHIPS grounds for termination include the notice.” *Id.* This court recognizes the importance of promoting the adoption of children into stable families over allowing children to languish in the instability of foster placement. *See* § 48.01(1)(gg), STATS. However, it cannot address this concern by denying the unambiguous and mandatory protections afforded parents under the notice statute.

None of the written orders complies with the requirements of § 48.356, STATS. None contains both the conditions of return *and* a list or explanation of applicable grounds for termination. Four of the five orders simply reference the statute and the applicable subsection. The statutory scheme on its face demonstrates both that oral warnings are insufficient to remedy the omission and that it is not the parent’s responsibility to seek out the statute to determine the applicable termination grounds that might apply to them. The statutory imperative places the burden on the trial court to assure that the parent is provided written notification of applicable grounds for terminating parental rights.

The order issued from the October 14, 1996, hearing does contain a copy of § 48.415, STATS., listing applicable grounds for termination. This order was the first to contain any reference to the substance of the applicable grounds for termination. It was provided, however, only seventeen days before the State filed a petition to terminate Susan’s parental rights. The written warning is intended to provide the parents with sufficient opportunity to conform their conduct and take the action necessary to achieve reunification and prevent termination. Seventeen

days' written notice before petitioning to terminate is insufficient to fulfill the statute's purpose. Further, the order failed to provide a list of necessary conditions for the child's return.

The State relies on dicta in *In re Jamie L.*, 172 Wis.2d 218, 493 N.W.2d 56 (1992), to support its contention that providing only a numerical reference to the grounds for termination in § 48.415, STATS., is a valid interpretation of § 48.356(2), STATS., and provides sufficient written notice. However, that case stands for the proposition that notifying a parent in writing of *more* grounds for termination of parental rights than are specifically applicable to their particular case satisfies the notice requirement. *Id.* at 227-28, 493 N.W.2d at 60-61 (emphasis added). Thus, it does not support the State's position.

In conclusion, a numerical reference to the applicable grounds for terminating parental rights under § 48.415, STATS., is insufficient written notice under § 48.356, STATS. Instead, the trial court must either provide a parent with a copy of § 48.415 or provide a written explanation in layman's terms of the applicable grounds for terminating parental rights.¹ While the State is not precluded from initiating further CHIPS actions against Susan, those actions must be consistent with the written notice requirements discussed in this opinion.

By the Court.—Order reversed and cause remanded.

¹ Susan also raises the argument that written notification failed because she did not pick up the written orders sent through certified mail. This court has resolved the case on other grounds and declines to address this issue.

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

