COURT OF APPEALS
DECISION
DATED AND FILED

December 9, 1999

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.

Nos. 99-0637
99-0638

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

NO. 99-0637

IN THE INTEREST OF JAKAYA M.Q., A PERSON UNDER THE AGE OF 18:

GREEN COUNTY HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

JENNIFER S.Q.,

RESPONDENT-APPELLANT.

NO. 99-0638

IN THE INTEREST OF KATLYN L.E.Q., A PERSON UNDER THE AGE OF 18:

GREEN COUNTY HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

JENNIFER S.Q.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Green County: JAMES R. BEER, Judge. *Reversed.*

¶1 EICH, J.[1] Jennifer S.Q. appeals from orders (a) denying her motion to dismiss a petition to extend a dispositional order in a CHIPS proceeding involving her daughter, Katlyn L.E.Q., (b) denying her motion to withdraw her admission to the allegations in the CHIPS petition, and (c) extending the dispositional order. She raises several arguments. We consider one to be dispositive, however: whether the record establishes that Jennifer's initial admission to the allegations of the CHIPS petition was knowing and voluntary, and accepted by the court in compliance with the procedures mandated by § 48.30(8), STATS. While the result is unfortunate, we are satisfied that it does not, and we therefore reverse the orders.

¶2 The CHIPS petition alleged that Jennifer's children were in need of protection and services under § 48.13(10), STATS., which authorizes court-ordered services for a child "whose parent … neglects, refuses or is unable for reasons other than poverty to provide necessary care … so as to seriously endanger the physical health of the child." The petition was based on an incident occurring on January 28, 1997, when Jennifer left her children (ages ten months and two and

[1] This appeal is decided by a single judge pursuant to § 752.31(2)(e), STATS.

one-half years) alone in her apartment for approximately one hour.[2] Based on her absence and observations of the children and their living quarters by the police, the petition was filed.[3]

¶3 Jennifer appeared at the plea hearing without counsel. The proceedings were brief, comprising only a few pages in the record. The court began by noting that an "Acknowledgment of Legal Rights" form, signed by Jennifer, had been filed. The page-long form purports to list the rights of which parties to CHIPS proceedings are to be advised under §§ 48.30(2) and 48.243, STATS.[4] The court asked Jennifer whether she had "read them over carefully," to which she replied "Yes." The court went on:

THE COURT:	Do you understand that?
MS. JENNIFER Q.:	Yes. I do.
THE COURT:	You had sufficient time to talk to Mr. Hustad (the children's guardian ad litem) about this …?

[2] Police officers testified that, to their knowledge, Jennifer had been gone for an hour or more. Jennifer maintained she was gone for a shorter time.

[3] According to the officers, when responding to Jennifer's apartment after a telephone call that the children had been left alone, they observed the ten-month-old child through a window sucking on a can later identified as a "'stain guard' labeled in large print to KEEP OUT OF REACH OF CHILDREN." The door was unlocked and, upon entering the apartment, the officers noticed two large knives on the edge of the kitchen counter (within easy reach of the older child), dishes stacked in the sink and counter, food on the floor, a garbage can in the pantry area with garbage overflowing from the can and covering the entire pantry floor, cigarette butts on the floor adjacent to a mattress, many baby bottles on the floor, some containing curdled, spoiled milk, several dirty diapers on the floor and two garbage bags filled with dirty diapers in a bedroom. The apartment was filled with garbage and diaper odors.

[4] This includes the right to an attorney and a jury trial at which the right to confront and cross-examine witnesses is available, as well as the right to substitution of judge. The form also notes that a failure to testify may be used against the party, and that the ultimate disposition may result in supervision by the county, out-of-home placement, transfer of legal custody to a relative or an agency, or residential treatment.

MS. JENNIFER Q.: He has not spoken with me about it, no.

THE COURT: Did you talk to anyone about it?

MS. JENNIFER Q.: About?

THE COURT: These rights?

MS. JENNIFER Q.: I – with Miss McManus (a juvenile court intake worker).

THE COURT: Do you have any questions about them?

MS. JENNIFER Q.: No.

THE COURT: You understand that?

MS. JENNIFER Q.: Yes.

THE COURT: Are you going to be having an attorney represent you?

MS. JENNIFER Q.: No.

THE COURT: At this time there are allegations that have been set forth. This is a plea hearing on these matters. First, as to 97-JV-3, the allegation is as follows: "The above named minor child, Jakaya, is in need of protection and services under chapter 48.13 of the Wisconsin Statutes based upon the following grounds: …Whose parent, guardian or guardian [sic] or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child." … As to that allegation, do you admit it or do you deny it?

MS. JENNIFER Q.: I admit it.

THE COURT: As to 96 – or 97-JC-4, again there is an allegation which has been made: "The above named child Katlyn … is in need of protection and services under section 48.13 of the Wisconsin Statutes based on the following grounds: … Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than

> poverty to provide necessary care, clothing, medical or dental care or shelter as to seriously endanger the physical health of the child." As to that allegation, do you admit or deny the same?
>
> MS. JENNIFER Q.: Admit.…
>
> MR. KOHL (Assistant District Attorney): Your Honor, we'd ask that the court enter findings of the –each child being in need of protection or services.
>
> THE COURT: The court will – Well, Mr. Hustad?
>
> MR. HUSTAD: I agree.
>
> THE COURT: Mrs. Q.—Ms. Q.?
>
> MS. JENNIFER Q.: I didn't understand.
>
> THE COURT: You agree as well that the Court enter findings that the children are in need of protection and services at this time?
>
> MS. JENNIFER Q.: Yes, sir.

Then, after discussion with the attorneys about scheduling the court asked: "Is there anything further at this time," to which all—including Jennifer—responded: "No," whereupon the court adjourned the hearing.

¶4 Assuming that, even on this sparse a record, the written Acknowledgment would suffice with respect to compliance with the requirements of § 48.30(2), STATS., § 48.30(8) requires, in addition that the court, before accepting an admission of the alleged facts in a CHIPS petition, shall:

> (a) Address the parties … personally and determine that the … admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.
>
> (b) Establish whether any promises or threats were made to elicit the … admission and alert unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to [the person].

> (c) Make such inquiries as satisfactorily establishes that there is a factual basis for the … admission of the parent ….[5]

¶5 As indicated above, the Acknowledgment form does state the potential dispositions in a CHIPS proceeding. It does not, however, alert the person about the possibility of a lawyer discovering defenses or mitigating circumstances that would be apparent to an unrepresented layperson. Beyond that, all the court did after obtaining Jennifer's statement that she had read and understood the Acknowledgment form, was to quote the general "charging" language of statute to her. No inquiry was made as to whether she understood "the nature of the acts alleged in the petition" that formed the basis of the proceeding—what she was claimed to have done on the evening in question—nor were any questions asked that would establish the existence of a factual basis for the admission (not even a variation of the short-cut "do-you-stipulate-that-the-facts-alleged-in-the-petition-may-stand-as-a-factual-basis-for-the-plea" question so often asked when taking pleas in criminal cases).

¶6 The children's guardian ad litem doesn't argue the point, other than to assert, without citation to the record, that "[a]t the Motion Hearing in February of 1999, [the court] took additional testimony of respondent and then upheld the ruling that her admission to the allegations as well as her waiver of certain rights [sic]." Then, referring to Jennifer's testimony (presumably at that hearing) that she could remember some of the details of the incident that gave rise to the initial CHIPS petition, the guardian claims that the court "could certainly have inferred [Jennifer's] general reading and understanding ability based on the documents in

[5] These requirements, like those of § 48.30(2), STATS., are outlined in the Wisconsin Judicial Benchbook, Vol. IV, Juvenile, at JV 7-11, and 7-12 (1999).

the record [and] her testimony and articulation," and, on that basis, could determine that her admission was knowing and voluntary. Nowhere, however, does the guardian's brief comment on the requirements of § 48.30(8), STATS., or the court's compliance (or non-compliance) with those requirements. The guardian does no more than refer to the Acknowledgment form and the above comments to support his assertion that "these statutory requirements were followed."

¶7 Undoing all this more than two years after the fact is indeed an unhappy task. But the case has just now come before us (the last brief was filed less than two months ago, on October 26, 1999), and the record—which we have set forth in its entirety—plainly indicates that the statutes governing acceptance of admissions to CHIPS petitions were not followed when these proceedings were instituted. And we have been provided with no plausible argument as to how that fact can be avoided, despite the difficulties our decision is bound to cause at this late date.

By the Court.—Orders reversed.

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