

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 2001

Cornelia G. Clark
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 No. 01-2554

Cir. Ct. No. 01-TP-1

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

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

BARRON COUNTY,

PETITIONER-RESPONDENT,

v.

DEANNA C.,

RESPONDENT,

CARLOS H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Barron County:
JAMES C. EATON, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Carlos H. appeals from a circuit court order terminating his parental rights to Christopher H. Carlos argues that the court erroneously exercised its discretion when it ordered that Carlos, as a sanction for failing to attend his deposition, would be prohibited from presenting an affirmative defense at the fact-finding hearing. We conclude that Carlos failed to preserve this issue when he indicated that he wanted to proceed directly to the dispositional phase of the case. Carlos has raised no other objections to the order. Accordingly, we affirm.

¶2 The County filed a petition for termination of Carlos's parental rights on grounds of abandonment.² *See* WIS. STAT. § 48.415(1). Carlos, who was represented by counsel, denied the allegations in the petition and alleged as an affirmative defense that he had good cause for not having contact with Christopher.

¶3 The County filed a notice of deposition for Carlos, who was served with the subpoena. Because Carlos failed to attend the deposition,³ the County moved the court for sanctions pursuant to WIS. STAT. § 804.12(4).

¶4 At the motion hearing, the County first asked the circuit court to recognize that because Carlos had failed to file a response to the County's request for admissions, they were deemed admitted. Carlos did not object and the court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

² The County also sought to terminate the mother's parental rights. The eventual termination of her rights is not at issue on this appeal.

³ Carlos later indicated to the court that he forgot about the deposition and went to work instead.

agreed. The admissions included each of the elements required to constitute abandonment under WIS. STAT. § 48.415(1).

¶5 The County then asked the circuit court for an order denying Carlos the right to present his affirmative defense at the fact-finding hearing, as a sanction for Carlos's failure to attend his deposition. Such a sanction is permissible under WIS. STAT. § 804.12(2)(a)2, which provides that the court may issue "[a]n order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence."

¶6 The circuit court expressed concern about imposing such a severe sanction, especially given the fact that Carlos's affirmative defense was all that remained of his defense at the fact-finding hearing. The court stated:

Well, I am looking for reasons to lessen the blow. ... There is nothing onerous about submitting to a deposition. ... The excuse that I forgot is beneath comment. Now having said that, is there anything I ought to be told to ameliorate this situation, to lessen the blow? ... Is there a problem that I haven't been told about that you want to tell me about?

In response, Carlos replied, "No, sir."

¶7 The circuit court again asked the parties for their recommendations on sanctions. Carlos's counsel indicated that he was not sure what Carlos wanted to do. The court suggested that counsel and Carlos consult outside the court's presence. The court recessed.

¶8 Shortly thereafter, Carlos and his attorney returned to the courtroom. The following exchange then took place:

THE COURT: [Carlos], you have returned. Have you had adequate time to go over the pending issues with [your attorney]?

[CARLOS]: Yes, sir.

THE COURT: Do you agree, counsel?

[COUNSEL]: Yes.

THE COURT: All right. What do you think I should do? I say again, is there any equitable argument that [Carlos] can make? Is there any less severe sanction? Is there anything else that you want me to consider?

[COUNSEL]: No, your Honor. He has instructed me that he wants to proceed to dispositional then, to make argument there.

THE COURT: So to speak, he would like to put his eggs in that basket?

[COUNSEL]: Yes, sir.

The court thereafter issued a written order denying Carlos the opportunity to present his affirmative defense.

¶9 Before the fact-finding hearing, Carlos filed a motion seeking clarification of his right to present a defense at the hearing. On the day of trial, the parties and the court discussed whether Carlos would be permitted to present a case. The County argued that because Carlos's admissions satisfied the required elements and because he was not allowed to present an affirmative defense, the court should direct a verdict in the County's favor. Carlos did not object.

¶10 At the dispositional hearing, Carlos argued against terminating his parental rights. However, the court found termination to be in Christopher's best interests and Carlos's parental rights were terminated. This appeal followed.

¶11 Carlos argues that the circuit court lacked authority to deny him the opportunity to present an affirmative defense absent a finding that Carlos's failure to attend his deposition was the result of bad faith or egregiousness. We conclude that Carlos failed to preserve his right to challenge the court's order denying him the opportunity to present an affirmative defense. *See Wright v. Mercy Hosp.*, 206 Wis.2d 449, 463, 557 N.W.2d 846 (Ct. App. 1996) (In the absence of a specific objection that brings into focus the nature of the alleged error, a party has not preserved its objections for appeal.).

¶12 Not only did Carlos tell the court that he wanted to proceed to the dispositional phase of the proceeding, thereby indicating that he no longer wanted to present an affirmative defense, he did not seek reconsideration of the order or ask to present an affirmative defense at the fact-finding hearing. Accordingly, he failed to preserve the issue. Because Carlos raises no other objections to the order, we affirm.

By the Court.—Order affirmed.

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

