

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 31, 2004

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. 04-1553
STATE OF WISCONSIN**

Cir. Ct. No. 03TP000011

**IN COURT OF APPEALS
DISTRICT III**

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

PIERCE COUNTY,

PETITIONER-RESPONDENT,

V.

RYAN P.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Ryan P. appeals an order terminating his parental rights to Sierra P. Ryan contends the order should be vacated and the petition to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

terminate his parental rights dismissed because he claims the circuit court lost competence when it did not hold the hearing on the petition within thirty days of the petition's filing. We disagree and affirm the order.

¶2 Pierce County (County) filed petitions to terminate Ryan's and Amy F.'s parental rights to Sierra on November 13, 2003. A hearing on the petition was held on November 26, but only Amy appeared. The morning of the initial appearance, the County learned and informed the court that Ryan was in jail in another county. The court inquired whether Ryan had been served with the petition, and the County responded that it believed he had not. The court stated that the County should try to serve Ryan, and if it could not serve him the court wanted to know if it had "to delay the matter further." Amy contested the petition and requested an attorney, so the court granted her a continuance.

¶3 Ryan appeared in court on December 23 and told the court he was incarcerated in Chisago County, Minnesota, during the November 26 hearing. The County notified the court that Ryan was served with the petition on December 10 when he appeared in traffic court. The court then formally granted Ryan a continuance so that he could contact the public defender's office. The court later terminated Ryan's parental rights, and Ryan appeals.

¶4 WISCONSIN STAT. § 48.422(1) requires the hearing on the petition to terminate parental rights to be held within thirty days after the petition is filed. However, a court may continue a hearing pursuant to WIS. STAT. § 48.315(2). That section states:

A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or

consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

The court does not have to explicitly state it is making a finding of “good cause” on the record for good cause to exist as the basis for a continuance. *State v. Quinsanna D.*, 2002 WI App 318, ¶38, 259 Wis. 2d 429, 655 N.W.2d 752. If the record contains “ample evidence to support a finding of good cause,” *id.*, this court can conclude a continuance occurred without there actually being the “incantation of [the] statutory phrase.” *Id.*

¶5 Whether the circuit court complied with the time limits of WIS. STAT. § 48.422(1) and granted a continuance pursuant to WIS. STAT. § 48.315(2) present questions of law. *See State v. April O.*, 2000 WI App 70, ¶6, 233 Wis. 2d 663, 607 N.W.2d 927. We review questions of law independently. *Id.*

¶6 Here, the petition was filed on November 13, and a hearing was scheduled on November 26. Ryan was not present at this hearing because he was not yet personally served with the petition and was in jail in Minnesota. The court was concerned that Ryan had not yet been served and, while it explicitly granted Amy a continuance to confer with an attorney, stated it would have to delay the hearing as it related to Ryan. Given Ryan’s incarceration in Minnesota and that he had not yet been personally served with the petition, we conclude the record indicates ample ground to support a finding of good cause for a continuance. Further, we construe the court’s remarks relating to delaying the hearing as continuing the hearing. Therefore, because the hearing was properly continued until December 23, the court did not lose competency to proceed and the order terminating Ryan’s parental rights is affirmed.

By the Court.—Order affirmed.

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

