

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 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 No. 2009AP2606

Cir. Ct. No. 2008TP50

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

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

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-APPELLANT,

v.

SAMUEL W.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Reversed.*

¶1 SHERMAN, J.¹ Dane County Department of Human Services (the Department) appeals an order of the circuit court granting Samuel W.’s post-verdict motion to vacate a prior order terminating Samuel’s parental rights to Sharneeka W. The Department contends that the court erred in concluding that the order terminating Samuel’s parental rights is void because the CHIPS dispositional order (dispositional order) failed to specify the “specific services” that are “to be provided to the child and family” as required by WIS. STAT. § 48.355(2)(b)1.² The Department argues that as in the supreme court’s recent decision in *Sheboygan County DHHS v. Tanya M.B.*, 2010 WI 55, 325 Wis. 2d 524, 785 N.W.2d 369, the services were specified as required by § 48.355(2)(b)1., even though the services were not delineated in the dispositional order, because the services could

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. On the court’s own motion, we are extending the deadline in WIS. STAT. RULE 809.107(6)(e) for releasing this opinion by one day to October 14, 2010.

² WISCONSIN STAT. § 48.355(2), which addresses dispositional orders, provides in pertinent part:

(2) CONTENT OF ORDER; COPY TO PARENT. (a) In addition to the order, the judge shall make written findings of fact and conclusions of law based on the evidence presented to the judge to support the disposition ordered, including findings as to the condition and need for special treatment or care of the child or expectant mother if an examination or assessment was conducted under s. 48.295. A finding may not include a finding that a child or an expectant mother is in need of psychotropic medications.

(b) The court order shall be in writing and shall contain:

(1) The specific services to be provided to the child and family, to the child expectant mother and family, or to the adult expectant mother and, if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian.

be inferred from the conditions placed on Samuel for the return of Sharneeka. We agree and therefore reverse.

BACKGROUND

¶2 On May 23, 2008, the Department petitioned for the involuntary termination of Samuel’s parental rights to his at-the-time 22-month-old daughter, Sharneeka, on the basis that Samuel had abandoned Sharneeka and had failed to assume parental responsibility under WIS. STAT. § 48.415(1) and (6), and on the basis that Sharneeka was in continuing need of protection and services under WIS. STAT. § 48.415(2).³

¶3 Following a trial to the court, the circuit court determined that the Department failed to prove that Samuel abandoned Sharneeka or failed to assume his parental responsibility of her, but that the Department had proven that Sharneeka was in continuing need of protection and services under WIS. STAT. § 48.415(2). In so ruling, the court took judicial notice of the underlying dispositional order, which did not include a statement of the “specific services to be provided to the child and family,” but which had attached to it conditions for return. The conditions for return provided as follows:

Samuel [W.] shall:

- A. HAVE A SAFE, SUITABLE AND STABLE HOME AND LEGAL SOURCE OF INCOME.
- B. SHOW THAT YOU ARE INTERESTED IN YOUR CHILD.

³ The Department also petitioned for the involuntary termination of the parental rights of Sharneeka’s biological mother, Sharon D. Sharon does not appeal the termination of her parental rights to Sharneeka and her parental rights to Sharneeka are not at issue here.

C. HAVE REGULAR AND SUCCESSFUL VISITS WITH YOUR CHILD AND COOPERATE WITH A FAMILY INTERACTION PLAN AS ESTABLISHED BY THE ASSIGNED SOCIAL WORKER.

D. KEEP YOUR CHILD SAFE AND DO NOT HURT YOUR CHILD OR LET ANYONE ELSE HURT YOUR CHILD.

E. SHOW THAT YOU CAN CARE FOR AND CONTROL YOUR CHILD PROPERLY AND THAT YOU UNDERSTAND HIS/HER NEEDS.

F. STAY IN TOUCH WITH AND COOPERATE WITH YOUR WORKER.

G. COMPLETE ANY PROGRAMS RECOMMENDED BY YOUR WORKER UNLESS THE COURT OTHERWISE ORDERS.

H. COOPERATE WITH YOUR CHILD'S SERVICE AND EDUCATION PROVIDERS WHEN ASKED.

I. SIGN ALL RELEASES OF INFORMATION AS REQUESTED.

J. SUCCESSFULLY COMPLETE: SHARON [D.]: A PSYCHOLOGICAL EVALUATION.

K. SUCCESSFULLY COMPLETE ANY PROGRAMS RECOMMENDED IN ANY COURT-ORDERED EVALUATION(S) UNLESS THE COURT OTHERWISE ORDERS.

L. USE NO ALCOHOL IF AN AODA EVALUATION OR TREATMENT PROVIDER SAYS YOU HAVE AN ALCOHOL PROBLEM.

M. USE NO ILLEGAL DRUGS OR ABUSE PRESCRIPTION DRUGS.

N. GIVE A URINE SAMPLE FOR A DRUG AND ALCOHOL TEST IF YOU ARE ASKED TO DO SO. ANY FAILURE OR REFUSAL TO GIVE A URINE SAMPLE WILL BE CONSIDERED A POSITIVE TEST BY THE COURT AND YOUR SOCIAL WORKER.

O. COMMIT NO LAW VIOLATIONS OR BE INCARCERATED.

P. IF YOU ARE INCARCERATED, TAKE ADVANTAGE OF ANY OPPORTUNITIES TO MEET THE CONDITIONS FOR RETURN AND/OR REDUCE THE AMOUNT OF TIME YOU ARE INCARCERATED.

Q. FOLLOW ANY AND ALL THE RULES OF YOUR PROBATION OR PAROLE.

R. RESOLVE ANY AND ALL OUTSTANDING CHARGES, WARRETS [sic] OR TICKETS.

¶4 The circuit court found that the Department had provided “services in terms of case management, review of conditions, transportation assistance, arranging, supervising visits, setting up U.A.s for testing.” The court found that the evidence was “quite clear” that the Department made reasonable efforts to provide services ordered by the court. The court further found that Sharneeka had been placed outside the home for nearly twenty-four months and that Samuel “ha[d] not maintained a safe, suitable and stable home” in that time. The court found that Samuel had obtained a legal source of income for only a brief amount of time, failed to have regular visits with Sharneeka,⁴ failed to abstain from alcohol or illicit drugs, failed to provide urine samples for drug and alcohol testing as required, failed to refrain from additional law violations or incarceration, and failed to follow rules of probation or parole.

¶5 The court ultimately determined that Samuel was unlikely to meet the conditions for return in the following twelve months and that the evidence was convincing that grounds for termination of his parental rights to Sharneeka existed under WIS. STAT. § 48.415(2). Following a dispositional hearing, the court went

⁴ The court observed, however, that the scheduled visits which Samuel did attend were “successful” and that Samuel was “described as loving and nurturing.”

on to find that termination of Samuel's parental rights was in Sharneeka's best interest and an order of parental termination was entered accordingly.

¶6 Thereafter, Samuel moved the court to vacate its order terminating his parental rights to Sharneeka. Samuel asserted that because the dispositional order failed to include a statement of the "specific services to be provided to the child and family," as required by WIS. STAT. § 48.355(2)(b)1., the Department failed to prove, as required by WIS. STAT. § 48.415(2)(a)2b; that "the agency responsible for the care of the child and family ... has made a reasonable effort to provide the services ordered by the court."

¶7 Following a hearing on Samuel's motion, the court vacated its order terminating Samuel's parental rights. The court explained that it believed that the dispositional order must specifically state what services the Department was to provide and if it failed to do so, the dispositional order is void. The court explained that in light of *F.T. v. State*, 150 Wis. 2d 216, 441 N.W.2d 322 (Ct. App. 1989),⁵ "and given ... what I think is the mandate or directive of the statute, this was a case where there weren't any specific services ordered by the Court. And therefore, it was an impossibility for the [Department] to prove reasonable efforts to provide the services ordered by the Court."

⁵ *F.T. v. State*, 150 Wis. 2d 216, 441 N.W.2d 322 (Ct. App. 1989), involved the interpretation of WIS. STAT. § 48.355(2)(b)7. and (6)(a) (1987-88). The court of appeals in *F.T.* addressed whether the circuit court properly imposed sanctions for violations of the conditions of any order in a delinquency proceeding "where the order did not contain '[a] statement of the conditions with which the child [was] required to comply' ... and where the court failed to 'explain [] the conditions to the child' at the dispositional hearing." *F.T.*, 150 Wis. 2d at 218. The court of appeals in *F.T.* reversed the sanctions because the circuit court did not provide "a full explanation of what is necessary for compliance, and what conduct must be eschewed in order to avoid the sanctions which may be imposed for violation." *Id.* at 227.

¶8 The Department appeals. Additional facts will be discussed as necessary below.

STANDARD REVIEW

¶9 Our review in this case involves the interpretation and application of WIS. STAT. § 48.355(2)(b)1. “The interpretation and application of a statute to an undisputed set of facts are questions of law that we review independently.” *Tanya M.B.*, 325 Wis. 2d 524, ¶18.

DISCUSSION

¶10 The Department challenges the circuit court’s order vacating a prior order terminating Samuel’s parental rights to Sharneeka. Citing the Supreme Court’s recent opinion in *Tanya M.B.*, 325 Wis. 2d 524, the Department contends that it was not necessary for the dispositional order in this case to specifically set forth what services were to be provided by the Department because those services could be inferred from the conditions placed on Samuel in order for Sharneeka to be returned to his care, conditions which were set forth on a separate sheet attached to the dispositional order.

¶11 In *Tanya M.B.*, the supreme court addressed whether a dispositional order that failed to set forth specific services nevertheless satisfied WIS. STAT. § 48.355(2)(b)1.’s requirement that such services be set forth. The court concluded that although the dispositional order in that case did not set forth the specific services, it was nevertheless sufficient because the specific services could be found in the directions to the county’s DHHS that it provide supervision, services and case management to the children and parents involved. According to the court, those directions were set forth in the dispositional order and in the

detailed conditions to the parents for the return of their children, which the court said “implicitly required the Department to provide services necessary to assist the parents in meeting the court ordered conditions for the return of their children.” *Tanya M.B.*, 325 Wis. 2d 524, ¶1.

¶12 WISCONSIN STAT. § 48.355(2)(b) provides that “[t]he court order shall be in writing and shall contain: 1. The specific services to be provided” to the children and family. The supreme court in *Tanya M.B.* concluded compliance with this statutory mandate does not necessarily require that the specific services be separately delineated in the dispositional order. The court held:

[Section] 48.355(2)(b)1. does not require a CHIPS dispositional order to separately list each individual service that the Department is to provide so long as the Department is ordered to provide ‘supervision,’ ‘services’ and ‘case management’ and the order also provides *detailed conditions* that the parents must complete in compliance with the dispositional order. (Emphasis added.)

Id., ¶33.⁶ The court rejected as misplaced any reliance on *F.T.* in that case. *Id.*, ¶44. The court noted that *F.T.* involved the interpretation of statutes which serve a purpose different from that of § 48.355(2)(b)1. *Id.*, ¶45

¶13 The court concluded in *Tanya M.B.* that the “detailed conditions directed at changing the parents’ conduct establish[ed] the specific services that the Department [was] to provide, either directly or through arrangements with others,” and set forth multiple examples. *Id.*, ¶34. The court cited as an example

⁶ The court in *Sheboygan County DHHS v. Tanya M.B.*, 2010 WI 55, ¶¶40-41, 325 Wis. 2d 524, 785 N.W.2d 369, stated that its holding is consistent with the purpose of WIS. STAT. § 48.355(2)(b)1., which “is to assure that the Department will arrange those services that are necessary to assist the parents in meeting the court ordered conditions for the return of their children,” as well as the explicit legislative purpose of the Children’s Code.

a condition which provided that the parents “will go to any parenting or nurturing program set up by the [social] worker and attend any community-based programs recommended by their [social] worker.” *Id.* The court stated that implicit in this condition was “an order that the Department arrange for a parenting or nurturing program for the parents to attend.” *Id.*

¶14 The court observed that the orders “directed the Department to assist the parents in completing certain programs, which the Department may recommend in order to enable them to be reunited with their children.” *Id.*, ¶35. These programs included: alcohol or drug abuse programs; an alcohol or other drug assessment; psychological and/or a psychosocial evaluation; treatment and/or counseling programs; and individual or family counseling. *Id.*

¶15 The court observed that the detailed conditions of return set out specific case management services the Department was to provide. The court noted that the conditions required the parents “to stay in touch and cooperate with their [social] worker, meet with the [social] worker when asked, allow the [social] worker into the home and to be available to their [social] worker to make any necessary appointments.” *Id.*, ¶36 (internal quotations omitted). Implicit in these conditions was “the requirement that the Department provide services to the parents by providing a social worker who will be available” to the parents. *Id.*

¶16 The court observed that the dispositional orders set forth specific conditions that the Department was to provide to or arrange for the entire family. *Id.*, ¶37. These conditions included: “provid[ing] their children with a safe, suitable, and stable home; learning to care for and control their children; understand[ing] their children’s needs; and obtaining appropriate childcare for their children in their absence.” *Id.* (internal quotations omitted).

¶17 The court also observed that two additional conditions for return required the Department to assist the parents, upon their release from prison, in obtaining and maintaining an appropriate residence for themselves and their children and in obtaining and maintaining full-time employment. *Id.*, ¶38. The court further observed that all parties had been interpreting the dispositional orders as requiring the Department to arrange the services necessary to assist the parents in meeting the court ordered conditions for the return of their children. *Id.*, ¶39.

¶18 Samuel acknowledges the supreme court's holding in *Tanya M.B.* He argues, however, that unlike *Tanya M.B.*, the conditions of return in this case “were so generic that they did not imply” the services ordered by the court. We disagree.

¶19 The conditions for return in *Tanya M.B.* were more extensive than those in the present case, particularly with respect to the parents' obligation to participate in numerous specified treatment and parenting programs, which in turn obligated the Department to provide additional services to the parents relating to those programs. Those conditions, however, were specific to the troubles faced by the parents in that case. Whereas the conditions in *Tanya M.B.* focused primarily on the parents' treatment for drug and alcohol problems and on obtaining appropriate counseling, both personal and as a family, the conditions placed on Samuel focused primarily on Samuel's ability to provide a safe and stable home environment for Sharneeka.

¶20 The conditions placed on Samuel were not “generic” as argued by Samuel, but were merely different than those in *Tanya M.B.*, addressing a completely different set of concerns. Although the conditions placed on Samuel

are less exhaustive in detail than those in *Tanya M.B.* and different in nature, they nevertheless establish the services to be provided by the Department.

¶21 For example, the conditions required Samuel to stay in touch with and cooperate with his social worker. As in *Tanya M.B.*, implicit in this condition is the requirement that the Department provide Samuel with a social worker. *See id.*, ¶36.

¶22 The conditions of return directed that Samuel complete any programs recommended by his social worker or court unless otherwise ordered by the court. Implicit in this condition is the requirement that the Department assist Samuel in completing any programs deemed necessary by his social worker or the court.

¶23 The conditions for return directed that Samuel have successful visits with Sharneeka and cooperate with a family interaction plan established by his social worker. Implicit in this condition is the requirement that the Department assist Samuel with his visits with Sharneeka and establish a family interaction plan.

¶24 The conditions of return directed that Samuel provide a safe, suitable, and stable home, and obtain a legal source of income. As in *Tanya M.B.*, implicit is the requirement that the Department provide Samuel assistance in meeting this condition. *See id.*, ¶37.

¶25 The conditions for return also directed that Samuel demonstrate that he can properly care for and control Sharneeka. Implicit in this condition is the requirement that the Department provide Samuel assistance in doing so.

¶26 Furthermore, as in *Tanya M.B.*, all parties had been interpreting the dispositional orders as requiring the Department to arrange services necessary to assist Samuel in meeting the court ordered conditions. *See id.*, ¶39.

¶27 In summary, although the conditions in the present case are less detailed than those found in *Tanya M.B.*, they nevertheless establish the services, however minimal, that the Department was to provide. We therefore conclude that in light of the supreme court's opinion in *Tanya M.B.*, services were specified as required by WIS. STAT. § 48.355(2)(b)1. Accordingly, we reverse the order of the circuit court vacating the order terminating Samuel's parental rights to Sharneeka.

By the Court.—Order reversed.

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

