COURT OF APPEALS
DECISION
DATED AND FILED

July 28, 2011

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 Nos. 2011AP753
2011AP754
2011AP755
2011AP756

Cir. Ct. Nos. 2004TP16
2004TP17
2004AD127
2004AD128

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

NO. 2011AP753

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

SHELLY J.,

APPELLANT,

V.

LESLIE W.,

RESPONDENT.

NO. 2011AP754

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

SHELLY J.,

APPELLANT,

V.

LESLIE W.,

RESPONDENT.

NO. 2011AP755

IN RE THE ADOPTION OF CAMRYN J. W.:

SHELLY J.,

APPELLANT,

V.

LESLIE W.,

RESPONDENT.

NO. 2011AP756

IN RE THE ADOPTION OF CHRISTIAN J. W.:

SHELLY J.,

APPELLANT,

V.

LESLIE W.,

RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] Shelly J. appeals an order denying her motions to reopen and vacate earlier orders terminating her parental rights to her two biological children, and granting petitions that Shelly and her former partner filed for adoption of the children. Shelly argues that the circuit court erred in denying the motions because she presented evidence to support relief from the earlier orders under WIS. STAT. § 806.07(1)(a), (c), (d), (g), and (h). Additionally, she argues that the circuit court erred in not admitting certain evidence at the hearing held on her motions to reopen and vacate.

¶2 Without addressing the substantive merits of Shelly's challenges to the TPRs or the adoptions, this court concludes that the circuit court properly exercised its discretion in denying the motions, because Shelly failed to meet her burden of showing that she is entitled, under WIS. STAT. § 806.07, to the relief that she seeks. As to Shelly's challenges to evidentiary rulings, because Shelly fails to develop arguments as to why the court erred in not admitting the respective pieces of evidence at issue, this court does not address these issues. Accordingly, the circuit court's decision is sustained.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

BACKGROUND

¶3 The following is a brief overview; additional relevant facts are included in the discussion of particular issues below. Shelly J. and Leslie W. started their relationship in 1996, eventually deciding to raise children. Shelly gave birth to one child in 2000 and a second in 2002. Both children were conceived by artificial insemination from an anonymous sperm donor. Shelly and Leslie raised the children together. As a same sex couple, Shelly and Leslie could not be married under Wisconsin law.

¶4 On March 3, 2004, Shelly petitioned for the voluntary termination of her parental rights (TPR) of both children in La Crosse County Circuit Court.[2] Both Shelly and Leslie filed separate petitions for adoption of each child on the same date. On June 16, 2004, the court held an initial hearing on the petitions. The court granted Shelly's voluntary TPR petitions, as well as Shelly's and Leslie's adoption petitions. As a result, Shelly and Leslie each became a legal parent of each child.

¶5 Nearly seven years later, on January 24, 2011, Shelly brought motions in La Crosse County Circuit Court under WIS. STAT. § 806.07(1)(a), (c),

[2] At the motion hearing and now on appeal, Shelly alleges that she did not sign the Petition for the Termination of her Parental Rights, Petition for Adoption, and Uniform Child Custody Jurisdiction Affidavit for her children. However, the circuit court found these allegations not credible. The circuit court is the "ultimate arbiter of the credibility of witnesses," *see* ***State v. Angiolo***, 186 Wis. 2d 488, 495, 520 N.W.2d 923 (Ct. App. 1994), and its credibility determinations will not be upset unless clearly erroneous, *see* WIS. STAT. § 805.17(2). Shelly does not point to sufficient reason for this court to conclude that the findings are clearly erroneous. Therefore, this court assumes the facts to be as the circuit court found them.

(d), (g), and (h) to reopen and vacate the orders granting the TPR of the two children and the subsequent adoptions. After holding a hearing on the motions, the court denied them on substantive grounds, concluding that Shelly failed to meet her evidentiary burden. The court did not address relevant statutory requirements governing the timing for the filing of a motion for relief from an order. Shelly appeals, arguing that the circuit court erred in denying her motions because the evidence she presented supports the relief requested and the admission of certain evidence was not allowed.[3] For the reasons discussed below, this court affirms the order denying Shelly's motions.

DISCUSSION

A. Standard of Review

¶6 A circuit court has wide discretion in deciding whether to grant relief under WIS. STAT. § 806.07. ***Price v. Hart***, 166 Wis. 2d 182, 195, 480 N.W.2d 249 (Ct. App. 1991). Reversal is not appropriate in this context unless the court erroneously exercises its discretion. ***Sukala v. Heritage Mut. Ins. Co.***, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. A court properly exercises its discretion when it uses a process of reasoning that depends on facts that are in the record or are reasonably derived by inference from record facts, and bases its conclusion on the application of the correct legal standard. ***Id.*** Therefore, if the record reveals that discretion was exercised and this court can perceive a reasonable basis for the

[3] Although Shelly does not address the statutory requirements governing the timing for the filing of motions for relief from orders in her principal brief on appeal, she does address them in her reply brief.

court's decision, the decision is sustained. ***Prahl v. Brosamle***, 142 Wis. 2d 658, 667, 420 N.W.2d 372 (Ct. App. 1987). "'[B]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary determinations.'" ***Sukala***, 282 Wis. 2d 46, ¶8.

¶7 When considering the court's decision, "[w]e may sustain [that] decision … even though the … court's reasoning may have been erroneous or inadequately expressed. 'Whether the ground assigned by the trial judge is correct is immaterial if, in fact, the ruling is correct and the record reveals a factual underpinning that would support the proper findings.'" ***Schauer v. DeNeveu Homeowner's Ass'n, Inc.***, 194 Wis. 2d 62, 71, 533 N.W.2d 470 (1995) (citations omitted). Further, "[w]here the circuit court sets forth no reasons or inadequate reasons for its decision, we will independently review the record to determine whether the circuit court properly exercised its discretion and whether the facts provide support for the court's decision." ***Miller v. Hanover Ins. Co.***, 2010 WI 75, 326 Wis. 2d 640, 656, 785 N.W.2d 493.

B. WISCONSIN STAT. § 806.07

¶8 Shelly argues that the court erred in denying her motions for relief under WIS. STAT. § 806.07(1)(a), (c), (d), (g), and (h), because the evidence she presented supports relief under each paragraph. This court will first discuss the statute generally, and then address Shelly's arguments regarding the applicability of the paragraphs.

¶9 Circuit courts have power to relieve parties from judgments, orders, and stipulations under WIS. STAT. § 806.07. Paragraphs 806.07(1)(a)-(g) allow relief under specified circumstances, and paragraph 806.07(1)(h) is a "catch-all"

provision, which allows relief from judgment for "any other reasons justifying relief."

¶10 The relevant portions of WIS. STAT. § 806.07(1) provide:

> **(1)** On motion and upon such terms as are just, the court … may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> ….
>
> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
>
> (d) The judgment is void;
>
> ....
>
> (g) It is no longer equitable that the judgment should have prospective application; or
>
> (h) Any other reasons justifying relief from the operation of the judgment.

¶11 The party seeking relief bears the burden to prove that the requisite conditions of the alleged circumstance exist. *See* ***Connor v. Connor***, 2001 WI 49, ¶28, 243 Wis. 2d 279, 627 N.W.2d 182.

¶12 Motions for relief under WIS. STAT. § 806.07(1), except for paragraph (1)(d), addressing "void" judgments, are subject to time limits that are set forth in § 806.07(2), which assigns varying limits to the categories of motions described in § 806.07(1). *See* § 806.07(2) ("The motion shall be made within a reasonable time, and, if based on [paras.] (1)(a) or (c), not more than one year after the judgment was entered or the order or stipulation was made.").

¶13 The most restrictive time limitation applies to motions under WIS. STAT. § 806.07(1)(a) and (c). These must be made within a reasonable time, but in any case "not more than one year after the judgment was entered or the order or stipulation was made." § 806.07(2).

¶14 Less restrictive is the standard for motions under WIS. STAT. § 806.07(1)(e)-(h), which "shall be made within a reasonable time." § 806.07(2).

¶15 Finally, as referenced above, a motion for relief on the grounds that a judgment is void under WIS. STAT. § 806.07(1)(d) is not subject even to the reasonable time requirement of § 806.07(2). ***Neylan v. Vorwald***, 124 Wis. 2d 85, 368 N.W.2d 648 (1985).

1. WISCONSIN STAT. § 806.07(1)(a), (c), and (h)

¶16 Shelly's arguments regarding WIS. STAT. § 806.07(1)(a), (c), and (h) will be considered together, because paragraphs (1)(a) and (c) are subject to the same statutory time restrictions and because Shelly's reliance on paragraph (1)(h) as a basis for relief includes the same factual allegations that she makes in support of her reliance on paragraphs (1)(a) and (c), namely mistake, fraud, and misrepresentation. The circuit court's decision is sustained in each instance, because Shelly failed to timely file her motions for relief on the basis of paragraphs (1)(a) and (c), and because Shelly failed to meet her burden by proving that extraordinary circumstances exist to justify relief under paragraph (1)(h).

a. Failure to timely file in reliance on WIS. STAT. § 806.07(1)(a) and (c)

¶17 This court first concludes that Shelly failed to timely file her motions in reliance on WIS. STAT. § 806.07(1)(a) and (c), on the grounds of mistake, fraud, and misrepresentation. A motion filed in reliance on paragraphs (1)(a) or (c) must be filed "not more than one year after the judgment was entered or the order or stipulation was made." § 806.07(2). Shelly clearly failed to meet this statutory time requirement. Shelly filed her motions in reliance on § 806.07(1)(a) and (c) nearly seven years after the challenged orders were entered. This court therefore sustains the circuit court's decision to deny her motions based on these paragraphs, not on the substantive grounds relied on by the court. The record conclusively shows that Shelly brought these claims after the statutory time limit passed.

b. Failure to prove extraordinary circumstances exist under WIS. STAT. § 806.07(1)(h)

¶18 Next, Shelly's asserts that she is entitled to relief under WIS. STAT. § 806.07(1)(h). Because her reliance on paragraph (1)(h) "sounds in" paragraphs (1)(a) and (c), by including allegations of mistake, fraud, and misrepresentation, Shelly could still obtain relief under paragraph (1)(h) if she could show extraordinary circumstances that justify relief. On this point, the circuit court is correct in reaching the conclusion that Shelly failed to meet her burden, because Shelly failed to prove that extraordinary circumstances exist to justify relief under paragraph (1)(h).

¶19 If a motion is brought after the time limits for WIS. STAT. § 806.07(1)(a) and (c) has passed, the court may grant relief for the claim under

paragraph (1)(h) if it meets the following requirements. ***Sukala***, 282 Wis. 2d 46, ¶13. First, the claim under paragraph (1)(h) "sounds in" either paragraphs (1)(a) or (c). ***Id.*** In other words, the paragraph (1)(h) claim includes allegations of mistake, inadvertence, surprise, excusable neglect, fraud, or misrepresentation. *See* § 806.07(1)(a), (c). Second, there are extraordinary circumstances that justify relief from the prior judgment, order, or stipulation. ***Sukala***, 282 Wis. 2d 46, ¶13. Third, the motion under paragraph (1)(h) is made within a reasonable time. WIS. STAT. § 806.07(2).

¶20 Shelly's claim under WIS. STAT. § 806.07(1)(h) sounds in paragraphs (1)(a) and (c), because it includes allegations of mistake, fraud, and misrepresentation. Therefore, the next step is to determine whether the circuit court had a reasonable basis to conclude that Shelly failed to meet her burden of showing that extraordinary circumstances exist to justify relief. This court concludes that the circuit court properly exercised its discretion when it denied her motion based on Shelly's failure to meet her evidentiary burden, and therefore this court does not address whether the motion was made within a reasonable time.[4]

[4] It appears that under these circumstances, involving fundamental and evolving relationships with children, a nearly seven-year delay in filing a motion for relief under WIS. STAT. § 807.07(1) is likely not reasonable, as required by § 806.07(2). However, the determination of what constitutes a reasonable time under § 806.07(2) "requires a case by case analysis of all relevant factors." ***State ex rel. Cynthia M.S. v. Michael F.C.***, 181 Wis. 2d 618, 627, 511 N.W.2d 868 (1994) (relevant factors include the reasons for the delay and the prejudice to the party opposing the motion). Because the circuit court did not make specific findings as to reasonableness, this court analyzes instead the court's decision that Shelly failed to meet her burden that the requisite conditions under § 806.07(1)(h) exist to justify the relief requested, and does not attempt to apply the reasonable delay standard.

¶21 To determine whether a party is entitled to review under WIS. STAT. § 806.07(1)(h), the circuit court should examine the allegations in the motion, and assume that all of its assertions are true. ***Sukala***, 282 Wis. 2d 46, ¶10. If the facts alleged are extraordinary or unique, such that relief may be warranted under paragraph (1)(h), a hearing is to be held on the truth of the allegations. ***Id.*** After determining whether the allegations are true and considering any other factors related to the equities of the case, the court should exercise its discretion to decide what relief, if any, should be granted. ***Id.***

¶22 In exercising its discretion, the court should consider whether unique or extraordinary facts exist that are relevant to the competing interests of finality of judgments and relief from unjust judgments. ***Id.***, ¶11. The examination should include the following five, non-exclusive factors:

> [1] whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; [2] whether the claimant received the effective assistance of counsel; [3] whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments; [4] whether there is a meritorious defense to the claim; and [5] whether there are intervening circumstances making it inequitable to grant relief.

State ex rel. M.L.B. v. D.G.H., 122 Wis. 2d 536, 552-53, 363 N.W.2d 419 (1985). The court should grant relief under WIS. STAT. § 806.07(1)(h) only when the "circumstances are such that the sanctity of the final judgment is outweighed by the 'incessant command of the court's conscience that justice be done in light of *all* the facts.'" ***Id.*** at 550.

¶23 Shelly contends that the extraordinary circumstances in this case are (1) that the court's orders resulted from mistakes of law and fact, fraud, and misrepresentation and (2) Shelly did not realize at the time of the original court proceedings that the TPR and adoption actions were not legal. As support for both allegations, she broadly asserts that the orders were the "result of two attorneys and a judge who disagreed with the legislature and the Supreme Court and worked to subvert the existing law to further a political agenda" and that this is a "clear case" of "manipulation of the legal system in contravention of the statutory procedures and requirements." Shelly further alleges that the TPRs and adoptions were the result of mistake, fraud, and misrepresentation, because the guardian ad litem did not meet with her or the children, and that Shelly did not sign certain key documents that bear her name. Additionally, she asserts that she did not know that her name would not appear on the children's birth certificates, or that the children would be issued multiple birth certificates.

¶24 The first issue here is Shelly's contention that extraordinary circumstances exist because the TPR and adoption actions were the result of mistake of law and fact, fraud, and misrepresentation.

¶25 At the motion hearing, the circuit court heard Shelly's testimony regarding her allegations of mistake, fraud, and misrepresentation, and made an unqualified finding of fact that this testimony was not credible. On this basis, the court concluded that Shelly failed to meet her burden under WIS. STAT. § 806.07(1). The court reached the following conclusions:

> I am satisfied beyond a reasonable doubt that you knew exactly what was happening back when we did this.… [F]or me to believe the testimony that I've heard today would mean that I would have to believe that … the

> questions in open court that you were lying to me; that when I read the order for the custody home study, that they were lying; that when the social worker who performed the study said that the contacts included a home study visit with both of you on December 4th of 2003, that that was a lie.
>
> ….
>
> You're asking me to believe that you were bamboozled into a decision that changed your life. That's what you're asking me to believe. I find that [Shelly] is not credible. I find that the information that you presented does not rise to the level necessary for proof.

¶26 In determining that Shelly failed to meet her burden, the circuit court did not explicitly address each of the factors of the extraordinary circumstances test. However, the circuit court's decision is sustained, because this court's independent review of the record provides a reasonable basis for the circuit court's decision. Each factor of the extraordinary circumstances test weighs against Shelly.

¶27 The first factor is whether the orders were the result of the conscientious, deliberate, and well-informed choices by Shelly. The circuit court concluded that Shelly's petitions were voluntary and that she understood the consequences of the actions of filing the petitions. As already mentioned above, the circuit court's findings that Shelly in fact did sign the legal documents of the actions and did know the legal consequences of her voluntary TPRs and subsequent adoptions are conclusive for purposes of this appeal. The court found that if Shelly's testimony at the motion hearing were true, it would mean that all parties and witnesses, including Shelly, at the original proceeding nearly seven years ago, lied to the court. This court lacks sufficient grounds to conclude that the circuit court clearly erred in finding that Shelly's testimony was not credible,

and that Shelly was fully aware of the nature and import of the original proceedings in the case. *See* WIS. STAT. § 805.17(2) (circuit court's credibility determinations will not be disturbed unless clearly erroneous). Again, this court need not reach the merits of arguments about whether the original proceedings were lawful. This court simply concludes, in addressing this factor, that Shelly made conscientious, deliberate, and well-informed choices in the course of the original proceedings.

¶28 The second issue is whether Shelly received the effective assistance of counsel. Shelly is not clear in describing specific conduct of her attorney that she alleges was ineffective. In any case, the brief submitted to the circuit court in support of Shelly's petitions does not on its face reflect that Shelly's counsel acted in an ineffective manner. More generally, regardless of the substantive merits of any particular legal argument originally advanced by Shelly's attorney, the record does not appear to reflect evidence that her attorney did not do what Shelly hired her to do, namely, to effectively advocate for parental rights to the two children for both Shelly and Leslie.

¶29 The third issue is "whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments." ***State ex rel. M.L.B.***, 122 Wis. 2d at 552. The record demonstrates that the circuit court considered the merits of the petitions in the original proceeding in 2004. The court found that Shelly sought the termination of her parental rights voluntarily, and that granting Shelly's petitions was in the best interest of the children. The court also considered the merits of the adoptions of both parents and found that

Shelly and Leslie were "fit and proper persons to be the adoptive parents" before granting the petitions.

¶30 The fourth factor is whether Shelly has a meritorious defense. "The crux of the inquiry is whether, given another chance, the party seeking to vacate the judgment could reasonably expect a different result." ***Allstate Ins. Co. v. Brunswick Corp.***, 2007 WI App 221, ¶14, 305 Wis. 2d 400, 740 N.W.2d 888. Here, the dispute is whether the order granting the TPR and adoption petitions were the result of mistake, fraud, or misrepresentation. Given the court's findings about Shelly's credibility and the limited support that Shelly provides for this argument, there is no basis for this court to disturb the court's conclusion that Shelly does not have a meritorious defense based on mistake, fraud, or misrepresentation.

¶31 The fifth factor is whether there are intervening circumstances making it inequitable to grant relief. Whether the relief requested would be in the child's best interests should also be considered because it is "highly relevant to 'whether there are intervening circumstances making it inequitable to grant relief.'" ***Johnson v. Johnson***, 157 Wis. 2d 490, 500, 460 N.W.2d 166 (Ct. App. 1990). The record supports the conclusion that reopening the proceedings would not be in the children's best interest. At the motion hearing, the court reasonably emphasized the importance that the "custodial and visitation rights of both parents be preserved given the parental relationship that was exhibited by both parties." Shelly and Leslie raised the children from birth and Leslie has been a legal parent of the children for nearly seven years. Therefore, the court's implied conclusion is reasonable that reopening and vacating the proceedings would not be equitable,

because it would disrupt settled parent-child relationships between each of the children and Leslie.

¶32 The next issue is Shelly's argument that extraordinary circumstances exist because she did not know at the time of the original proceedings that the TPR and adoption actions were not legal.

¶33 At the hearing on the motions at issue in this appeal, the circuit court addressed the merits, and concluded as the court had originally concluded that an unmarried individual can adopt, that a child who has the parental rights of both parents terminated is open for adoption, and that what the court deemed to be two separate petitions for adoption filed by two unmarried individuals are each considered to be a true adoption.

¶34 This decision is sustained, but not on the substantive grounds advanced by the circuit court. The decision is sustained, because Shelly fails to identify a change in the law that would give rise to unique and extraordinary circumstances, which is the burden she assumed in seeking to reopen and vacate the orders under WIS. STAT. § 806.07(1)(h).

¶35 A motion premised on an alleged change in the law could lie under WIS. STAT. § 806.07(1)(h) if there were a change in the law that gave rise to unique and extraordinary circumstances. ***Sukala***, 282 Wis. 2d 46, ¶13. However, Shelly concedes that the law is not settled and she identifies no change in the law that would give rise to unique and extraordinary circumstances. Instead, Shelly argues that the legal basis for granting the petitions was not correct at the time the petitions were granted and invites us to make a legal determination that the petitions were not properly granted based on the state of the law in 2004, which

remains unchanged by her own account. This court declines to do so on the basis of a motion to reopen filed nearly seven years after the challenged orders were entered. It is too late for this request, which should have been presented, if at all, in a timely motion for reconsideration or in an appeal of the original proceeding.

¶36 In sum, this court concludes that Shelly failed to file the motions for relief under WIS. STAT. § 806.07(1)(a) and (c) in time, and failed to meet her burden that extraordinary circumstances exist to justify relief under paragraph (1)(h). Accordingly, the court's decisions to deny Shelly's motion for relief under § 806.07(1)(a), (c), and (h) are sustained.

2. WISCONSIN STAT. § 806.07(1)(d)

¶37 Shelly next asserts that the court erred when it denied her motion to vacate the orders as void under WIS. STAT. § 806.07(1)(d), for two reasons. First, Shelly contends that the court lacked subject matter jurisdiction, because it lost competency to hear her TPR and adoption petitions when the initial hearing was not held within thirty days after her TPR petitions were filed, as required by WIS. STAT. § 48.422(1). *See* § 48.422(1) (An initial hearing in a termination of parental rights proceeding "shall be held within 30 days after the petition is filed"). Second, Shelly argues that the court lacked jurisdiction, because La Crosse County was an improper venue to hear the petitions.

¶38 On the first issue, the circuit court did not address the issue of competency. On the second issue, the circuit court determined that granting the parties' change of venue request at the original proceeding was proper, because the change was in the best interests of the children due to confidentiality concerns in their home county.

¶39 As discussed further below in two subsections of this opinion, this court sustains the court's denial of the motion to vacate the orders as void under WIS. STAT. § 806.07(1)(d), although on different grounds. As explained below, as a matter of law, challenges to competency and venue are not issues of subject matter jurisdiction or personal jurisdiction, and therefore the claims do not fall within § 806.07(1)(d). "An order is not 'void' under WIS. STAT. § 806.07(1)(d) unless the court rendering it lacked subject matter or personal jurisdiction or denied a party due process." ***Dustardy H. v. Bethany H.***, 2011 WI App 2, ¶15, 331 Wis. 2d 158, 794 N.W.2d 230.

a. Lack of Competency

¶40 This court first addresses Shelly's argument that the order is void pursuant to WIS. STAT. § 806.07(1)(d), because the court lacked competency.

¶41 Shelly is correct in asserting that the failure to comply with mandatory time limits under the Children's Code, including the time requirements set forth in WIS. STAT. § 48.422(1) for an initial hearing, may render the circuit court incompetent to proceed. *See* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927 (concluding that circuit court lost competency to proceed when it failed to hold initial and dispositional hearing within mandatory time limits and improperly extended time limits). However, a challenge to a court's competency to proceed is not equivalent to a challenge to the court's subject matter jurisdiction, as Shelly asserts, and therefore Shelly failed to meet her burden that the orders are void pursuant to § 806.07(1)(d).

¶42 Competency is a "'narrower concept' involving a 'lesser power' than subject matter jurisdiction." ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶14,

273 Wis. 2d 76, 681 N.W.2d 190. "Subject matter jurisdiction is the power of the court to hear and decide a particular case or controversy." ***P.C. v. C.C.***, 161 Wis. 2d 277, 297, 468 N.W.2d 190 (1991). No circuit court is without subject matter jurisdiction to entertain actions of any nature. ***Miller Brewing Co. v. LIRC***, 173 Wis. 2d 700, 705 n.1, 495 N.W.2d 660 (1993). In contrast, "competency to proceed" relates to the court's power to exercise its subject matter jurisdiction. ***Agnes T. v. Milwaukee County***, 179 Wis. 2d 363, 365 n.2, 507 N.W.2d 373 (Ct. App. 1993).

¶43 Therefore, a judgment or order "rendered by a court lacking competency is 'not void for the lack of subject matter jurisdiction, but invalid for the lack of competency to proceed to judgment.'" ***Mikrut***, 273 Wis. 2d 76, ¶14 (citation omitted). As such, when a motion for relief from an order is based on a circuit court's alleged lack of competency, the challenged judgment is not a void judgment, and therefore the motion cannot be brought at any time, but is subject to the "reasonable" time requirement of WIS. STAT. § 806.07(2). ***Mikrut***, 273 Wis. 2d 76, ¶¶32-34. Consequently, because she challenges only the court's competency to proceed and not the court's subject matter jurisdiction, Shelly fails to meet her burden that the orders are void for lack of subject matter jurisdiction.

b. Improper Venue

¶44 For a similar reason, this court also rejects Shelly's second argument, namely, that the judgment is void because the court lacked jurisdiction due to improper venue. A venue challenge cannot justify the relief sought under WIS. STAT. § 806.07(1)(d), because a venue defect is not a jurisdictional defect.

¶45 Venue and jurisdiction are related, but distinct, concepts. ***Enpro Assessment Corp. v. Enpro Plus, Inc.***, 171 Wis. 2d 542, 549, 492 N.W.2d 325 (Ct. App. 1992). "Jurisdiction determines the power of Wisconsin courts to decide a matter, while venue merely determines where within Wisconsin a matter should be tried." ***Id.***; *see also* ***Voit v. Madison Newspapers, Inc.***, 116 Wis. 2d 217, 224, 341 N.W.2d 693 (1984) ("the basic function of venue statutes is to set a fair and convenient location for trial"). Because a defect in venue is not a jurisdictional defect, a defect in venue does not affect the validity of any order or judgment. *See* WIS. STAT. § 801.50(1) ("A defect in venue shall not affect the validity of any order or judgment"); *see also* ***In re Brandon S.S.***, 179 Wis. 2d 114, 143 n.26, 507 N.W.2d 94 (1993) (statutes that include § 801.50(1) "generally apply" to proceedings that include TPRs and adoptions); Judicial Council Prefactory Note—1983 Act 228 (noting that the previous version of § 801.50 caused unnecessary litigation because the statute failed "to specify that a defect in venue is not jurisdictional and does not affect the validity of any order or judgment"). Accordingly, this court concludes that Shelly fails to meet her burden that the orders are void for lack of jurisdiction, because a venue defect is not a jurisdictional defect.

¶46 In sum, Shelly fails to meet her burden that the orders are void pursuant to WIS. STAT. § 806.07(1)(d). Even assuming without deciding that the court was not competent to proceed and that venue was improper, these assumed defects do not raise issues of subject matter jurisdiction or personal jurisdiction. Accordingly, the court's decision is affirmed.

3. WISCONSIN STAT. § 806.07(1)(g)

¶47 In passing, using two sentences, Shelly asserts that the court erred in denying her motion for relief under WIS. STAT. § 806.07(g), which allows relief when the prospective application of a judgment is no longer equitable, because Shelly presented evidence that the two children have eight birth certificates and that this "impacts their schooling." Shelly provides no analysis supporting an argument that such evidence warrants relief under paragraph (1)(g). Her argument fails because it is inadequately developed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

a. Circuit Court's Evidentiary Rulings

¶48 Finally, Shelly argues that the circuit court erred in not allowing certain pieces of evidence to be presented at the motion hearing. Shelly contends that the court's evidentiary rulings were erroneous exercises of the court's discretion that rested on "nonsensical" logic, and that the excluded pieces of evidence each support her motions for relief under WIS. STAT. § 806.07(1)(c) and (h). However, Shelly does not explain why the evidence at issue supports her motions for relief, nor why the circuit court's rationales for disallowing the evidence were not correct. Accordingly, this court declines to address this undeveloped argument. *See* ***Pettit***, 171 Wis. 2d at 646-47.

CONCLUSION

¶49 For all of these reasons, this court concludes that Shelly fails to meet her burden that she is entitled, under the cited paragraphs of WIS. STAT. § 806.07(1), to seek relief and fails to develop an argument as to why the court

erred in not admitting certain evidence. The order of the court is therefore affirmed.

By the Court.—Order affirmed.

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