

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 9, 2015

Diane M. Fremgen
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. 2015AP630
2015AP631**

Cir. Ct. No. 2013TP000335

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

AMELIA A.,

RESPONDENT-APPELLANT.

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

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

AMELIA A.,

RESPONDENT-APPELLANT.

APPEALS from orders of the circuit court for Milwaukee County:
MARK A. SANDERS, Judge. *Affirmed.*

¶1 BRENNAN, J.¹ Amelia A. appeals from orders terminating her parental rights to Madellyn V. and Elidio J. Amelia contends that the petitions to terminate her parental rights should be dismissed because the last dispositional order² entered prior to the commencement of this action—that is, the August 2013 order extending the placement of Amelia’s children outside of her home—did not specifically recite the conditions she needed to meet for the return of her children. It is undisputed that the original August 2012 CHIPS order,³ which placed the children outside of the home, specifically recited the conditions, and that the August 2013 order specifically incorporated the August 2012 order by reference. Amelia argues that WIS. STAT. §§ 48.356(2), 48.415(2)(a)1. and *Waukesha County v. Steven H.*, 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607, require the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² There were two separate dispositional orders issued in this case in August 2012 and two extension orders issued in August 2013. They are identical except that one order and extension was issued for Madellyn and the other was issued for Elidio. We refer to one August 2012 order and one August 2013 extension order for ease of reading and because there is no difference between the orders issued for each child.

³ “CHIPS” stands for “child in need of protection or services.”

August 2013 extension order to include, in writing, the CHIPS conditions for return.⁴

¶2 We conclude that Amelia was properly notified of the conditions for return as required under WIS. STAT. §§ 48.356(2) and 48.415(2)(a)1. The original August 2012 dispositional order expressly set forth the conditions for return and because that order was the “last order ... issued *at least six months before* the filing of the petition to terminate parental rights,” it complied with WIS. STAT. §§ 48.356(2), 48.415(2)(a)1. and *Steven H.*, 233 Wis. 2d 344, ¶3 (emphasis added). Accordingly, we affirm.

BACKGROUND

¶3 Amelia is the mother of Madellyn and Elidio. On April 11, 2012, Madeyln and Elidio were removed from Amelia’s home by the Bureau of Milwaukee Child Welfare.⁵ A CHIPS dispositional order was entered on August 22, 2012. The written order listed the conditions of return that Amelia would need to satisfy before her children could be returned to her. The order also included, as an attached two-page document, a warning that her parental rights to the children could be terminated if she failed to meet the conditions of return.

⁴ WISCONSIN STAT. §§ 48.356(2) and 48.415(2)(a)1. require notice of the grounds for termination of parental rights as well as notice of the conditions of return. However, because Amelia does not dispute that she received proper notice of the ground for termination of parental rights in the August 2013 extension order, we do not address that notice here.

⁵ Amelia’s challenge on appeal is that the August 2013 order extending the original August 2012 CHIPS dispositional order failed to contain statutorily mandated notices and thereby did not form a basis on which to file petitions to terminate her parental rights. She does not challenge the validity of her no-contest plea to grounds or the circuit court’s finding at the dispositional hearing that it was in the children’s best interests to terminate Amelia’s parental rights. As such, we do not detail the facts surrounding the children’s removal from the home because those facts are irrelevant to the narrow procedural issue raised on appeal.

¶4 The August 2012 dispositional order was extended following a hearing on August 29, 2013. The written extension order entered following the hearing stated that during the hearing Amelia had been orally informed, again, of the conditions of return, and had, again, been warned that termination of her parental rights could result. The August 2013 extension order included the warning concerning grounds to terminate but did not re-list the conditions of return. However, the extension order did explicitly state that “all conditions, orders and findings in the dispositional order dated 8/22/12 remain in effect.”

¶5 On November 4, 2013, less than three months after the circuit court entered the August 2013 extension order, the State filed petitions to terminate Amelia’s parental rights to Madellyn and Elidio, alleging that she failed to assume parental responsibility for both children pursuant to WIS. STAT. § 48.415(6) and that the children remained in continuing need of protection or services pursuant to § 48.415(2). On September 15, 2014, Amelia entered a no-contest plea to the allegations that the children remained in continuing need of protection or services. Following a colloquy between the circuit court and Amelia, the circuit court found that Amelia’s plea was voluntarily and knowingly entered. After a dispositional hearing, the circuit court found it in the children’s best interests to terminate Amelia’s parental rights. Amelia appeals.

DISCUSSION

¶6 Amelia contends on appeal that the petitions to terminate her parental rights should be dismissed, and as such, the orders terminating her parental rights should be reversed, because the August 2013 extension order did not contain written notice of the conditions for return of her children. Amelia claims that WIS. STAT. §§ 48.356(2) and 48.415(2)(a)1. require written notice of

the conditions to be included in the August 2013 extension order, which was the last order issued prior to the commencement of the termination of parental rights actions on November 4, 2013.⁶ We conclude that the notice Amelia received satisfies the statutes under the facts of this case and complies with the supreme court's holding in *Steven H.*

¶7 Amelia's appeal requires us to address whether WIS. STAT. §§ 48.356(2) and 48.415(2)(a)1. mandate that the August 2013 extension order explicitly set forth the conditions for return. As such, we begin our analysis with the plain language of the statutes.⁷ See *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶¶44-45, 271 Wis. 2d 633, 681 N.W.2d 110.

⁶ In support of her conclusion that WIS. STAT. §§ 48.356(2) and 48.415(2)(a)1. require the August 2013 extension orders to contain the requisite notices, Amelia relies heavily on *St. Croix County DHHS v. Juanita A.*, No. 2014AP2431, unpublished slip op. (WI App Jan. 16, 2015), *cert. granted* (Apr. 16, 2015). But *Juanita A.* is easily distinguishable because it was undisputed in that case that the last order issued more than six months before the filing of the petition to terminate parental rights did not contain the requisite statutory notices. See *id.*, ¶¶7-9. As such, *Juanita A.* is not relevant to the case at hand.

We also note that the Wisconsin Supreme Court granted a petition for review in *Juanita A.*, and Amelia requests that any decision in the instant case await the supreme court's decision in *Juanita A.*, which Amelia anticipates will issue next term. However, WIS. STAT. § 809.107(6)(e) requires that we issue a decision in a termination-of-parental-rights appeal 30 days after the filing of the appellant's reply brief; however, we may extend that deadline upon a showing of good cause. See *Rhonda R.D. v. Franklin R.D.*, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995). But because *Juanita A.* is distinguishable from this case, we see no good cause to extend our deadline and decline to do so here. See *id.*

⁷ Generally speaking, we review questions of statutory interpretation as questions of law independently of the circuit court but benefiting from the circuit court's analysis. See *Waukesha Cnty. v. Steven H.*, 2000 WI 28, ¶16, 233 Wis. 2d 344, 607 N.W.2d 607. However, here, we cannot review the circuit court's decision regarding whether Amelia received proper notice pursuant to WIS. STAT. §§ 48.356(2) and 48.415(2)(a)1., nor can we benefit from the circuit court's analysis of the question, because Amelia never raised this issue before the circuit court. While it is the often repeated rule in this state that issues not considered by the circuit court will not be considered for the first time on appeal, this rule is not absolute and exceptions are made. See *Binder v. City of Madison*, 72 Wis. 2d 613, 618, 241 N.W.2d 613 (1976). In this case, the

(continued)

¶8 WISCONSIN STAT. § 48.356 reads, in relevant part:

(1) Whenever the court orders a child to be placed outside his or her home ... under s. 48.345, 48.347, 48.357, 48.363, or 48.365 ... the court shall orally inform the parent or parents who appear in court ... of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child ... to be returned to the home....

(2) In addition to the notice required under sub. (1), any written order which places a child ... outside the home or denies visitation under sub. (1) shall notify the parent or parents ... of the information specified under sub. (1).

In other words, § 48.356(2) requires *any* written order placing a child outside of the home, pursuant to certain statutes, to notify the parent of any grounds for the termination of parental rights and the necessary conditions for the return of the child to the home. *See id.*

¶9 WISCONSIN STAT. § 48.415 sets forth the potential grounds for termination of parental rights. Subsection (2) explains the continuing-need-of-protection-or-services ground, as relevant here, thusly:

Grounds for termination of parental rights shall be one of the following:

....

(2) CONTINUING NEED OF PROTECTION OR SERVICES.
Continuing need of protection or services, which shall be established by proving any of the following:

issue raised is a legal question that can be disposed of “based upon a consideration of the record.” *See State v. Conway*, 34 Wis. 2d 76, 83, 148 N.W.2d 721 (1967). Furthermore, the primary case on which Amelia relies, *Juanita A.*, No. 2014AP2431, unpublished slip op., was released several months after the orders terminating parental rights were issued in this case. As such, we exercise our discretion to address Amelia’s appeal on the merits.

(a)1. That the child has been adjudged to be a child ... in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders ... containing the notice required by s. 48.356(2)

To wit, contrary to WIS. STAT. § 48.356(2), § 48.415(2)(a)1. explicitly states that only one or more of the court orders needs to notify the parent of the grounds for termination and the conditions of return. *See* § 48.415(2)(a)1.; *see also* § 48.356(2).

¶10 Our supreme court addressed the conflict between the statutes in *Steven H.* *See id.*, 233 Wis. 2d 344, ¶¶22, 30. As summarized in *Steven H.*:

The words of Wis. Stat. §§ 48.356(2) and 48.415(2) about what orders need to contain the written notice are not consistent Section 48.356(2) requires that “*any* written order which places a child outside the home” (emphasis added) under specified statutes contain written notice, including notification of any grounds for termination of parental rights. When we turn to the statutory grounds for termination of parental rights we find different language in § 48.415(2). Section 48.415(2) speaks of “*one or more court orders* ... containing the notice required by s. 48.356(2)” (emphasis added). The words “one or more orders” in § 48.415(2) are not the equivalent of “any,” “each,” “all,” or “every” order.

Steven H., 233 Wis. 2d 344, ¶30 (all editorial changes in *Steven H.*).

¶11 To resolve the conflict between the statutes, the supreme court held “that Wis. Stat. §§ 48.356(2) and 48.415(2) require that the last order specified in § 48.356(2) placing a child outside the home, *which must be issued at least six months before the filing of the petition to terminate parental rights*, must contain the written notice prescribed by § 48.356(2).” *Steven H.*, 233 Wis. 2d 344, ¶3 (emphasis added). Before reaching this conclusion, the supreme court explained that “[§]§ 48.356(2) and 48.415(2) do not require that each and every” CHIPS

placement order “contain the written notice prescribed by § 48.356(2).” *Steven H.*, 233 Wis. 2d 344, ¶3. The supreme court concluded that reading the two statutes to require the last order filed six months before the filing of the petition to include the notices best balances the dual interests at stake, that is, a parent’s interest in “an opportunity to conform his or her conduct to avoid termination of parental rights,” *see id.*, ¶25, with a child’s interest in “eliminating unreasonable periods while their parents try to correct the conditions that prevent the child’s return to the family,” *see id.*, ¶32.

¶12 Here, Amelia contends that the August 2013 extension order did not comply with *Steven H.* because, as the *last* order issued before the November 2013 termination of parental rights petitions were filed, it was required to notify her of the conditions she needed to meet for the return of her children. She disregards the “at least six months” language of the holding. *See id.*, ¶3. We do not regard that language as mere surplusage. Because the last order “issued at least six months before the filing of the petition to terminate parental rights” was the August 2012 order, we conclude Amelia received proper notice under *Steven H.* And because she received explicit written notice of the conditions for return in the August 2012 order placing the children outside the home, which was then expressly incorporated by reference into the August 2013 extension order, the notice complied with WIS. STAT. §§ 48.356(2) and 48.415(2)(a)1.

¶13 Finally, we note that there is no indication in the record that Amelia failed to understand the conditions for return. In the ten court appearances that occurred between the time when the petitions requesting to terminate her parental rights were filed and when Amelia pled no contest to grounds, the conditions for return of her children were never changed. The consistency of the conditions for

return here is relevant to the supreme court's analysis in *Steven H.* of the balancing of a parent's interest in having an opportunity to conform conduct to avoid termination of parental rights against the child's interest in permanency. *See id.*, 233 Wis. 2d 344, ¶¶25, 32. Here, there is no question that Amelia's interest in having an opportunity to know and perform the conditions of return was addressed in the notices.

¶14 Because Amelia received notice as required under WIS. STAT. §§ 48.356(2) and 48.415(2)(a)1., we affirm.

By the Court.—Orders affirmed.

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

