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CHIPS – DATE OF CHIPS FINDING

State v. Gregory L.S., 2002 WI App 101, 253 Wis. 2d 563, 643 N.W.2d 890
Parents had divorced and mother was awarded primary physical placement but parents had joint legal custody. The children were removed from their mother's home and ultimately placed with their father. He appealed the CHIPS determination of his four children.
A court may find a child in need of protection or services even when only one parent has neglected the child and where one parent may be fit.
The determination should be based on facts in existence on the date the petition was filed. Any changes subsequent to the filing of the petition should be considered at the dispositional hearing.

CHIPS – PARENTS RIGHT TO COUNSEL

Joni B. v. State, 202 Wis. 2d 1, 549 N.W.2d 411 (1996)
The Supreme Court ruled a flat legislative prohibition on a judge's ability to appoint counsel violated the separation of powers doctrine. The fundamental fairness doctrine of the Due Process Clause requires an "individualized determination of the necessity for appointment under the circumstances presented by the particular case." If a parent requests appointment of counsel, the circuit court should balance the due process factors (private interests, governmental interests, and the risk of erroneous decisions) and suggests a number of other factors to consider, including complexity of the case, the parent's interest in the proceedings, the parent's personal characteristics, whether the alleged incidents could lead to criminal prosecution, the probability of out-of-home placement, and the potential duration of separation.
Note: § 48.23 was amended to allow the court to appoint counsel for CHIPS parents.

State v. Tammy L.D., 2000 WI App 200, 238 Wis. 2d 516, 617 N.W.2d 894
The mother requested an attorney at various stages of the CHIPS proceedings and demonstrated through her words and conduct that the court should have considered whether to appoint her counsel. A psychologist also noted that her behavior and responses suggested she had a mental illness.

When the parent requests counsel or when the circumstances otherwise raise a reasonable concern that the parent will not be able to provide meaningful self-representation in a CHIPS case, the court must exercise discretion conferred by *Joni B.* whether to appoint counsel.

CHIPS – SUFFICIENCY OF CHIPS PETITION

State v. Courtney E., 184 Wis. 2d 592, 516 N.W.2d 422 (1994)
The CHIPS petition stated the pregnant teen would not be 16 by the time of the child's birth and that the teen's 21 year-old boyfriend was the father of the child.

A CHIPS petition must allege and contain information giving rise to a reasonable inference sufficient to establish probable cause that a child is in need of protection or services that can be ordered by the court. The petition failed to allege she was in need of protection or services that the court could provide and therefore was properly dismissed.

TPR – CONTINUING NEED OF PROTECTION AND SERVICES – TERMINATION GROUND

Kenosha County Dep't of Human Services v. Jodie W., 2006 WI 93, 293 Wis. 2d 530, 716 N.W.2d 845
The mother's substantive due process rights were violated when the court did not consider her parenting abilities or condition of the child and instead based termination solely on an impossible condition of return of obtaining suitable housing while she was incarcerated.

Incarceration alone is not a sufficient basis to terminate one's parental rights. The trial judge must decide on a case-by-case basis whether to ask the jury about the impossibility to perform where a parent alleges an impossibility to meet the conditions of the dispositional order.

TPR – DEFAULT

Evelyn C.R. v. Tykila S., 2001 WI 110, 246 Wis. 2d 1, 629 N.W.2d 768
After the mother failed to appear in person at several TPR hearings, the circuit court ordered the mother to personally appear at subsequent hearings. At the next hearing, the mother did not appear and was found in default for failing to obey a court order.

The Supreme Court held that the circuit court should not have found the mother in default without first taking evidence on the issue of abandonment. However, this error was corrected at the dispositional hearing where the court took testimony to support by clear and convincing evidence she had abandoned her son.

State v. Shirley E., 2006 WI 129, 298 Wis. 2d 1, 724 N.W.2d 623
The mother failed to appear at multiple hearings and the circuit court found her in default for failing to obey a court order to personally appear. The circuit court dismissed her attorney and conducted the fact-finding and dispositional hearings without the mother or her counsel present.

Prior to finding a parent in default, the circuit court must take evidence as to whether grounds for TPR existed by clear and convincing evidence. A parent has the right to counsel at both the fact-finding and dispositional phases, even when the parent defaults for failing to personally appear. A parent who has defaulted at the fact-finding still may present evidence at the dispositional hearing.

Dane County DHS v. Mable K., 2013 WI 28, 346 Wis. 2d 396, 828 N.W.2d 198
The Circuit Court ordered Mable K. to appear in person at all TPR hearings. Mable K. failed to appear personally at the second day of the unfitness jury trial, although her attorney appeared. Dane County moved for a default judgment and admitted it needed to present more evidence to prove the abandonment ground. Mable K.'s attorney objected to the default judgment and stated that she had evidence that would make it difficult to prove the abandonment ground. The circuit court did not take additional evidence from either Dane County or Mable K.'s attorney and granted the default judgment.

The Supreme Court found that the circuit court erroneously exercised its discretion when it entered a default judgment finding that grounds existed to terminate Mable K.'s parental rights after barring her attorney from offering additional evidence and failing to take sufficient evidence to establish the grounds alleged in the TPR petition.

TPR – DIRECTED VERDICT ON AN ELEMENT

Door County DHFS v. Scott S., 230 Wis. 2d 460, 602 N.W. 2d 167 (Ct. App. 1999)
The trial court directed a verdict on the question whether the daughter had been adjudged to be in need of protection and services and placed outside the home pursuant to one or more court orders. Scott did not object and there was sufficient evidence in the record to show that element and the remaining elements of the Continuing Need of Protection and Service ground.

A TPR proceeding is civil in nature and the Wisconsin Rules of Civil Procedure permit directed verdicts in a TPR where the evidence is so clear and convincing that a reasonable impartial jury, properly instructed could reach one conclusion and the parent does not object to the directed verdict on the element.

TPR – FAILURE TO ASSUME PARENTAL RESPONSIBILITY – TERMINATION GROUND

Tammy W-G. v. Jacob T., 2011 WI 30, 333 Wis. 2d 273, 797 N.W.2d 854
Mother and stepfather petitioned for termination of the father's parental rights based on § 48.415(6) for failure to assume parental responsibility. The father and mother had lived together for the first four months of the child's life but by the time the child reached four and a half, he had very limited contact and had provided no financial support. The circuit court terminated his rights after the jury found he had failed to assume parental responsibility.

The fact-finder should engage in a totality of circumstances analysis without regard to a limited time period and consider the involvement of the parent over the entirety of the child's life. The reasons for a parent's failure to become involved in the child's life may be considered, although the lack of an opportunity is not a defense. The Supreme Court held he did not have a protected liberty interest as he had not taken sufficient steps to establish a relationship and assume responsibility for his child. The statute was constitutional as applied to the father.

TPR –JURY TRIAL RIGHT

Manitowoc County Human Services Dep't v. Allen J., 2008 WI App 137, 314 Wis. 2d 100, 757 N.W.2d 842
Father's counsel stipulated to an element of parental unfitness (child out of home for six months pursuant to a court order) in a TPR jury trial. The court, instead of the jury, then answered one of the verdict questions on the element of parental unfitness, and his rights were ultimately terminated. On appeal, the father argued he had been denied his right to a jury trial.
The Court of Appeals held that the father did not receive a jury trial on the stipulated element and that the case should be reversed and remanded for a new trial. The father did not agree to the stipulation in open court and even though the element was considered a "paper" element, there was no documentary evidence in the record to determine the time the child was outside of the home pursuant to a court order.

TPR – KNOWING AND INTELLIGENT PLEA

Kenosha County Dep't of Human Services v. Jodie W., 2006 WI 93, 293 Wis. 2d 530, 716 N.W.2d 845
Mother was incarcerated and entered a no contest plea at TPR hearing as she could not meet the conditions of return. She filled out a plea form and specifically contested the disposition phase on the form, making notations throughout the form. The court did not take testimony on the allegations in the petition and found that while the residence condition was impossible, it was because of the mother's own criminal behavior.

The no contest plea was not voluntarily, knowingly, and intelligently entered as there were a number of inconsistencies marked throughout the form and in her colloquy. The court did not fully address these inconsistencies and did not take testimony regarding the mother's compliance with the conditions of return in the CHIPS dispositional order once the finding of unfitness had been made.

Oneida County Dep't of Social Services v. Therese S., 2008 WI App 159, 314 Wis. 2d 493, 762 N.W.2d 122
Mother plead no contest to the continuing need TPR ground. The mother received social security benefits for a mental disability, had not graduated high school, and had difficulties reading. The judge did not inform her that she would be found unfit to parent as a result of her plea and briefly discussed disposition.

Mother proved a prima facie case that her plea was not knowingly and intelligently made. The court must engage in a personal colloquy regarding the plea. The court was required to inform the mother that the dispositional decision would be governed by the child's best interests but was not required to review every possible dispositional outcome. The parent must also understand that a plea will result in a finding of unfitness.

Brown County Dep't of Human Services v. Brenda B., 2011 WI 6, 331 Wis. 2d 310, 795 N.W.2d 730
The court is not obligated to inform a parent who is entering a no contest plea that he or she loses the constitutional right to parent; a finding of unfitness does not mean that a parent will automatically lose that right. A parent must be given sufficient information to understand s/he may lose parental rights in the second phase and must also understand the protections offered by a trial. The parent must also be informed that the court may decide between two independent decisions: dismissing the petition or terminating parental rights.

TPR – RIGHTS OF ALLEGED FATHER

State v. Bobby G., 2007 WI 77, 301 Wis. 2d 531, 734 N.W.2d 81
Alleged father learned of the existence of his one year old child when served with a petition for termination of his parental rights. After he learned of the petition he contacted the child's caseworkers to learn how he could contact his son.
For the TPR ground of failure to assume parental responsibility, the court must consider the biological father's efforts made after he discovers he is the father but before the circuit court adjudicates the grounds of the termination proceeding. Because the circuit court did not consider the father's efforts after the TPR petition was filed, the case was remanded for a full hearing.

TPR – STANDARDS FOR DISPOSITION

David S. v. Laura S., 179 Wis. 2d 114, 507 N.W.2d 94 (1993)
Mother and child lived with maternal grandparents and grandparents were caretakers for approximately 14 months until the relationship between the mother and grandparents deteriorated. The grandparents filed for custody and visitation; the mother and proposed adoptive parents filed a petition to terminate her rights in conjunction with a petition to place the child for adoption.

Using the factors enumerated in § 48.426(3), the maternal grandparents should have been permitted the opportunity to appear as witnesses and be heard at the dispositional hearing. The circuit court erroneously exercised its discretion in failing to hear evidence of the child's longstanding relationship with his maternal grandparents. Information regarding the grandparents, filtered through third parties, was not equivalent to giving them an opportunity to present evidence and testify themselves.

State v. Margaret H., 2000 WI 42, 234 Wis. 2d 606, 610 N.W.2d 475
At the dispositional hearing, the circuit court dismissed a petition for the termination of the mother's parental rights, focusing on the likelihood that the children's substantial relationship with their grandmother would be severed upon adoption and that severance would be harmful to the children.

The Appellate court determined that the circuit court had erroneously exercised its discretion when it exclusively focused on a single factor. "While it is in the province of the circuit court to determine where the bests interests of the child lie, the record should reflect adequate consideration of and weight to each of the [dispositional] factors".

Sheboygan County Dep't of Health & Human Services v. Julie A.B., 2002 WI 95, 255 Wis.2d 170, 648 N.W.2d 402
After a TPR hearing, the jury found the child was a child in continuing need of protection or services and that the four elements of § 48.415(2) were proven. The judge then held a dispositional hearing and dismissed the petition, finding that termination was not warranted where the evidence of unfitness was not so egregious.

The court shall consider the six factors in § 48.426(3) when determining whether the termination of parental rights is in the in the child's best interest and the best interests of the child shall be the prevailing factor. The court should explain the basis for the decision on the record, alluding specifically to the factors in § 48.426(3) and any other factors relied upon.

State v. Margaret H., 2000 WI 42, ¶21, 234 Wis. 2d 606, 610 N.W.2d 475
The Appellate Court declined the County's request to conclude that termination was in the child's best interest where the Trial Court failed to consider whether the child had a substantial relationship with his parent and birth family.
Wis. Stat. § 48.426(3)(c) "unambiguously require[s] that a circuit court evaluate the effect of a legal severance on the broader relationships existing between a child and the child's birth family. These relationships encompass emotional and psychological bonds fostered between the child and the family." Even if the court determined the evidence showed a parent failed to assume parental responsibility because the parent lacked a "substantial *parental* relationship" with the child, the court must still consider whether the child has any substantial emotional or psychological bond with the parent at the dispositional hearing.

TPR – STATED INTENT TO CONTINUE RELATIONSHIP WITH BIRTH FAMILY

State v. Margaret H., 2000 WI 42, ¶21, 234 Wis. 2d 606, 610 N.W.2d 475
The adoptive parent stated an intent to maintain contact between the children and their birth family.

The trial court may, as part of the examination of the impact of legal severance upon the child, afford due weight to an adoptive parent's stated intent to continue visitation with family members.

TPR – SUMMARY JUDGMENT

Steven V. v. Kelley H., 2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 856
Steven V. filed a petition to terminate Kelley H.'s parental rights. Kelley H. requested jury trial. At the fact-finding hearing the Court granted the Guardian ad Litem's request for summary judgment based upon the undisputed fact that Kelley had been denied placement and visitation by a court order that had been in place and unmodified for more than two years.

The Supreme Court concluded that partial summary judgment at the unfitness phase of TPR does not violate a parent's statutory right to a jury trial so long as the requirements of the summary judgment statute and applicable legal standards have been satisfied.

TPR – TERMINATION OF PARENTAL RIGHTS IS A TWO-STEP PROCESS

Sheboygan Cnty. DHHS v. Julie A.B., 2002 WI 95, 255 Wis. 2d 170, 648 N.W.2d 402
The procedure for involuntary termination of parental rights is a two-step process. During the first or "grounds" phase, the fact-finder determines whether one of the statutory grounds exist to terminate a parent's rights. If a ground is established, the parent is found unfit and the proceeding moves to the second phase, or dispositional hearing.

TPR – TERMINATION OF PARENTAL RIGHTS WARNINGS

St. Croix County Dep't of Health and Human Services v. Michael D., 2016 WI 35, 368 Wis. 2d 170, 880 N.W.2d 107
The Appellate Court was asked to determine if the parent had received proper notice under Wis. Stats. §48.415(2) where not all of the CHIPs orders placing the child out of home contained the required TPR warnings.

The Supreme Court held that A TPR case is not a CHIPS case and that this case is governed by 48.415(2) – a TPR statute. The plain language of Wis. Stats. 48.415(2) that in a TPR case where the underlying ground to terminate is based on Continuing CHIPS, the statutory notice requirements are satisfied when at least one of the CHIPS orders contains the written notice required under §48.356(2). In addition, the last order providing the written notice does not need to be provided to the parent six months prior to the filing of the TPR petition.

WICWA – WISCONSIN INDIAN CHILD WELFARE ACT

In re D.S.P., 166 Wis. 2d 464, 480 N.W.2d 234 (1992)
The court could properly instruct the jury on dual burdens of proof: clear and convincing evidence for the TPR ground of abandonment and beyond a reasonable doubt standard for the ICWA serious emotional or physical damage finding.

A qualified expert witness is meant to apply to expertise beyond the normal social worker qualifications. The provision under s. 48.31(4) requiring a psychiatrist or psychologist to testify that the child is suffering emotional damage applies to CHIPS cases where the ground of emotional damage is alleged. It does not apply to TPR grounds or the serious emotional or physical damage finding required under ICWA.

Brown County v. Marcella G., 2001 WI App 194, 247 Wis. 2d 158, 634 N.W.2d 140
Mother's parental rights were terminated for four of her children, three of whom were enrolled members in a tribe. The tribe requested and then withdrew the request that the case be transferred to tribal court. The mother objected and then orally requested the matter be transferred to tribal court. The court denied her request, stating that she did not have standing to make such a request.

The Court of Appeals held the mother had standing to request for a transfer of jurisdiction, but she did not have a duty to personally request that the Indian tribe accept jurisdiction. The circuit court had a duty to not only notify the tribal court of the request but also determine whether the request was accepted.

Sheboygan County Dep't of Health & Human Services v. Neal J.G., 2003 WI 11, 259 Wis. 2d 563, 657 N.W.2d 363
In an involuntary TPR proceeding, the father stated his mother had Indian ancestry from the Ojibwa Tribe in Marinette, WI. The prosecutor contacted the U.S. Dept. of the Interior and the Bureau of Indian Affairs and both responded that due to the lack of information provided by the father and his mother, no tribal or ancestry affiliation could be determined.

The circuit court did not have reason to know that the child was an Indian child for the purposes of ICWA as the information provided was too vague. Therefore, the ICWA notice requirement was not triggered.

Kewaunee County Dep't of Human Services v. R.I., 2018 WI App 7, 379 Wis. 2d 750, 907 N.W.2d 105
While other ICWA/WICWA requirements still apply (e.g., notice, placement preferences, etc.), the serious emotional or physical damage finding and active efforts would not apply if the parent never had physical or legal custody of the Indian child prior to any child custody proceedings. Relying on Adoptive Couple v. Baby Girl, 133 S.Ct. 2552 (U.S. Supreme Court), the Court of Appeals rejected the argument that WICWA would provide a higher level of protection under these circumstances.