

## SUPREME COURT OF WISCONSIN

# Eau Claire County Department of Human Services v. S. E.

2021 WI 56, 392 Wis. 2d 726, 946 N.W.2d 155 · No. 2019AP894 · Decided June 10, 2021

### SUMMARY

The Wisconsin Supreme Court affirmed a decision concerning the termination of S.E.'s parental rights to T.L.E.-C. The court held that the statutory 15-of-22-month timeframe for the continuing CHIPS ground began when S.E. received written notice with the initial 2016 CHIPS order, despite a later statutory amendment. The court also held that applying the timeframe beginning in 2016 did not violate S.E.'s due process rights.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                     |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Wisconsin                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Rebecca Grassl Bradley, J.; Ziegler, C.J.; Roggensack, J.; Hagedorn, J.; Dallet, J.; Ann Walsh Bradley, J.; Karofsky, J.                                                                                                                                                                            |
| JURISDICTION          | Wisconsin                                                                                                                                                                                                                                                                                           |
| DECIDED               | June 10, 2021                                                                                                                                                                                                                                                                                       |
| DOCKET                | 2019AP894                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | S. E. petitioned for review of the Wisconsin Court of Appeals' affirmance of a circuit-court ruling that the 2018 version of Wisconsin Statutes section 48.415(2)(a)3 applied to the termination-of-parental-rights proceedings and that the 15-of-22-month period began with the 2016 CHIPS order. |
| STANDARD OF REVIEW    | De novo review of statutory interpretation and constitutional questions, while benefiting from the analyses of the circuit court and court of appeals.                                                                                                                                              |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                      |
| PARTIES               | S. E. v. Eau Claire County Department of Human Services                                                                                                                                                                                                                                             |

### TOPICS

[termination of parental rights](#)[family law procedure](#)[parental rights](#)[statutory interpretation](#)[due process](#)

## PRACTICE AREAS

family law

termination of parental rights

constitutional law

## QUESTIONS PRESENTED

1. Whether the 15-of-22-month timeframe in the 2018 version of Wisconsin Statutes section 48.415(2)(a)3 began when S. E. received written notice accompanying the initial 2016 CHIPS order or only after she received notice of the amended statute.
2. Whether applying the 2018 version of section 48.415(2)(a)3 to begin the 15-of-22-month timeframe in 2016 constituted impermissible retroactive legislation.
3. Whether applying the amended statute without earlier notice violated S. E.'s due process rights.

## HOLDINGS

1. The 15-of-22-month timeframe under the 2018 version of Wisconsin Statutes section 48.415(2)(a)3 began when S. E. received written termination warnings accompanying the initial 2016 CHIPS order.
2. Applying the 2018 version of section 48.415(2)(a)3 to S. E.'s proceeding was not an impermissible retroactive application.
3. Beginning the 15-of-22-month timeframe in 2016 and applying the amended continuing-CHIPS statute did not violate S. E.'s due process rights.

## KEY QUOTATIONS

*“We hold: (1) the “15 out of 22 months” timeframe, as codified in the 2018 amended version of Wis. Stat. § 48.415(2)(a)3 (2017-18), began to run when Sophie received written notice accompanying the initial 2016 CHIPS order; and (2) starting the “15 out of 22 months” timeframe in 2016 does not violate Sophie’s due process rights.” (¶ 5)*

*“We are not at liberty to disregard the plain words of the statute and we will not attempt to improve the statute by adding words not chosen by the legislature.” (¶ 25)*

*“Accordingly, we affirm the decision of the court of appeals.” (¶ 41)*

## FACTUAL BACKGROUND

In June 2016, the Department removed three-year-old Tyler from S. E.'s care after he was found wandering unattended and later tested positive for methamphetamine. The circuit court adjudicated Tyler CHIPS in August 2016 and issued written notice identifying continuing CHIPS as a possible ground for termination and listing conditions for reunification. S. E. continued to use drugs, was repeatedly arrested, absconded from probation, and did not participate in court-ordered services; Tyler remained outside her home for more than 15 of the most recent 22 months before the termination petition was filed.

## PROCEDURAL HISTORY

The Eau Claire County Circuit Court adjudicated the child CHIPS in 2016, removed him from S. E.'s care, and issued written termination warnings. After the Department filed a termination petition and amended it to add

continuing CHIPS, the circuit court ruled that the 2018 statutory amendment applied and that the 15-of-22-month period began in 2016. The Wisconsin Court of Appeals affirmed, and the Wisconsin Supreme Court affirmed the court of appeals.

## DISPOSITION

affirmed

## CASES CITED

- State v. Stephenson, 2020 WI 92, 394 Wis. 2d 703, 951 N.W.2d 819
- State v. Smith, 2010 WI 16, 323 Wis. 2d 377, 780 N.W.2d 90
- Dane Cnty. DHS v. J.R., 2020 WI App 5, 390 Wis. 2d 326, 938 N.W.2d 614
- St. Croix Cnty. DHS v. Michael D., 2016 WI 35, 368 Wis. 2d 170, 880 N.W.2d 107
- Dane Cnty. v. Kelly M., 2011 WI App 69, 333 Wis. 2d 719, 798 N.W.2d 697
- Waukesha Cnty. v. Steven H., 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607
- Tammy W-G v. Jacob T., 2011 WI 30, 333 Wis. 2d 273, 797 N.W.2d 854
- State ex rel. Kalal v. Cir. Ct. for Dane Cnty., 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- State v. Hemp, 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811
- Schulz v. Ystad, 155 Wis. 2d 574, 456 N.W.2d 312 (1990)
- Matthies v. Positive Safety Mfg. Co., 2001 WI 82, 244 Wis. 2d 720, 628 N.W.2d 842
- Landgraf v. USI Film Prods., 511 U.S. 244 (1994)
- State v. Chrysler Outboard Corp., 219 Wis. 2d 130, 580 N.W.2d 203 (1998)
- State v. Patricia A.P., 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995)
- Lands' End, Inc. v. City of Dodgeville, 2016 WI 64, 370 Wis. 2d 500, 881 N.W.2d 702

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