



## FACT-FINDING HEARING

Advocate Counsel : Attorney Don Bielski

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## CIVIL PROCEEDING

- ❖ Where not specified in Ch. 48 civil procedure applies.
  - ❖ Possible to have Interrogatories, Depositions and Admissions
  - ❖ §967.04(7) Judge presides at Audiovisual deposition
- ❖ §48.299 (4) Rules of evidence apply at fact-finding hearing.
- ❖ § 48.31 (1) Burden= Reasonable certainty by clear and convincing evidence.
- ❖ Jury demand before Initial Plea
  - ❖ 6 person Jury
  - ❖ 5/6 Verdict
  - ❖ Separate verdicts for each child



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## SUMMARY JUDGMENT

In re Gregory R.S. (Wis. Ct. App. 2002) 253 Wis.2d 563 [643 N.W.2d 890]

And Partial Directed Verdict



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### DEFAULT JUDGMENT § 806.02

- §806.02 (1) Initial Appearance
  - *Kimberly B.*, No. 2008 AP 1715 (Wi. App. Unpublished)

- §806.02 (5) Failure to appear at trial



- If counsel for parent is present the parent is “appearing.”
  - *Evelyn C.R.*, 2001 WI 110.

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### §806.02 as a Sanction

- Default Judgment proper as a sanction
  - parent fails to appear
  - was previously ordered to appear
  - knew the date of the hearing



ALSO

- If parent violates a Court order (i.e., Discovery)
- Grounds still need to be proven by evidence
- Still can participate in future hearings including dispositional hearing

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### PROCEDURAL TIME LIMITS

- 30 days after plea hearing
- 20 days if child or expectant mother is in custody. §48.30(7)



- Time Limits can be tolled § 48.315

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### PARENT UNAVAILABILITY

- Incarceration
- Hospitalization
- Other legitimate reason
- Must permit "meaningful participation" (assess the witnesses, confer with their lawyer, hear everything that is going on).
  - *Teodoro*, 307 Wis. 2d 372 (Ct.App. 2007).




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### STIPULATIONS

- Element of CHIPS ground or Waiver of Jury Trial
- Colloquy
- Waiver of jury determination as to that element.
- Knowing and voluntary.
  - *Andrea L.O.*, 309 Wis. 2d 161 (2008)




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### CHIPS Findings

- Two Step Procedure
- Grounds are proven § 48.13
  - Judge/Jury determination
    - Can be based on one parent's conduct
    - Best Interests of child **not considered by jury**
- Child is in need of protection or services that can be ordered by the Court
  - Judge determination




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### ADDITIONAL FINDINGS FOR WICWA

- Clear and convincing evidence that continued custody by the parent/custodian is *likely to result in serious emotional or physical damage* to the child
  - Decided by Jury/Judge
- Active efforts have been made to prevent the breakup of the child's family and those efforts have proved unsuccessful
  - Requires the testimony of a Qualified Expert Witness §48.028(2)(g)



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### IF ALLEGATIONS ARE PROVEN

- Court determines that protection or services is appropriate
- Dispositional hearing must be held within:
  - 30 days
  - 20 days if child or expectant mother is in custody §48.31 (7)
  - Time Limits can be tolled §48.315



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