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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT
Case No. 2021AP001146
Case No. 2021AP001147

IN RE TERMINATION OF PARENTAL RIGHTS TO C.P.,
A Child Under the Age of Eighteen:

STATE OF WISCONSIN,
Petitioner-Respondent-Respondent,
v.
A.P.,
Respondent-Appellant-Petitioner.

IN RE TERMINATION OF PARENTAL RIGHTS TO P.P.,
A Child Under the Age of Eighteen:

STATE OF WISCONSIN,
Petitioner-Respondent-Respondent,
v.
A.P.,
Respondent-Appellant-Petitioner.

PETITION FOR REVIEW PURSUANT TO WISCONSIN
STATUTES SECTION 809.32(4)

PETITION FOR REVIEW OF DECISION
IN THE COURT OF APPEALS, DISTRICT I
FILED DECEMBER 7, 2021

SUBMITTED BY:
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COMPLIANCE CERTIFICATE

I hereby certify that this Petition for Review conforms to the form and length requirements of Rule 809.19(8)(b) and (c) in that it is typewritten using a proportional font. The length of this Petition for Review is 1,722 words.

Dated this 7th of December 2021.

Electronically signed by:

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**PETITION FOR REVIEW PURSUANT TO WISCONSIN
STATUTES SECTION 809.32(4)**

The Petitioner, A.P., has requested appointed appellate counsel, Carl W. Chesshir, to file on his behalf, pursuant to Wisconsin Statutes Section 809.32(4), a Petition for Review of the adverse decision of the Court of Appeals in this case, filed December 7, 2021, which satisfies the requirements of Wisconsin Statutes Section 809.62(2)(d) and (f).

STATEMENT OF THE FACTS

C.P. was born on October 10, 2015. (R. 32; Case No. 2019TP000013).

P.P. was born on November 12, 2016. (R. 27; Case No. 2019TO000014). Both children were placed out of the home on July 16, 2017. (R. 32; Case No. 2019TP000013; R. 27; Case No. 2019TO000014).

The paternal grandmother, S.I. sought placement of both children through DMCPs as soon as she learned that the children were removed from the parental home which was on October 20, 2017. (R. 156; p. 155). S.I. consistently appeared at all court hearings, missing just one due to a medical issue. (*Id.* at 107). DMCPs informed S.I. of the reasons she was considered as a placement for the children. (R. 136; pp. 28-32). S.I. addressed each concern raised by DMCPs and became licensed as a foster parent and as an adoptive resource. (R. 136; p. 99; R. 156; pp. 156-160).

STATEMENT OF THE CASE

On January 23, 2019 Petitions for Termination of Parental Rights were filed to terminate the parental rights of A.P. to his children C.P. and P.P. (R. 1; Case No. 2019TP000013; R. 1; Case No 2019TP000014) (hereinafter all references to the record will be for Case No. 2019TP000013 unless otherwise noted).

An initial appearance was on both petitions February 12, 2019. (R. 142). A.P. was in custody and not produced for this hearing. (*Id.* at 3). The court adjourned the proceedings. (*Id.* at 8).

On March 13, 2019 an adjourned initial appearance was held. (R. 141). A.P. was produced for this hearing but his counsel had filed a substitution of judge and the proceedings were stayed for the appointment of a new judge. (*Id.* at 3-4).

The adjourned initial appearance was held before the new judge on April 8, 2019. (R. 145). The mother of the children appeared without counsel and the court adjourned the initial appearance to allow the mother to obtain counsel. (*Id.* at 5). The court then proceeded a permanency plan hearing and made no finding as to what the permanency goal should be. (*Id.* at 7).

On May 14, 2019 and adjourned initial appearance was held. (R. 146). The court advised A.P of his rights and A.P. requested a court trial. (*Id.* at 5-7).

On July 22, 2019 a permanency plan was held. (R. 147). The court once again withheld making a finding on the permanency goal. (*Id.* at 3). The court also noted that the mother filed a timely request for judicial substitution resulting from the judicial rotation. (*Id.*). Dates were set for final pretrial hearing and a jury trial. (*Id.* at 10-110).

A final pretrial hearing was held on October 21, 2019. (R. 148). However, the judge that would be presiding of the jury trial was not available and as a result no action was taken. (*Id.* at 4).

A jury trial was scheduled for October 28, 2019. (R. 160). Mother's attorney filed a motion to adjourn the trial and A.P. concurred. (*Id.* at 3 and 8). The paternal grandmother's guardianship petition was also scheduled to be heard. (*Id.* at 30-31). The paternal grandmother agreed to withdraw the guardianship petition and refile to accommodate the jury trial adjournment. (*Id.* at 34).

A jury trial was scheduled for January 13, 2020. (R. 163). A.P. informed the court that he wanted to change his plea to no contest to the Failure to Assume Parental Responsibility allegation in both Petitions. (*Id.* at 9). The court entered into an extensive colloquy with A.P. to determine that he was freely, voluntarily and intelligently waiving his rights to contest the grounds of failure to assume parental responsibility as to both petitions. (*Id.* at 13-32). The court heard testimony for the case manager in regards to the factual basis to support a finding on the ground

of failure to assume parental responsibility. (*Id.* at 49-80). The court made a finding that a factual basis exists to support the failure to assume parental responsibility pursuant to Wis. Stat. § 48.415(6) and also made a finding of unfitness. (*Id.* at 88-89).

On the same date, the court also conducted a permanency plan hearing and withheld making any findings. (*Id.* at 95-97).

On May 12, 2020 a status hearing was held in regards to the guardianship/dispositional hearing. (R. 150). After conferring with the parties in regards to the Covid-19 orders and the motion to adjourn filed by A.P., the court kept the dispositional hearing dates but also scheduled back up dates if the hearing could not proceed. (*Id.* at 28-29).

A hearing was held on May 18, 2020 on the motion by A.P. to adjourn the proceedings and requesting an in person hearing. (R. 151). The paternal grandmother, S.I., agreed to withdraw her guardianship petition and refile it for a hearing within the timelines. (*Id.* at 6-7). The court converted the June 22, 2020 hearing to a status hearing and set new dates for the disposition/guardianship hearing. (*Id.* at 13-14).

On June 22, 2020, a status hearing and permanency plan hearing was held. (R. 152). The court withheld making a finding as to the permanency goal. (*Id.* at 7). The court then confirmed with the parties the procedures for appearing in person or remotely and calling witnesses remotely for the next court date. (*Id.* at 25-26).

On October 6, 2020 the deposition/guardianship hearing was commenced. (R. 136). The court heard testimony from the Peyton Berth, ongoing case manager and S.D., foster parent. (*Id.* at 6-208). The court then adjourned the proceedings to the next court date. (*Id.* at 211).

The disposition/guardianship hearing was continued on October 8, 2020. (R. 156). The testimony from the foster parent, S.D. was continued. (*Id.* at 5-99). The court then heard testimony from S.I., the paternal grandmother. (*Id.* at 102-172). The court then adjourned the proceedings to the next court date. (*Id.* at 172).

The disposition/guardianship hearing was continued on October 22, 2020. (R. 155). The testimony of S.I., the paternal grandmother continued. (*Id.* at 9-61). The court then heard testimony from A.P., the children's father. (*Id.* at 64-93). Jeffrie Frizzle, visitation worker then testified. (*Id.* at 96-111). The court then next heard testimony from P.B., the mother's landlord. (*Id.* at 114-131). The mother, T.T. then testified. (*Id.* at 132-168). Anita Hicks, visitation supervisor then testified. (*Id.* at 171-188). The court then adjourned the proceedings to the next court date. (*Id.* at 192).

On December 7, 2020, the disposition/guardianship hearing continued. (R. 153). At this time, the court heard testimony from Dr. Ryan Mattek, a licensed psychologist. (*Id.* at 8-51). Finally, the court heard testimony from Amada Morales, advocate for the paternal

grandmother. (*Id.* at 54-70). The court then adjourned the proceedings to the next court date. (*Id.* at 71).

The deposition/guardianship hearing continued on December 9, 2020. (R. 154). The court continued with the testimony of Amada Morales. (*Id.* at 12-44). The court then further heard testimony of S.I., the paternal grandmother as a rebuttal witness and further testimony of Peyton Berth, ongoing case manager as a rebuttal witness. (*Id.* at 46-54). The court then heard closing arguments from the parties. (*Id.* at 55-94). The court then adjourned the proceedings to the next court date for the court to issue its decision. (*Id.* at 94).

The disposition/guardianship hearing was continued on December 10, 2020. (R. 149). The court rendered its decision. (*Id.* at 10-69). The court concluded as follows:

I am further finding it is in the best interest of these children that the parental rights of [T.T.] and [A.P.] be terminated after considering the factors I have placed on the record.

(*Id.* at 69).

In regards to the guardianship, the court further concluded that as follows:

I am finding that the petitioner has not met his burden. I am denying the guardianship at this point in time and dismissing it.

(*Id.* at 71).

On December 7, 2021, the court of appeals issued its decision, which affirmed A.P.'s Order terminating his parental rights to C.P. and P.P. (Decision, December 7, 2021 District I).

Dated this 7th of December 2021.

Electronically signed by:

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