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SUPREME COURT OF WISCONSIN

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In the Interests of N.A., D.A., & N.A., Persons under the Age of 18:

PORTAGE COUNTY,

Petitioner-Respondent,

Consolidated Appeals Nos.

v.

2021 AP 1683, 2021 AP 1685

2021 AP 1686

D.A.,

Respondent-Appellant-Petitioner,

R.A.,

Respondent-Respondent.

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PETITION FOR REVIEW

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PETITION FOR REVIEW

To: Court and Counsel

Comes now Attorney Timothy A. Provis who, on behalf of appellant D.A., presents this petition for review, pursuant to §809.62, *Wis. Stats.*, of the unpublished one judge court of appeals decision, District 4, filed in this action on March 24, 2022. This decision is filed as an appendix.

ISSUE PRESENTED

Whether D.A., natural father of N.A., D.A. and N.A., was denied basic Due Process at the court trial of Portage County's CHIPS petitions and at the dispositional hearings on those petitions.

The courts below found no denial of Due Process and no prejudice from the dispositional orders denying D.A. placement with his children.

### CRITERIA FOR REVIEW

A significant question of federal constitutional law is presented. §809.62(1r)(a), *Wis. Stats.* A supreme court decision here will help develop, clarify or harmonize the law and the question presented is a novel one as there are no cases deciding the application of Due Process to evidentiary issues in CHIPS proceedings. §809.62(1r)(c)(2), *Wis. Stats.*

### STATEMENT OF THE CASE

#### 1. Nature of the Case

This is a review of the constitutionality of CHIPS hearing procedure and of the subsequent dispositional orders denying D.A. placement with his children.

#### 2. Proceedings Below

On January 8, 2021, Portage County filed CHIPS petitions, alleging 1) the children were victims of physical abuse; 2) they were at substantial risk of abuse; 3) they were suffering emotional damage and 4) they were being neglected by their parents. (3) & Appellant's Appendix at 091-129.

On January 23, 2021, Portage County took custody of the children, placing them exclusively with their mother, R.A. (54:17 (21 AP 1683))(9 [21 AP 1685])(11 [21 AP 1686]). On that date the circuit court ordered the children be temporarily placed with R.A. with visitation with D.A. permitted. (54:16, 34, 77-78 [21 AP 1683]).

Court trial on the petitions was held April 8 and May 13 &14, 2021. (56)(97)(98)(99). Both parents testified at this trial. *Ibid.*

The final CHIPS disposition hearing was held on August 2021. (121). Written disposition orders were entered on September 7, 2021. (119 [21 AP 1683]).

Notices of Appeal were filed September 24, 2021.

## ARGUMENT

I. This case deserves plenary consideration by the Court.

### A. Relevant Facts

During the trial, the circuit court limited or cut off trail counsel's questions regarding 1) the timing of Portage County's investigation and other matters (96:99-100)(98:108-109)(98:115-117); 2) impeachment evidence that R.A. was not as dependent on D.A. as she testified (98:93-94, 124-125); 3) the children's false statements (98:129-130)(102:35-37); 4) inaccuracies in Portage County's reports (102:72-73)(121:2-26) and 5) cross examination of R.A. to show appellant's religion was not material to the CHIPS proceedings (98:92-94).

### B. Discussion

It is, of course, well settled basic 14<sup>th</sup> Amendment Due Process applies to Children's Code proceedings. See, *e.g.*, *Joni B. v. State*, 202 Wis.2d 1, 12-18, 549 N.W.2d 411, 415-417 (1996)(legislative restriction on court's power to appoint counsel in CHIPS proceedings violated basic Due Process)(following U.S. Supreme Court rulings): *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶19-¶26, 246 Wis.2d 1, 13-18 (failure to take evidence in TPR proceedings before defaulting mother violated basic Due Process)(following U.S. Supreme rulings).

It is equally well settled basic Due Process include the rights to confrontation and cross-examination. *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959) (since right to pursue ones' chosen occupation is

constitutionally guaranteed, it cannot be denied absent Due Process including rights to confrontation and cross-examination).

Here, appellant father D.A. was denied his rights to cross-examine and even to present relevant evidence. See A., *supra*. Counsel's research discloses no Wisconsin cases discussing the application of Due Process to evidentiary issues in CHIPS proceedings. Thus,, considering the great number of CHIPS cases heard yearly, it is important to clarify the issues presented here for guidance to trial courts.

#### Conclusion

Counsel respectfully submits the foregoing demonstrated the Court should grant this petition for review.

Dated April 21, 2022

Respectfully submitted,

Timothy A. Provis

Electronically signed by

Timothy A. Provis

Attorney for Petitioner

D.A.

## SUPREME COURT OF WISCONSIN

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CERTIFICATIONS

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition conforms to the rules contained in §809.19(8)(b), (bc) & (c) for a brief produced with a proportional serif font. The length of this brief is 701 words.

ACCURACY CERTIFICATION

I hereby certify that the electronic copy of this petition conforms to the rule contained §809.19(12)(f) in that the text of the electronic copy of this petition is identical to the text of the paper copy of this petition.

Dated: April 21, 2022

Signature: Timothy A. Provis

Timothy A. Provis

Bar No. 1020123