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SUPREME COURT

**STATE OF WISCONSIN
IN SUPREME COURT
Case No. 2022AP001084**

IN RE THE TERMINATION OF PARENTAL RIGHTS TO
K.S.,
A Person Under the Age of Eighteen.

N.D.,
Petitioner-Respondent-Respondent,

v.

E.S.,
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 II
FILED JANUARY 25, 2023

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), (bm), and (c) in that it is typewritten using a proportional font. The length of this Petition for Review is 1,412 words. I further certify in accordance with Rule 809.19(12)(f) that the text of the electronic copy of this Petition for Review is identical to the text of the paper copy of this Petition for Review.

Dated this 25th Day of January 2023.

Electronically signed by:

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STATUTES SECTION 809.32(4)**

The Petitioner, E.S., 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 January 25, 2023, which satisfies the requirements of Wisconsin Statutes Section 809.62(2)(d) and (f).

STATEMENT OF THE FACTS

K.S. was born on June 19, 2009. (R. 116). When K.S. was about one-year old her parents separated but continued to co-parent. (*Id.*). On or about June 19, 2017, E.S. had his last contact with K.S. (R. 2).

STATEMENT OF THE CASE

On December 28, 2020 a Petition for Termination of Parental Rights was filed to terminate the parental rights of E.S. to his child, K.S. (R. 2).

An initial appearance was held on the petition January 21, 2021. (R. 125). E.S. informed the court that wanted to contest the petition and that he wanted legal representation. (*Id.* at 3). The court adjourned the proceeding to allow E.S. to obtain counsel. (*Id.* at 4).

On February 22, 2022, the adjourned initial appearance was held. (R. 141). E.S. informed the court that an SPD attorney had been appointed to him but there were no records in the court file appointing E.S. an attorney. There was a note from the SPD office

that E.S. eligibility had not yet been determined. (*Id.* at 4-5). The court then adjourned the proceedings. (*Id.* at 5).

An adjourned initial appearance was held on March 4, 2021. (R. 124). E.S. appeared with counsel. (*Id.* at 2). E.S. entered a denial to the allegations in the petition, preserved his right to a jury trial and waived his right of judicial substitution. (*Id.*). The court found good cause to adjourn the matter and set a date for a status hearing. (*Id.* at 6).

On May 21, 2021, a status hearing was held. (R. 126). The court set dates for a status hearing, final pretrial hearing and jury trial. (*Id.* at 4-7).

A status hearing was held on July 23, 2021 where the court set a date for a summary judgment motion hearing. (R. 127; p. 5).

On September 7, 2021, a summary judgment hearing was held. (R. 128). The court listened to argument from the parties. (*Id.* at 5-11). The court then made a finding that issues of material fact exist and therefore denied the motion for summary judgment. (*Id.* at 13-14).

On October 18, 2021 a final pretrial was held. (R. 129). The court made rulings on the motions in limine. (*Id.* at 4-18). The court then confirmed the scheduled jury trial date. (*Id.* at 18).

A jury trial commenced on October 27, 2021. (R. 139). Voir dire of the jury was completed and a jury selected. (*Id.* at 9-40). The court then instructed the jury and the jury heard opening arguments from the attorneys. (*Id.* at 41-58). The jury first heard testimony from the Respondent, E.S. (*Id.* at 59-85). The jury then heard from Petitioner's witness, J.S. (*Id.* at 87-90). The next witness the jury heard from was Petitioner's witness, J.D. (*Id.* 79-96). The jury then heard testimony from Petitioner's witnesses, J.P. and R.P. (*Id.* at 96-108). The jury then heard testimony from the Petitioner's witness, K.D. (*Id.* at 108-135). The court then held a sidebar. (*Id.* at 136-145). The jury then heard testimony from the Petitioner, N.D. (*Id.* at 146-182). Both the Petitioner and GAL rested. (*Id.* at 183). E.S. then moved the court for a directed verdict and the Petitioner objected. (*Id.* at 184). The court denied the motion. (*Id.* at 184-185). E.S. then testified to the jury. (*Id.* at 186-197). The court then excused the jury and held a conference with the parties. (*Id.* at 198-201). The court then adjourned the trial to continue the following morning. (*Id.* at 206).

The jury trial continued on October 28, 2021. (R. 142). Before calling in the jury, the court held a conference with the parties regarding the criminal record of E.S. and heroine usage. (*Id.* at 2-14). The court advised

the parties that a juror did not appear and the parties stipulated to proceeding with twelve jurors. (*Id.* at 14-15). The trial then continued with the jury hearing testimony from E.S. (*Id.* at 16-23). E.S. then rested. (*Id.* at 23). The jury then heard rebuttal testimony from N.D. (*Id.* at 23-37). The court concluded the evidentiary portion of the trial. (*Id.* at 37). The court then instructed the jury. (*Id.* at 42-54). The jury then heard closing argument from N.D.'s attorney. (*Id.* at 54-56). The jury then heard closing argument from E.S.'s attorney. (*Id.* at 56-62). Next, the jury heard closing argument from the GAL. (*Id.* at 62-63). Finally, the jury heard rebuttal closing from N.D.'s attorney. (*Id.* at 63-65). The trial court then gave the jury its final instructions before deliberation. (*Id.* at 65-66). The jury then returned a unanimous verdict. (*Id.* at 66-67). The court then polled the jury as to its verdict. (*Id.* at 67-68). Based on the verdict, the court found E.S. to be unfit. (*Id.* at 69). E.S. moved for a judgment notwithstanding the verdict. (*Id.* at 70). The court denied the motion. (*Id.* at 70-71). The court then scheduled the case for a dispositional hearing. (*Id.* at 71).

The dispositional hearing was held on December 21, 2021. (R. 130). The court then heard dispositional testimony from the N.D.'s witness, Rachel Straka, a privately retained social worker who wrote the court report for this case. (*Id.* at 6-20). The court

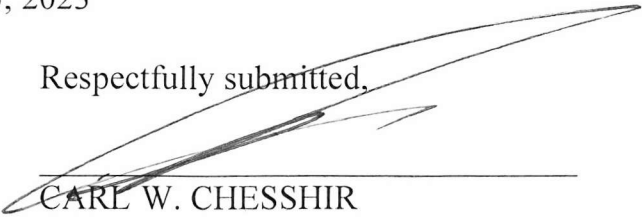
then heard testimony from the petitioner, N.D. (*Id.* at 20-24). E.S. was the final witness to testify. (*Id.* at 26-31). The court then heard closing argument from N.D.’s attorney. (*Id.* at 32-33). The court then heard the GAL’s recommendation. (*Id.* at 33-35). Finally, the court heard closing argument from E.S.’s attorney. (*Id.* at 35-38). The court then rendered its decision. (*Id.* at 38-44). The court concluded by stating, “I do find that it is in the best interest of this child that the parental rights of [E.S.] be terminated. Based upon that finding, I will order that the parental rights of [E.S.] are terminated.” (*Id.* at 44)

On July 22, 2022, E.S. filed a motion for a new trial along with the Affidavit of Attorney Carl W. Chesshir. (R. 155 and 156). The Petitioner filed an Objection to Respondent-Appellant’s Notice of Motion and Motion for a New Trial. (R. 158). A hearing was held on E.S.’s motion on August 17, 2022. (R. 164). The trial court denied E.S.’s motion for a new trial. (R. 161).

On January 25, 2023, the court of appeals issued its decision, which affirmed E.S.’s Order terminating his parental rights to his child, K.S. (Decision, January 25, 2023, District II).

Dated: January 25, 2023

Respectfully submitted,



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