STATE OF WISCONSIN

COURT OF APPEALS - DISTRICT III

Case No. 2022AP1432

In re Termination of Parental Rights to R.M.,
A Person Under the age of 18.

BROWN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Petitioner-Respondent,

v.

S.K.,

Respondent-Appellant.

ON APPEAL FROM AN ORDER TERMINATING PARENTAL RIGHTS IN THE CIRCUIT COURT FOR BROWN COUNTY, THE HONORABLE JOHN P. ZAKOWSKI, PRESIDING

BRIEF OF RESPONDENT-APPELLANT

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ISSUE PRESENTED

> Is a conviction for neglect of a child as a party to a crime a "serious felony" pursuant to Wis. Stat. sec. 48.415(9m) on which summary judgment for prior conviction of a felony against a child can be based?

Respondent moved to oppose summary judgment on the ground that a misdemeanor did not qualify as a "serious felony" under the statute. The trial court found that respondent's misdemeanor conviction for neglect was a "serious felony" and granted the County's motion for partial summary judgment.

SUMMARY OF ARGUMENT

Brown County Terminated the parental rights of S.K., the mother and respondent, on a directed verdict on the grounds that she had previously committed a felony against a child, Wis. Stat. § 48.415(9m). That section creates grounds for termination where the parent has been convicted of a "serious felony." The County alleged that S.K.'s "serious felony" conviction occurred when she entered a no contest plea as a party to a crime to a charge of neglect of a child resulting in the death of the child. Her former boyfriend was convicted of first-degree homicide of the child for which he received a significantly longer sentence.

Contrary to the finding of the trial court, Wis. Stat. § 48.415(9m) does not create grounds to terminate parental rights where a parent was convicted as a party to a crime. It allows termination where a parent has committed a "serious felony" against a child which it defines in relevant part as:

> 1. The commission of, **the aiding or abetting** of, or the solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if committed in this state.
> …
>
> 3. **The commission of a violation of s. 948.21** or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.21 if committed in this state, that resulted in the death of the victim. (emphasis added).

(Emphasis added).

Aiding and abetting is one way to be a party to a crime, and therefore since the legislature listed aiding and abetting the homicide or felony murder of a child as the only forms of being a party to a crime that qualify as a serious felony for purposes of satisfying the applicability of Wis. Stat. § 48.415(9m), S.K.'s conviction as a party to a crime of neglect does not satisfy the definition of a "serious felony" as required for the application of Wis. Stat. § 48.415(9m). The express mention of one matter excludes other similar matters that are not mentioned. Therefore, summary judgment based on a conviction as a party to a crime was improper as a matter of law.

STATEMENT OF THE FACTS

S.K. had 5 children with the oldest being 15 years old. R.M., the fifth child and the child at issue in this case, was removed from S.K.'s care on May 25, 2017, when S.K. took

her fourth child, sixteen-month-old B.K.R., to the emergency room. Her daughter had died before being brought in, and the department determined that the child died from injuries caused by S.K.'s boyfriend, the father of her fifth child. The department found that S.K.'s boyfriend, J.M., caused injuries which should have been very apparent to S.K., and therefore she was substantiated for neglect and failing to protect her daughter. (50:3) The record does not reflect that S.K. ever physically abused a child or that any child other than the deceased child was abused. The County has not sought to terminate S.K.'s rights to S.K.'s older children.

A CHIPS order was entered on June 1, 2017. S.K. completed all of the conditions that she was able to complete including working with the department and completing mental health evaluation and domestic violence services, which was ordered because her children reported that S.K. was a victim of domestic abuse, and contacting the department regarding her child's health. (50:4-5) S.K. did not complete conditions such as maintaining suitable housing or making living decisions which were rendered impossible once she was charged with the crime of neglect causing death and was incarcerated beginning in May 2018. S.K. wrote monthly letters to her child which she was unaware were never passed on to him (78:43-44). She continued writing monthly letters until this TPR proceeding was filed (78:18).

On May 4, 2018, the State filed a criminal complaint in Brown County Case 18CF662. On October 8, 2020, S.K. entered a no contest plea to Neglecting a Child (consequence is death) as a party to a crime, violations of Wis. Stat. §§948.21(1)(d) and 939.05. A count of Child Abuse—

Fail/Prevent Bodily Harm as a party to a crime was dismissed and read in. She was sentenced on January 19, 2021, to a sentence of 10 years incarceration plus 10 years extended supervision. Her boyfriend, J.M., who entered a no contest plea to 1st-degree Reckless Homicide received a sentence of 24 years initial incarceration followed by 12 years extended supervision.

The County filed Petition for Termination of Parental Rights on June 10, 2021, and sought termination pursuant to Wis. Stat. § 48.415(9m), Commission of a Felony Against a Child. That statute reads:

> (9m) Commission of a felony against a child.
> (a) Commission of a serious felony against one of the person's children, which shall be established by proving that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction.
>
> (am) Commission of a violation of s. 948.051 involving any child or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.051 involving any child if committed in this state.
> (b) In this subsection, " serious felony" means any of the following:
>
> 1. The commission of, **the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, 940.03 or 940.05** or a violation of the law of any other state or federal law, if that violation would be a violation of

> s. 940.01, 940.02, 940.03 or 940.05 if committed in this state.
>
> 2.a. The commission of a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a), (3) (a), or (5) (a) 1., 2., or 3., 948.05, 948.051, 948.06, 948.08, or 948.081, or a violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.
>
> b. A violation of the law of any other state or federal law, if that violation would be a violation listed under subd. 2. a. if committed in this state.
>
> 3. **The commission of a violation of s. 948.21** or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.21 if committed in this state, that resulted in the death of the victim.

(Emphasis added).

The petition for termination of parental rights alleged that the father had become angry and violent, had "smacked," the deceased child, and had kicked her in the head. (4:7) Petitioner filed a motion for Partial Summary Judgment on August 7, 2021. (24:1-21). In it the County had alleged that, "On August 6, 2020, [S.K.] entered a plea of "no contest" to [a count of] Neglecting a Child (Consequence is Death) under Wis. Stat. § 948.21(1)(d)." Because of her conviction, the County argued that, "There is no genuine issue of material fact that a child (B.K.R. dob 1/26/2016) of the person whose parental rights are sought to be terminated ([S.K.'s]) was the victim of a serious felony (Wis. Stat. 948.21(1)(d)…." (24:3).

S.K., the respondent, filed a Reply requesting that the court deny summary judgment. (28:1-7). According to Respondent's Request to Deny to (sic) the Petitioner's Motion for Summary Judgment and Motion to Dismiss Ground 48.415(9m), it is undisputed that S.K. was convicted of a crime of neglect of a child as a party to a crime, but the fact that she entered a plea as a party to a crime means that her conviction does not satisfy the definition of a "serious felony" for purposes of Wis. Stat. § 48.415(9m). Specifically because the statute "is explicit that persons who aid or abet felonies under 940.01, 940.02, 940.03, 940.05 are included in the definition of a serious felony under Wis. Stat. § 48.415(9m)(b)1 but 'is mute' on those who commit an offense as a party to a crime under Wis. Stat. 48.415(9m)(b)3, it is fair to assume the legislators did not intend to include those who aid or abet under Wis. Stat. § 948.21 to have grounds for termination of parental rights." (28:2)

The County responded to Petitioner's Reply to Respondent-Mother's Request to Deny Summary Judgment and Motion to Dismiss, and argued that the only definition that applied to S.K. was the one set forth in Wis. Stat. § 48.415(9m)3, and there is no question that S.K. was convicted of neglect of child resulting in death. Furthermore Wis. Stat. § 939.05(2) indicates that a person concerned in the commission of a crime "[d]irectly commits the crime." (30: 4) According to the County, "Although the Respondent-Mother may not have caused or inflicted the injuries that lead to the death of her child, that does not mean that she is not equally culpable since her direct involvement is specifically related to her failure to act." (30:4) Furthermore, the County has argued that, "Accepting the argument of the Respondent-Mother

would allow a mother and father to both be convicted of neglect of their child resulting in death but evade a finding of unfitness under Wis. Stat. § 48.415(9m) simply because both were convicted as a party to a crime." (30: 4) The County did not address the statutory interpretation issue concerning the disparate definitions under Wis. Stat. § 48.415(9m)1 and (9m)3.

The court issued a ruling denying respondent's motion and granting summary judgment. The court reviewed the statute and drafting note which stated:

> Note: Adds a ground for involuntary TPR based on commission of a serious felony against one of the person's children which must be established by proving that the person whose parental rights are sought to be terminated has been convicted of a serious felony and that one of the person's children was the victim of that serious felony. These serious felonies are as follows: s. 940.01, stats., (first-degree intentional homicide), 940.02, stats., (first degree reckless homicide), 940.03, stats., (felony murder), 940.05, stats., (2nd-degree intentional homicide), 940.225 (1), stats., (first-degree sexual assault), 940.225 (2), stats., (2nd-degree sexual assault), 948.02 (1), stats., (first-degree sexual assault of a child--child under age 13), 948.02 (2), stats., (2nd-degree sexual assault of a child--child under age 16), 948.025, stats., (engaging in repeated sexual assault of the same child), 948.03 (2) (a), stats., (intentionally causing great bodily harm to a child) or (3) (a), stats., (recklessly causing great bodily harm to a child), 948.05, stats., (sexual exploitation of a child, including a person responsible for the child's welfare knowingly permitting, allowing or encouraging a child to engage in sexually exploitative conduct), 948.06, stats., (incest with a child, including, under certain

> circumstances, a person responsible for the child's welfare failing to take action to prevent incest) or 948.08, stats., (soliciting a child for prostitution) or s. 948.21, stats., if death is the consequence (intentionally neglecting a child), or a similar crime under federal law or the laws of any other state. In addition to applying when the person commits a serious felony against one of the person's children other than the child who is the subject of the petition, this ground also applies in those cases in which the child who is the subject of the petition was the victim of such a crime and survives. (44: 2-3)

The court did not address the fact that statute specifically lists the aiding and abetting of the most serious offenses but does not list any similar language for cases for convictions of neglect. The court concluded that, "The court interprets the language of § 48.415(9m)(b3) which is the grounds for the TPR as clearly stating a conviction for § 948.21, intentionally neglecting a child where death is a consequence is a 'serious felony.'" (44:3)

ARGUMENT

I. "SERIOUS FELONY" UNDER WIS. STATS. § 48.415(9M) DOES NOT INCLUDE A CONVICTION FOR NEGLECT AS A PARTY TO A CRIME.

Whether a court has construed a statute correctly is a matter of law subject to de novo review, *see e.g.,* ***State v. Escalona-Narano****,* 517 N.W.2d 157, 160, 185 Wis. 2d 168 (1994), and the trial court did not correctly construe Wis. Stat. § 48.415(9m) in this case. The statute, when read in context, is clear and unambiguous that termination for prior

commission of a felony against a child does not include offenses committed as a party to a crime. By its very terms, the statute includes aiding and abetting for only the very most serious offenses including various degrees of homicide and felony murder. The legislature could have listed, but did not list, negligence of a child as a party to a crime. Therefore, pursuant to the doctrine of *expressio unius est exclusio alterius*, "the express mention of one matter excludes other similar matters [that are] not mentioned.," *infra.,* the fact that the legislature listed aiding and abetting homicides and felony murders as "serious felon[ies]" but did not list aiding and abetting or crimes committed as a party to a crime means that the legislature did not intend for a conviction for neglect as a party to a crime to count as a "serious felony" no matter the result of the neglect.

The Wisconsin Supreme Court "clarified" in ***State v. Kalal v. Circuit Court,*** 2004 WI 58, 271 Wis.2d 633, 681 N.W.2d 110, that "scope, context, and purpose are perfectly relevant to a plain-meaning interpretation of an unambiguous statute as long as the scope, context, and purpose are ascertainable from the text and structure of the statute itself, rather than extrinsic sources, such as legislative history." *Id.* at ¶48.

As clarified further by the Wisconsin Supreme Court,

> [S]tatutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.

> Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.
>
> Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning. Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history. "In construing or interpreting a statute the court is not at liberty to disregard the plain, clear words of the statute.
>
> The test for ambiguity generally keeps the focus on the statutory language: a statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses.. It is not enough that there is a disagreement about the statutory meaning; the test for ambiguity examines the language of the statute "to determine whether `well-informed persons should have become confused,' that is, whether the statutory . . . language reasonably gives rise to different meanings." "Statutory interpretation involves the ascertainment of meaning, not a search for ambiguity."

Id. at ¶¶ 45-47 (citations omitted).

The court further instructed that legislative history cannot be used to find ambiguity. As stated by the court:

> At this point in the interpretive analysis the cases will often recite the following: "If a statute is ambiguous, the reviewing court turns to the scope, history, context, and purpose of the statute." Sometimes the cases substitute the phrase "subject matter and object of the statute" for the phrase "purpose of the statute" in this litany. Either way, this common formulation is somewhat misleading: scope, context, and purpose are perfectly relevant to a plain-meaning interpretation of an unambiguous statute as long as the scope,context, and purpose are ascertainable from the text and structure of the statute itself, rather than extrinsic sources, such as legislative history.

Id. at ¶ 48 (Citations omitted).

The court continued explaining that context remains important, saying:

> It is certainly not inconsistent with the plain-meaning rule to consider the intrinsic context in which statutory language is used; a plain-meaning interpretation cannot contravene a textually or contextually manifest statutory purpose...."

Id. at ¶ 49.

> ...
>
> What is clear, however, is that Wisconsin courts ordinarily do not consult extrinsic sources of statutory interpretation unless the language of the statute is ambiguous. By 'extrinsic sources' we mean interpretive resources outside the statutory text— typically items of legislative history...

Id. at ¶ 50.

As a result,

> [R]esort to legislative history is not appropriate in the absence of a finding of ambiguity.' This rule generally "prevents courts from tapping legislative history to show that an unambiguous statute is ambiguous."

Id. at 51 (Citations omitted).

In construing context, the Wisconsin Supreme Court has said that, "[T]his court looks to see whether a statute makes reference to a list of specific alternatives in a statue. When it does, it evidences the legislature's intent to exclude alternatives that have not been listed." ***State ex rel. Harris v. Larson***, 64 Wis. 2d 521, 527, 219 N.W.2d 335, 339 (1974) As stated further in ***Harris,*** "The chapter reflects the legislature's desire to specifically define the authority of appropriate officers. Where there is evidence of such enumeration, it is in accordance with accepted principles of statutory construction to apply the maxim, *expressio unius est exclusio alterius*; in short, if the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power." ***Id.*** *See also,* ***C.A.K. v. State***, 154 Wis. 2d 612, 621, 453 N.W.2d 897 (1990); ***FAS, LLC v. Town of Bass Lake***, 2007 WI 73, ¶27, 301 Wis.2d 321, 733 N.W.2d 287 ("Under the doctrine of expressio unius est exclusio alterius , the express mention of one matter excludes other similar matters [that are] not mentioned.").

Aiding and abetting is one of the ways in which a person can be a party to a crime. *see* Wis. Stat. § 939.05(2)(b). Therefore, the fact that the legislature specifically listed conviction for aiding and abetting homicides and felony murder as being grounds for termination of parental rights

while not listing a conviction for aiding and abetting or as party to a crime for neglect of a child establishes as a matter of statutory construction that the legislature did not intend to make conviction for neglect as a party to a crime as grounds for termination under Wis. Stat. § 48.415(9m), commission of a felony against a child. Neither the County nor the trial court have ever explained why the listing of aiding and abetting only to homicides of felony murder does not exclude party to a crime for all other offenses. Both logic and the rules of statutory construction require the same conclusion: Wisconsin Stat. § 48.415(9m) unambiguously excludes party to a crime except for homicides and felony murder, and therefore it does not include neglect as a party to a crime within the definition of a "serious felony."

II. THERE IS NO AMBIGUITY NOR IS THERE ANY LEGISLATIVE HISTORY INDICATING AN INTENT TO INCLUDE PARTY TO A CRIME OF NEGLECT IN THE DEFINITION OF "SERIOUS FELONY."

The statute is not ambiguous, but even if it were there is no legislative history indicating that the legislature intended to include party to a crime of neglect in the definition of a "serious felony" under Wis. Stat. § 48.415(9m). The legislative history that the court cites lists the crimes that it added to the list of serious felonies, but it does not address at all the distinction between persons who have aided and abetted a crime or been party to a crime as opposed to those who were not so convicted. When Wisconsin § 48.415(9m) was first promulgated in 1995 Wisconsin Act 275, subsection (9m)3 did not exist. It was added later in 1997 Wisconsin Act 35. That same Act added the aiding and abetting language. Since then, the

legislature has amended the statute four times in 2001 Wis. Act 109, 2007 Wis. Act 116, 2011 Wis. Act 271, 2015 Act 366, and 2017 Act 128. The legislature did not indicate any intent in any of them that it wanted to add aiding and abetting or party to a crime to the crime of neglect within the definition of "serious felony." In short, the legislature was aware of the distinction between aiding and abetting/party to a crime and the "serious felon[ies]" listed in the statute. It also has had ample opportunity to include party to a crime of neglect to the definition of "serious felony" in Wis. Stat. § 48.415(9m), but it has not. There simply is no indication that the legislature ever intended to do so.

Applying the statute as written does not create an absurd result. It would mean, says the County, that where both parents have been convicted of neglect resulting in death as a party to crime, both could "evade a funding of unfitness under Wis. Stat. § 48.415(9m) simply because they both were convicted as a party to a crime…This cannot be the intent of the plain language selected by the legislature and would be an absurd interpretation of these statutory definitions." (Reply at 4-5). The court "agree[d]" with the logic of that argument.

The logic is flawed for multiple reasons. First, the legislature reasonably has fashioned a statute that allows the automatic taking of a parent's parental rights in only the most extreme cases of parental homicide or felony murder because termination of parental rights "work[s] a unique kind of deprivation" and is "among the most severe forms of state action." ***Evilyn C.R. v. Tykila S.***, 2001 WI 110, 20, 246 Wis. 2d 1, 629 N.W.2d 768 *quoting* ***M.L.B. v. S.L.J.*** 519 U.S. 102, 127-28 (1996). It is not absurd to require more than a plea to neglect as a party to a crime where, as here for

example, the mother did not take her child to the doctor timely or report the perpetrator where she was herself the victim of abuse.

Second, it is not true that reading Wis. Stat. § 48.415(9m) as not including convictions as a party-to-a-crime in the definition of a "serious felony" will allow undeserving parents to somehow evade termination of their parental rights. Firstly, prosecutors can avoid this problem by not charging dangerous and undeserving parents as a party to a crime. Secondly, even if parents such as S.K. have been convicted as a party to a crime, the County or State is not left without recourse. The child can be removed from the home and put on a CHIPS order pursuant to Wis. Stat. § 48.355, and the parental rights ultimately can be terminated pursuant to any of the other applicable grounds for termination listed in Wis. Stat. § 48.415 should the parent be unfit. This includes most likely continuing need of protection or services, continuing denial of periods of physical placement or visitation, child abuse, failure to assume parental responsibility,[1] or prior involuntary termination of parental rights. Requiring more than being party to neglect is not "absurd" but rather cognizant and respectful of the precious parental rights involved and the County's duty to prove that a parent is unfit before a parent's parental rights can be terminated permanently.

[1] If exposing a child to a hazardous living environment can be grounds to find that a parent has failed to assume parental responsibility, *see* ***Tammy W.G. v. Jacob T.,*** 2001 WI 30 "¶37, 33 Wis. 2d 273, 797 N.W.2d 854, then certainly exposing a child to an environment that caused the death of another child could possibly constitute grounds to establish failure to assume parental responsibility.

III. NOTHING IN WIS. STAT. § 939.05 MODIFIES OR OVERRULES THE CLEARLY STATED LANGUAGE OF WIS. STAT. §48.415(9M).

The County has claimed that the language in "…Wis. Stat. § 939.05 does not somehow negate her culpability in her child's death or allow her to evade the definition of a 'serious felony'" (30:3), but the County's first claim is irrelevant here and the County's second claim is wrong. The issue is not whether S.K. is culpable in her child's death but whether she has been convicted of a "serious felony" for purposes of the statute. There are three ways that a person can be a party to a crime: 1) directly committing the crime; 2) aiding and abetting the crime; and 3) conspiring to commit a crime. Wis. Stat. §§ 939.052(a), (b), and (c). *See also,* ***State v. Charbeneau***, 82 Wis. 2d 644, 264 N.W.2d 227 (1978) (There are two party-to-a-crime theories: aiding and abetting and conspiracy). As addressed above, the legislature has specifically listed that only the most serious offenses of homicide and felony murder are "serious offenses" if the parent aided and abetted those offenses. Since the legislature singled out those offenses but did not include lesser offenses, it clearly did not intend to include party to a crime for neglect as a "serious felony."

CONCLUSION

The legislature's express mention of aiding and abetting applying only to homicides and felony murder excludes other similar matters such as party to a crime that are not mentioned. Since the legislature could have listed, but did not list, party to a crime of neglect as a "serious felony" which creates grounds for termination, the language of the statute clearly and unambiguously excludes party to a crime for neglect as a ground for termination under Wis. Stat. § 48.415(9m).

Even if the statute were ambiguous, there is no indication, including legislative history, that the legislature intended for party to a crime to be a "serious felony" listed in Wis. Stat. § 48.415(9m).

Reading the statute according to its plain language reveals that the legislature did not intend that conviction of neglect as a party to a crime be a ground for termination of parental rights. That result is not absurd but fair and respectful of the child's and parent's rights to remain a family unless and until the County proves that the parent is unfit.

For these reasons, S.K., the respondent-appellant, respectfully requests that this court vacate the grant of summary judgment and the termination order which was founded upon it, and return the case to the trial court for further proceedings on the petition for termination. In addition, S.K., who is incarcerated, requests that the court vacate any no contact order so that she can continue her practice of writing and sending letters to her child.

Dated this 1st day of November, 2022.

Respectfully submitted,

Electronically signed by Brian Findley
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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 4,489 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 1st day of November, 2022.

Signed:
Electronically signed by
Brian Findley
BRIAN FINDLEY
Attorney for Respondent-Appellant