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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2023AP1495

No. 2023AP1496

IN RE THE TERMINATION OF PARENTAL RIGHTS TO E.A.
and D.L.A., persons under the age of 18:

JACKSON COUNTY DEPARTMENT OF HUMAN SERVICES,

Petitioner-Respondent-Respondent,

v.

I.J.R.,

Respondent-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JERI MARSOLEK

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INTRODUCTION

The Department opposes the petition for review filed by I.J.R. (hereinafter “Isla”). The court of appeals employed the correct standard of review and applied established due process principles when it determined that Isla had no due process right to be present at a summary judgment hearing. Furthermore, the court of appeals correctly found that Isla had not made constitutional or statutory arguments before the trial court and therefore had forfeited the same. *In re the Termination of Parental Rights to E.A. and D.L.A.*, Nos. 2023AP1495 and -1496, 2024 WL 1565024 (Wis. Ct. App. April 11, 2024) (unpublished); (Pet-App. 1-21). Isla’s attempt for further review, which constitutes no more than a plea for error correction, should not convince this Court otherwise.

DISCUSSION

There are several reasons why this Court should deny Isla’s petition for review.

First, the court of appeals decision is correct and does not involve a real or significant question of federal or state constitutional law. Rather, the court of appeals determined that Isla’s argument regarding any due process right to appear failed for independent reasons. Isla’s arguments to the court of appeals were without clear support in the record.

Isla argued in the court of appeals that the department disobeyed a court order to file a writ for Isla’s appearance at a summary judgment hearing. But, the court of appeals found the

record is devoid of any such order. Rather, the court observed that the record shows trial counsel for Isla represented that “[i]f we can confirm” Isla’s custody status as of the hearing date, the department “should do a writ” for Isla’s appearance. This vague statement from trial counsel does not constitute a court order. Moreover, trial counsel had indicated on the record that she had not followed up on the issue of a writ. The court of appeals found nothing in the record to confirm that Isla’s custody status had been confirmed.

More importantly, the court of appeals noted that Isla made no arguments based on constitutional or statutory bases in the trial court. The court of appeals properly held that arguments raised for the first time on appeal are generally deemed forfeited. (Pet-App. 7) (citing *Tatera v. FMC Corp.*, 2010 WI 90, ¶ 19 n.16, 328 Wis. 2d 320, 786 N.W.2d 810; and *State v. Eugene W.*, 2002 WI App 54, ¶ 13, 251 Wis. 2d 259, 641 N.W.2d 467.

The court of appeals specifically stated that, “this court does not ‘blindsides [circuit] courts with reversals based on theories which did not originate in their forum.’” (citing *State v. Rogers*, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995)). On this basis the court of appeals properly concluded that when applying the facts of this case to the established legal principles of law, Isla’s constitutional and statutory arguments fail on forfeiture grounds.

Isla does not argue that the court of appeals analysis was wrong or that it misconstrued any of this Court’s precedential holdings. Rather, Isla ignores the court of appeals forfeiture holding and instead again argues the issue of due process grounds. Isla

merely wants this court to apply established legal principles to the factual situation presented in this case and reach a different result.

The Court should deny Isla's petition for review because it satisfies none of this Court's criteria for review. Pursuant to Wis. Stat. § 809.62(1r)(c)1., the Court does not grant review to the application of "well-settled principles to the fact situation" presented in this case. To do so would be mere error correction, which is not this Court's primary function. *Cook v. Cook*, 208 Wis. 2d 166, 188-89, 560 N.W.2d 246 (1997) (the supreme court's role is law development, whereas the primary function of the court of appeals is error correction).

This court grants review when special and important reasons are presented. Wis. Stat. § 809.62(1r). Criteria to be considered include a real and significant question of federal or state constitutional law; a need for the court to consider establishing, implementing or changing a policy within its authority; an opportunity to develop, clarify or harmonize the law; a conflict in legal precedent; or an issue that is in accord with opinions, but ripe for re-examination due to passage of time. Wis. Stat. § 809.62(1r)(a)–(e).

Isla's petition for review meets none of these criteria. Rather, Isla asserts in conclusory fashion that the criteria are met in this case. (See, Isla's Pet. 7). Isla argues that the court should grant the petition because it presents novel issues of both constitutional and statutory concern, but fails to identify how parents' fundamental due process rights in this case represent new principles of law. The petition fails

to articulate an issue of statewide impact. The law of due process as applied to parents in termination of parental rights cases is well-established and Isla did not argue that the issues in this case are in conflict with controlling precedent on the matter.

Isla next argues that this case involves a novel question of statutory interpretation. First, this issue was not raised in the circuit court and therefore should not be a subject for review by this Court. Second, the assertion is simply wrong. The court of appeals assumed, without deciding, that the statute applied, and went on to find that the circuit court did not erroneously exercise its discretion when applying that statute to the facts in the record. Therefore a review of this decision would merely be applying the facts of the case to well-established law, which is not a basis for review in this Court.

Finally, Isla contends that this case involves an issue of first impression for the application of facts to the summary judgment statute Wis. Stat. § 802.08. In an attempt to create a statutory conflict, Isla points to precedent that pre-dates legislative action on Wis. Stat. § 48.415(1)(c). The statute is unambiguous on its face and not in conflict with any caselaw following its inception. Therefore, there is no novel question of statutory interpretation.

Further, there is no need to clarify whether Wis. Stat. ch. 885 applied in this case because Isla failed to make this argument in the courts below. As stated previously, arguments raised for the first time on appeal are generally deemed forfeited. *See, Tatera v. FMC Corp., infra.*

Finally, this Court should deny Isla's petition for review because the underlying decision of the court of appeals is unpublished. The lower court decision will not impact any case other than Isla's.

CONCLUSION

The court of appeals correctly affirmed the decision of the circuit court terminating Isla's parental rights and further review is not warranted.

Dated: May 16, 2024.

Respectfully Submitted,

Electronically signed by:

Jeri Marsolek

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 1,100 words.

Dated: May 16, 2024.

Electronically signed by:

Jeri Marsolek
JERI MARSOLEK

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated: May 16, 2024.

Electronically signed by:

Jeri Marsolek
JERI MARSOLEK