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SUPREME COURT**

STATE OF WISCONSIN
SUPREME COURT

APPEAL NOS. 2023AP2068, AND 2023AP2069
CIRCUIT COURT CASE NOS. 2022TP000059, AND
2022TP000060

In re the Termination of Parental Rights of
R.A.C. and R.F.,
Persons Under the Age of 18:

Kenosha County Division of Children & Family Services,
Petitioner-Respondent,

v.

M.A.C.,
Respondent-Appellant.

ON APPEAL FROM THE WISCONSIN COURT OF APPEALS, DISTRICT II
AND FROM THE KENOSHA COUNTY CIRCUIT COURT, THE HONORABLE
BRUCE SCHROEDER, PRESIDING AND FROM ORDER DENYING
POSTDISPOSITION RELIEF, THE HONORABLE GERAD DOUGVILLO,
PRESIDING

PETITIONER-RESPONDENT'S RESPONSE
TO MOTHER'S PETITION FOR REVIEW

BY:

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ISSUE

Does this case meet the criteria for review pursuant
to Wis. Stat. § 809.62(1)(r)?

ARGUMENT**I. THE MOTHER'S APPEAL DOES NOT MEET ANY OF THE CRITERIA FOR REVIEW.**

None of the statutory criteria for review apply to this case. To begin with, the mother does not argue that review is necessary pursuant to subsections (a), (b), (c)(1), (c)(2), or (e) of Wis. Stat. § 809.62(1r). With regard to subsection (c)(3), the question presented in this case is factual in nature and is not a question of law that is likely to recur. In paragraphs 7-16 of its opinion, the Court of Appeals detailed the factual history of this case. The Court of Appeals found that the mother "was not completely deprived of the assistance of counsel when responding to the County's requests for admission" because "she reviewed the requests with her counsel. . . ." Opinion, ¶ 21. With regard to prejudice, the Court of Appeals held that the mother "has not shown a reasonable probability that the outcome of the trial in the grounds phase would have been different. . . ." *Id.*, ¶ 27.

Before the Circuit Court and the Court of Appeals, the mother, without citing any authority, attempted to characterize her ineffective assistance of counsel claim as a question of law. She argued that the "error" made by the mother's trial attorney deprived the mother of counsel and

the resulting prejudice to the mother could not be “reliably” determined. *See, e.g., Appellant’s Court of Appeals brief*, pp. 14-17. The Court of Appeals properly rejected this argument. Opinion, ¶¶ 19-21. The Court of Appeals noted that the mother had no “absolute right to have a jury decide” the grounds for termination of parental rights and the “asserted error in this case is materially less significant” than a complete denial of counsel. *Id.* By the mother’s logic, any ineffectiveness by an attorney would deprive the client of counsel and obviate the need for the client to show prejudice. This runs contrary to *Strickland v. Washington*, 466 US 668 (1984) and subsequently decisions from this Court setting forth the elements of an ineffective assistance of counsel claim.

The mother’s argument that review is authorized pursuant to Wis. Stat. § 809.62(1r)(d) also lacks merit. The Court of Appeals’ decision was consistent with *Strickland* and *State v. Shirley E.*, 298 Wis.2d 1 (2006). The mother argues that the Court of Appeals’ decision conflicts with *Weaver v. Massachusetts*, 582 U.S. 286 (2017). This is not true. *Weaver* was a criminal case where the public was excluded from the courtroom during jury selection. *Id.* at 291. The defendant’s attorney failed to object at the time and the defendant raised

ineffective assistance of counsel on appeal. *Id.* at 292. The Supreme Court began its discussion by noting that there is a class of "structural errors" that defy a harmless error analysis because the effect of the errors is too hard to measure. *Id.* at 294-95. These errors affect the framework of the trial, as opposed to errors in the trial process itself. *Id.* at 295. The Court concluded that "a violation of the right to a public trial is a structural error." *Id.* at 296. The Court held that the defendant had the burden to show "either a reasonable probability of a different outcome" in the case or to prove that the error "was so serious as to render his or her trial fundamentally unfair." *Id.* at 301. The Court concluded that the defendant had failed to meet this burden.

The Court of Appeals precisely followed this legal framework. The Court of Appeals found that the mother failed to show a reasonable probability of a different outcome in her trial. *Opinion*, ¶¶ 24-27. The Court of Appeals also ruled that the "alleged error" by the mother's attorney did not create a fundamentally unfair trial. *Id.*, ¶ 21. As a result, the Court of Appeals' decision does not conflict with controlling precedent and review is not warranted.

CONCLUSION

For the foregoing reasons, the Court should deny the
Petition for Review.

Dated at Kenosha, Wisconsin, this 17th day of
June, 2024.

Respectfully submitted,

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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained within Section 809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 9 pages.

Dated this 17th day of June, 2024.

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