STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2024AP000472

In the Interest of: S.G., a person under the age of 18.
S.G.,

Petitioner-Appellant,

v.

WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES AND WAUPACA COUNTY,

Respondents-Respondents.

Appeal from an Order Dismissing
S.G.'s Petition for Protection or Services;
the Honorable Troy L. Nielsen, Presiding,
Entered in the Waupaca County Circuit Court

BRIEF OF PETITIONER-APPELLANT

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ISSUE PRESENTED

> Did the circuit court err by granting Waupaca County Corporation Counsel's request to be added as a party for the purposes of contesting Sara's[1] petition for protection or services, brought pursuant to Wis. Stat. § 48.13(9), which permits children to petition for their own protection and services?

The circuit court granted Waupaca County Corporation Counsel's request to be added as a party to contest the petition. Then, because the court concluded that it could not accommodate a contested fact-finding hearing, it dismissed Sara's petition.

This Court should reverse.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Sara would welcome the opportunity for oral argument. The issue presented involves the interpretation of several statutes working together, including Wis. Stat. §§ 48.09 (representation of the interests of the public), 48.13(9) (a child's request for her own protection and services), 48.25(1) (who may file petitions), 48.255 (who is entitled to receive a copy of petitions filed under Chapter 48), 48.27 (who is

[1] Pursuant to Wis. Stat. § 809.81(8), this brief refers to S.G. as "Sara," a pseudonym.

entitled to notice of hearings), 48.335 and 48.355 (disposition of children adjudged in need of protection or services), 48.43 (termination of parental rights court orders), as well as other related statutes and caselaw. The breadth of the applicable laws and the novel issue raised may justify oral argument to allow the Court and parties to fully identify and argue the issues.

Publication is not authorized, as this is a one-judge appeal of a Chapter 48 order. Wis. Stat. §§ 752.31(2)(e) and 809.23(4)(b).

INTRODUCTION

The circuit court erroneously concluded that it must grant Waupaca County Corporation Counsel's (hereinafter, "Corporation Counsel"[2]) request to intervene as a party to contest Sara's petition for protection and services. Generally, a government attorney, either the local district attorney or corporation counsel, files most CHIPS[3] petitions and serves as the petitioner-party in the proceedings commenced therefrom. However, the district attorney

[2] In this brief, Sara uses the capitalized "Corporation Counsel" to specifically refer to the Waupaca County Corporation Counsel, the party allowed to intervene in the circuit court proceedings, whereas when she uses the uncapitalized "corporation counsel," she is referring to the office of corporation counsel, generally.

[3] "CHIPS" is a term used to describe proceedings under Chapter 48 in which children are alleged and adjudged to be in need of protection or services.

or corporation counsel has limited and specific statutory authority, and such authority does not include *carte blanche* to act as that attorney wishes in any and all situations, nor does it include party-status in each and every case. Where the district attorney or corporation counsel is not the petitioning party, there is no authority for that attorney to contest a petition, for the district attorney or corporation counsel is not entitled to notice, not entitled to a copy of the petition, and is not entitled to party status. Here, the circuit court erred when it allowed Corporation Counsel to intervene as a party to contest Sara's petition.

STATEMENT OF THE CASE

Sara is a parentless 17-year-old child. She is the victim of physical abuse, sexual abuse, and torture. She lived in ten placements (five foster homes and five group homes) over a five-year period. In this case, she sought the government's assistance for services and protection. After the parental rights of her biological and adoptive parents had each been terminated, Sara was never adopted, rendering her a ward of the State, and the Department of Children and Families ("DCF") served as her guardian. But, DCF had no means to provide her services or placement past her 18th birthday, set to occur months before she graduated high school. Sara sought the support of the local child protection agency to provide her services (such as independent living skills training) and a place to live so that she could finish high school.

Corporation Counsel, however, sought to intervene in Sara's CHIPS action. The circuit court granted Corporation Counsel's request to be added as a party. The court then allowed Corporation Counsel to contest the allegations in the petition and demand a fact-finding hearing. Instead of scheduling that hearing, the circuit court dismissed Sara's petition outright, reasoning that it could not accommodate a contested fact-finding hearing before Sara's 18th birthday, thus leaving Sara without legal family or provision of placement, care, or services.

STATEMENT OF FACTS

Sara was born in Georgia in 2005. (14:1-2; App. 40-41). Her biological parents' parental rights were terminated, and she was sent to live with an aunt. (14:2; App. 41). However, that placement ended when her aunt failed a drug test. (14:2; App. 41). Then, in 2007, she moved to Wisconsin to live with her maternal grandmother. (14:3; App. 42). In her maternal grandmother's home, she witnessed domestic violence and was sexually assaulted by her step-grandfather. (14:3; App. 42). In 2010, the local child protection agency intervened and removed Sara from that home. (14:3; App. 42). Sara lived in three separate foster homes before she was adopted by the Grants[4] in 2012. (14:3; App. 42).

[4] Pursuant to Wis. Stat. § 809.81(8), this brief refers to S.G.'s adoptive parents as the "Grants," a pseudonym.

Sara was removed from the Grants' home on October 14, 2018, for "extreme physical abuse[,] . . . torture that she experienced from her [adoptive] mother, . . . and ongoing emotional abuse and neglect." (14:2; App. 42). The Grants' parental rights to Sara were eventually terminated on April 22, 2021. (20:1).

Once Sara was removed from the Grants' home in 2018, she began a five-year period of instability, being placed in five group homes and five foster homes, as well as multiple psychiatric hospitalizations. (14:3-6; App. 42-45). During this period, Sara was provided services, placement, and case management from a case worker, either through a CHIPS case or, after April 2021, through the TP case.[5] (14:2-5; 20:1-2; App. 41-44).

In October 2018, Sara was placed in foster care with a relative of the Grants. (14:6; App. 45). In March 2019, she was moved to a new foster home. (14:6; App. 45). After three months, she was moved to yet another foster home. (14:6; App. 45). Then, in March 2020, she was placed at the SHARE Academy, her first of several group home placements. (14:6; App. 45).

[5] "TP case" refers to a proceeding brought to terminate parental rights, and in this instance, TP case is used to refer to the proceedings that resulted in termination of the Grants' parental rights and the subsequent placement and care provided to Sara pursuant to that TP case order thereafter.

After the group home, and in August 2020, Sara moved to live with foster parents who expressed a willingness to adopt Sara when the Grants' parental rights were terminated in April 2021. (14:3-6; App. 42-45). Sara wished to be adopted by these foster parents, as well. (14:3; App. 42). These foster parents were "able to provide a safe and stable home for [Sara] while meeting all of her physical, emotional, social, and mental needs." (14:3; App. 42). Despite the "good relationship" between Sara and her foster parents, she continued to experience panic attacks due to her trauma history. (14:3; App. 42).

In December 2021, these foster parents terminated Sara's placement. (14:3-4; App. 42-43). Upon termination of this placement, Sara was psychiatrically hospitalized and then moved to her second group home in two years. (14:4, 6; App. 43, 45). At this time, Sara reported to her caseworker that she "is very open to being adopted someday when she and a family would be ready." (14:4; App. 43).

Sara spent five months at the group home. (14:6; App. 45). There, she managed to earn As and Bs at her online school program. (14:4; App. 43). She also joined in extracurricular activities through her church. (14:4; App. 43). However, she "desire[d] to be in a family setting and [was] very open to being adopted[.]" (14:4; App. 43).

Despite this desire, Sara's next two placements were also group homes. (14:6; App. 45). During these placements, she "struggled . . . with her

mental health, well-being, and self-worth." (14:5; App. 44). Sara's case manager met with her three times weekly and "recruit[ed] for a foster family . . . where [Sara] can build healthy relationships." (14:5; App. 44). The case manager also described Sara's therapeutic needs, including developing "coping skills and working through her trauma experiences, grief, and loss[.]" (14:5; App. 44).

When the second group home terminated Sara's placement, one of Sara's former foster families agreed to take emergency placement of Sara in their treatment foster home in Waupaca County. (14:5; App. 44). Through a change of placement order in the TP case, Sara's placement was officially changed to this foster home on April 7, 2023. (14:5; App. 44).

Throughout this period of placements, Sara continued to suffer because of her trauma history. (14:3; App. 42). Her case worker noted that she "has such a high level of trauma that she has experienced in her life, that sometimes she goes into flight or freeze mode and struggles with her relationships at the home." (14:3; App. 42). To help cope with this, Sara was offered services, such as therapy and medication management, coordinated by her case worker. (14:3; App. 42).

On April 11, 2023, after her placement changed to Waupaca County, Sara filed a petition for protection or services. (3). Sara sought such protection or services pursuant to Wis. Stat. § 48.13(9), asserting that she "is at least 12 years old at the time of signing [her]

petition. . . She is requesting jurisdiction under this statute and subsection. She is in need of special treatment or care." (7).

In the attachment to her petition, Sara further asserted that she was in need of "case management, out of home placement, referrals for services and services to address trauma history and other mental health needs." (7). Finally, Sara stated that she "has no parents. Her [parents'] rights were terminated and she was never adopted. [Sara] is almost 18 years old and needs further support to launch her into adulthood. The court has the ability to provide a year of supervision to help [Sara] manage her mental health and gain the independent living skills that she needs." (7).

Sara's petition seeking protection or services notes that Sara's parents had their rights terminated, leaving Sara parentless, and so the only other party listed is Sara's legal guardian, the "Department of Children and Family Services." (3).

Upon filing the CHIPS petition, Sara's trial counsel forecasted for the circuit court the "unusual posture" of the case:

> To make matters more complicated, [Sara] will turn 18 years old on April 21, 2023, and therefore will be asking the Court to enter an order on her petition and proceed to disposition on the same day. In support of the Petition, the defense plans to solicit a report from [Sara]'s current guardian that is based on the most-recently filed

> permanency plan. This report will be filed as soon as it is available.
>
> Given the urgency of this filing and the unusual posture, I am writing this letter to put the Court on notice of what the child will ask the Court to do at the hearing that has been scheduled on the petition on April 19, 2023 at 2:45 p.m. We will supplement the record with any additional information the Court may find helpful to address this issue.
>
> (8).

On April 13, 2023, Corporation Counsel filed a letter with the circuit court asking to "add Waupaca County Corporation Counsel . . . as an interested party to the recently filed CHIPS proceeding involving [Sara]." (11). Corporation Counsel added, "I also requested that this Court add the Waupaca County Department of Health and Human Services . . . as an interested party to the proceeding." (11). In addition to the request to have both entities be named parties, Corporation Counsel also asked that "both Waupaca County Corporation Counsel and the Department" have the chance to "present their respective position(s) regarding the issues of venue and jurisdiction." (11).

On April 18, 2023, just one day before the scheduled hearing, Corporation Counsel also sought to have Sara's petition dismissed. (16). Corporation Counsel sought to dismiss the petition on venue, jurisdictional, and facial deficiency grounds. (17:1-4). Corporation Counsel also objected to

Sara's request to hold the hearing on the petition and the disposition at the same hearing. (17:5).

On the same day that Corporation Counsel filed its request to dismiss the petition, the circuit court wrote a letter to counsel for the Wisconsin Department of Children and Families ("DCF"), Sara's legal guardian. (18). The court asked DCF's counsel whether Sara was still subject to a Chapter 48 order from Vernon County. (18).

DCF's counsel responded the next day (April 19), informing the circuit court about the legal history of Sara's court involvement. (20). DCF reported that on "April 22, 2021, the Vernon County Circuit Court ordered the termination of the parental rights to [Sara]'s parents. . . . Pursuant to that order, guardianship, placement and care responsibility and legal custody of [Sara] were transferred to DCF pending adoption." (20:1). The underlying Vernon County CHIPS case was dismissed on June 18, 2021. (20:1). Therefore, "there has not been an active CHIPS Order for [Sara] in Vernon County for almost two years[.]" (20:2).

DCF's counsel further explained how Sara's active TP case provides her services and placement. (20:2). "Since [Sara]'s TPR in April 2021, permanency plans and change of placement proceedings for [Sara] have occurred in this TP case. The TP order is set to expire upon [Sara]'s 18th birthday." (20:2).

As DCF's counsel explained, the expiration of the TP case before Sara finished high school was unavoidable because "[t]here is no provision in Chapter 48 that permits DCF, a child or the child's attorney, or any other person to seek to extend a TP order beyond when a child turns 18 the way that a CHIPS order can be extended[.]" (20:2). Thus, for a child like Sara "in DCF guardianship post-TPR who wants the option of being on a CHIPS order that can extend beyond their high school graduation date . . . their only option is to seek a new CHIPS order[.]" (20:2).

On April 19, 2023, the circuit court presided over a hearing on Sara's petition. (31; App. 3-33). Present at the hearing were Sara, her attorney, DCF's counsel, two attorneys from the Corporation Counsel's office (Attorney Domonic Weisse and Attorney Diane Meulemans), two social workers from the local Waupaca County Department of Health and Human Services, Sara's ongoing case worker from her TP case, and Sara's then-current placement providers. (31:2-3; App. 4-5).

At the commencement of the hearing, the circuit court acknowledged that Corporation Counsel had raised several potentially dispositive legal challenges to Sara's petition. (31:3; App. 5). The court also asked Corporation Counsel whether it contested the petition; Attorney Weisse indicated that he did. (31:4; App. 6). Then, the circuit court asked DCF, as a non-petitioning party, whether it contested the petition. (31:5; App. 7). DCF's counsel indicated that

DCF was not contesting – and actually supported – Sara's petition. (31:5; App. 7).

Next, the court asked Sara's counsel, acknowledging that Sara turned 18 in a matter of days, "what legal authority would I have to find today that your client is in need of protection or services when one of the non-petitioning parties is contesting the petition?" (31:5; App. 7). In response, Sara's counsel rejected the underlying premise to the court's question, disputing that neither Corporation Counsel nor the local department of human services (collectively, the "county") were entitled to party status such that it had standing to contest the petition in the first place. (31:5-9; App. 7-11). Sara's counsel argued that the county is not a party in a CHIPS petition filed by a child; only the child and her guardian were parties. (31:5-7; App. 7-9). Further, Sara's counsel also argued that Corporation Counsel was not entitled to intervene into the proceedings as a party under existing statutory and case law. (31:5-7; App. 7-9). The only parties are DCF and Sara, given that Sara had no legal parents. (31:5-6; App. 7-8).

Sara's counsel acknowledged that the county had an interest in the outcome of the proceedings, but she likened such interest to that of a victim in a criminal proceeding as someone who may be interested in the outcome and may be entitled to be heard, but not someone who is a party who could file motions or contest the petition. (31:7-11; App. 9-13).

Therefore, reasoned Sara's counsel, without any *party* actually contesting the petition, the circuit court is authorized, under section 48.31(7)(a), to find that Sara is a child in need of protection or services and go straight to disposition. (31:5-8; App. 7-10). The circuit court acknowledged this position, posing "if the only people's opinions who matter for the purposes of determining whether or not this petition is going to move forward – the only positions or opinions that matter are your client's and DCF, we wouldn't need a fact-finding hearing." (31:13; App. 15). Sara's counsel clarified that Corporation Counsel could be heard at disposition, but it lacked party status to contest the grounds set forth in the petition. (31:13-14; App. 15-16).

The circuit court and Sara's counsel briefly discussed the timing of the petition, with the court lamenting that the situation would be easier if Sara turned 18 in 60 days instead of two. (31:14; App. 16). Sara's counsel agreed that such a situation would be logistically more convenient, but she noted that the very nature of the expiring TPR order is the reason that Sara needed to file the CHIPS petition at all, for while DCF has been adequately caring for Sara, it "lacks the legal authority to continue to offer services to [Sara.]" (31:14-15; App. 16-17).

Sara's counsel observed, "So this really is a Catch-22 situation for these children who are subject to termination of parental rights proceedings and are not subsequently adopted. They're put into a category where it's difficult to get services, and that's not right.

It's not right that [Sara] is only able to get the help she needs by initiating the filing of a petition." (31:15; App. 17).

The circuit court considered Sara's argument, but it ultimately concluded, without citing to any specific statute or law, that Corporation Counsel must have party status to contest the petition. (31:17-20; App. 19-22). Instead of citing specific authority, the court observed that it "struggle[d] with the idea that the agency or the entity or the office in charge of representing the public's interest has the right and the ability to petition, but not the ability to participate and be a party in cases in which they don't petition." (31:17; App. 19). Therefore, by granting Corporation Counsel party status, the court felt forced to hold a fact-finding hearing given Corporation Counsel's insistence to contest the petition. (31:18-20; App. 20-22).

Given this contest, the court sought input from the parties about possibly finding Sara to be a child in need of protection or services without a fact-finding hearing. (31:19-20; App. 21-22). Sara's counsel argued that the legislative intent of Chapter 48 – that the best interests of a child are paramount – should govern. (31:20; App. 22). Sara's counsel noted that given "the intent of Chapter 48, the intent of what is best for [Sara] – I – I don't understand the Corporation Counsel's position here. I don't. So I don't understand how it is in the public interest to object to a petition for a child who is so clearly in need of services." (31:20-21; App. 22-23). She added, "My client is a child. My client

is in need of protection and services." (31:22-23; App. 24-25).

DCF's counsel continued to support Sara's petition and position on the issues, saying "the Department of Children and Families does recognize that because of the complexity in statute, there really is a strong need for youth, you know, who fall into this category to be able to access services. And therefore, as I said, the Department is supportive of the petition and doesn't object to – to the Court moving forward with the petition[.]" (31:22; App. 24).

The circuit court ultimately concluded that it must hold a fact-finding hearing on Corporation Counsel's desire to contest the allegations in the petition. (31:23; App. 25). The court further reasoned, "Because of the decision I have made as it relates to the office of Corporation Counsel's ability to participate, you know, they're entitled to having a fact-finding hearing. Obviously, that's not going to happen today, and I would find it to be unreasonable to set it tomorrow and the Court's, you know, unavailable on Friday. And I don't, quite frankly, think tomorrow or Friday would be reasonable either." (31:23; App. 25).

Given this conclusion, the court determined that it could not accommodate a fact-finding hearing before Sara obtained an age at which a CHIPS court loses jurisdiction to enter a CHIPS dispositional order. (31:23-24; App. 25-26). Therefore, the court dismissed Sara's petition. (22; 31:23-24; App. 25-26).

After the hearing, Sara filed a motion for reconsideration. (21; App. 35-38). The court denied that motion. (23; App. 39).

This appeal follows.

ARGUMENT

I. Waupaca County Corporation Counsel lacked the authority to contest Sara's CHIPS petition.

A. Standard of Review.

The issue is whether the statutes permit the district attorney or corporation counsel to intervene as a party when that lawyer is not the petitioner in a CHIPS case. (31:24). This issue involves the application of statutory provisions to undisputed facts, which is a question of law reviewed independently. *State ex rel. Sandra D. v. Getto*, 175 Wis. 2d 490, 493-94, 498 N.W.2d 892 (Ct. App. 1993); *see also Ball v. District No. 4, Area Bd. of Vocational, Technical and Adult Educ.*, 117 Wis. 2d 529, 537, 345 N.W.2d 289, 294 (1984); *see also Gonzalez v. Tesky*, 160 Wis. 2d 1, 7-8, 465 N.W.2d 525, 538 (Ct. App. 1990).

B. Corporation counsel may not intervene as a party in a CHIPS petition brought by a child seeking her own protection and services.

A county's corporation counsel[6] will represent the "interests of the public . . . in proceedings under [Chapter 48]." Wis. Stat. § 48.09(5). However, even if corporation counsel represents the interests of the public, corporation counsel is not authorized to act as a party in every case.[7] Wis. Stat. § 48.09; *see also* Wis. Stat. §§ 48.09, 48.13, 48.24-48.32. While Chapter 48 does not expressly state who is entitled to party status in various CHIPS proceedings, the relevant statutes, read together under the principles of statutory interpterion, reveal that corporation

[6] Either corporation counsel or the district attorney will represent the interests of the public, depending upon which office is chosen by the local county board. Wis. Stat. § 48.09(5). For the purposes of the majority of this brief, Sara will reference only "corporation counsel" given that Waupaca County has designed that office, not the local district attorney, to operate within Chapter 48. However, the analysis contained herein would apply similarly to a district attorney if such office is tasked with Chapter 48 duties in a particular county.

[7] Corporation counsel is authorized to file CHIPS petitions. Wis. Stat. §§ 48.24(3); 48.25(1). In these instances, in which corporation counsel is the petitioner, Chapter 48 provides several express directives granting corporation counsel the authority to act as a party. *See, e.g.,* Wis. Stat. §§ 48.293 (duty to provide discovery to other parties); 48.315(1)(d) (authority to request a continuance to obtain more evidence); 48.363 (authority to request a revision of a dispositional order); 48.365 (authority to request an extension of a dispositional order).

counsel is not a party who may contest a child's petition brought seeking their own protection or services.

1. Rules of statutory interpretation.

Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain," a court will not further inquire to ascertain its meaning. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citing *Seider v. O'Connell*, 2000 WI 76, ¶43, 236 Wis. 2d 211, 612 N.W.2d 659); *see also Clean Wisconsin, Inc. v. Wisconsin Department of Natural Resources*, 2021 WI 72, ¶10, 398 Wis. 2d 433, 961 N.W.2d 611 (citations omitted). Further, the statute's language is given its "common, ordinary, and accepted" meaning. *Kalal*, 271 Wis. 2d 633, ¶45 (citing *Bruno v. Milwaukee County*, 2003 WI 28, ¶¶8, 20, 260 Wis. 2d 633, 660 N.W.2d 656); *see also* Wis. Stat. § 990.01(1).

Beyond the statutory language itself, statutes are also "interpreted in the context in which [they] are used." *Kalal*, 271 Wis. 2d 633, ¶46 (citing *State v. Delaney*, 2003 WI 9, ¶13, 259 Wis. 2d 77, 658 N.W.2d 416; *Landis v. Physicians Ins. Co. of Wis.*, 2001 WI 86, ¶16, 245 Wis. 2d 1, 628 N.W.2d 893; *Seider*, 236 Wis. 2d 211, ¶43). Thus, statutes are to be read "in relation to the language of surrounding or closely-related statutes[.]" *Kalal*, 271 Wis. 2d 633, ¶46 (citations omitted).

Relatedly, context may reveal what a statute does *not* mean, for when the Legislature "includes particular language in one section of a statute but omits it in another section . . . it is generally presumed that [it] acts intentionally and purposefully in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983). In other words, courts are not to "read into the statute language that the legislature did not put in." *State v. Hemp*, 2014 WI 129, ¶31, 359 Wis. 2d 320, 856 N.W.2d 811 (citing *Brauneis v. State, Labor & Indus. Review Comm'n*, 2000 WI 69, ¶27, 236 Wis. 2d 27, 612 N.W.2d 635).

Similarly, when the Legislature uses different words, a court will consider each separately. *Augsburger v. Homestead Mut. Ins. Co.*, 2014 WI 133, ¶17, 359 Wis. 2d 385, 865 N.W.2d 874. Different words are presumed to have different meanings. *Augsburger*, 359 Wis. 2d 385, ¶17.

Further, the Legislature is presumed to act intentionally, giving "reasonable effect to every word, in order to avoid surplusage." *Id.* (citing *State v. Martin*, 162 Wis. 2d 883, 894, 470 N.W.2d 900 (1991); *Bruno*, 260 Wis. 2d 633, ¶24).

One application of this particular principle (that every is presuming to have meaning) is the general/specific canon. *Townsend v. ChartSwap, LLC*, 2021 WI 86, ¶25, 399 Wis. 2d 599, 967 N.W.2d 21 (citing *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012)). This canon applies to a situation "in which a general

authorization and a more limited, specific authorization exist side-by-side." *RadLAX Gateway Hotel*, 566 U.S. at 645. In such a scenario, the canon provides that the more-specific provision governs, thus avoiding "the superfluity of a specific provision that is swallowed by the general one[.]" *Id.*

All of these statutory interpretation principles help ensure that statutes are interpreted "reasonably, to avoid absurd or unreasonable results." *Kalal*, 271 Wis. 2d. 633, ¶46 (citations omitted).

If application of these rules of statutory interpretation "yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Id.* (citing *Bruno*, 260 Wis. 2d 633, ¶20). Conversely, a "statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses." *Kalal*, 271 Wis. 2d 633, ¶47 (citing *Bruno*, 260 Wis. 2d 633, ¶19). If a statute is ambiguous, courts may look to its "scope, history, context, and purpose" to ascertain its meaning. *Kalal*, 271 Wis. 2d 633, ¶48 (citing *State ex rel. Cramer v. Schwarz*, 2000 WI 86, ¶18, 236 Wis. 2d 473, 613 N.W.2d 591).

2. Corporation counsel is not authorized to contest a CHIPS petition filed by a child.

A county's corporation counsel is tasked with representing "the interests of the public" in proceedings under the Children's Code. Wis. Stat.

§ 48.09. However, § 48.09 does not indicate the specific authority conferred upon corporation counsel in individual cases when corporation counsel is following this broader, general directive to represent the "interests of the public." *See* Wis. Stat. § 48.09(5). Instead, the more-specific provisions within Chapter 48 are determinative,[8] providing specific authorizations and restrictions that define the scope of corporation counsel's role in certain CHIPS cases.

A corporation counsel may act as petitioner and file a CHIPS petition. Wis. Stat. §§ 48.13, 48.24(3), 48.25(1). However, so too may a child or a parent file a CHIPS petition. Wis. Stat. § 48.25(1) ("A petition initiating proceedings under this chapter shall be signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true."). Certain grounds even require the parent or child to sign the petition. Wis. Stat. §§ 48.13(4), (9). Others authorized to file a petition include "counsel or guardian ad litem for a parent, relative, guardian or child[.]" Wis. Stat. § 48.25(1).

Once a petitioner, whether corporation counsel or someone else, files a CHIPS petition, that petitioner must provide a copy of that petition to certain people. Wis. Stat. § 48.255(4). Specifically, the petitioner must provide a copy to "the child if the child is 12 years of age or over[,] and to a parent, guardian, legal custodian, and physical custodian" of the child. Wis. Stat. § 48.255(4). The statute does not

[8] *See RadLAX Gateway Hotel*, 566 U.S. at 645.

differentiate this list of those entitled to a copy of the petition based upon the identity of the petitioner. *See* Wis. Stat. § 48.255(4).

A similar, limited group of people are also entitled to notice of the proceedings. Wis. Stat. § 48.27(3)(a)1. These people include "the child, any parent, guardian, and legal custodian of the child, any foster parent or other physical custodian . . . of the child, . . . and any [alleged father] . . . of all hearings involving the child[.]" Wis. Stat. § 48.27(3)(a)1. Again, the statute does not differentiate this list based upon who filed the petition: the same group of people are entitled to notice regardless of the identity of the petitioner. *See* Wis. Stat. § 48.27(3)(a)1.

After the petitioner provides a copy of the petition to those entitled, and after the court provides notice to those entitled, the court will preside over a plea hearing. Wis. Stat. § 48.30(1). This hearing is "to determine whether any party wishes to contest an allegation that the child . . . is in need of protection or services[.]" Wis. Stat. § 48.30(1). Therefore, "the nonpetitioning parties and the child, if he or she is 12 years of age or older or is otherwise competent to do so, shall state whether they desire to contest the petition." Wis. Stat. § 48.30(3).

Read together, the notice and plea hearing statutes reveal that corporation counsel, when not a petitioner, is not a party entitled to contest the petition. Whereas Chapter 48 expressly authorizes corporation counsel to file a petition, Chapter 48

does not list corporation counsel as someone to whom a copy of the petition and notice must be given. Wis. Stat. §§ 48.25(1); 48.255(4); 48.27(3)(a)1.

Comparatively, others (like corporation counsel) who are authorized to file a petition are also (*un*like corporation counsel) entitled to notice when they are not the petitioner. Wis. Stat. §§ 48.25(1); 48.255(4); 48.27(3)(a)1. For example, a child over the age of 12 may file a petition. Wis. Stat. §§ 48.13(9), 48.25(1). A child over the age of 12 is also entitled to receive a copy of the petition and notice of all hearings. Wis. Stat. §§ 48.255(4); 48.27(3)(a)1. This overlap also exists for a parent, guardian, legal custodian, and physical custodian. Wis. Stat. §§ 48.255(4); 48.27(3)(a)1.

Absent from the category of people who are authorized to file a petition *and* receive notice of another's petition is corporation counsel. *See* Wis. Stat. §§ 48.25(1); 48.255(4); 48.27(3)(a)1. Under the rules of statutory interpretation, this omission is intentional and meaningful. *See Kalal*, 271 Wis. 2d 633, ¶¶44-48; *see also Hemp*, 359 Wis. 2d 320, ¶31. Further, this omission is unambiguous: there is no other reasonable interpretation of the notice statutes (Wis. Stat. §§ 48.255(4); 48.27(3)(a)1.) that somehow silently infers authority to receive notice on an unnamed entity when the broader context of the notice statutes – other related provisions in Chapter 48 – specifically name corporation counsel as someone authorized to take certain actions. *See, e.g.,* Wis. Stat. § 48.25(1). The Legislature omitted

corporation counsel from the people who are entitled to notice because corporation counsel is not entitled to notice. *See Hemp*, 359 Wis. 2d 320, ¶21 ("If the legislature wished to [take a specific action,] it could have easily done so.").

Given the Legislature's decision to omit corporation counsel from the list of people entitled to notice of a petition, such as one filed by a child pursuant to Wis. Stat. § 48.13(9), the plea hearing statute reveals that corporation counsel is also not entitled to party status or to contest the petition. *See* Wis. Stat. § 48.30. At that plea hearing, the "nonpetitioning parties . . . shall state whether they desire to contest the petition." Wis. Stat. § 48.30(3).

Neither the plea hearing statute nor Chapter 48, generally, specifically define "nonpetitioning parties." *See* Wis. Stat. § 48.30; *see also, generally,* Chapter 48, Wisconsin Statutes. But, reading the plea hearing statute in context[9] with the notice statutes provides a clear answer: those who were entitled to a copy of the petition and notice of the plea hearing must also be those nonpetitioners who may appear at the plea hearing to state their position(s). No one else would have authorization or reason to attend the plea hearing.[10] To suggest that some unnamed person

[9] Statutes are to be "interpreted in the context in which [they] are used." *Kalal*, 271 Wis. 2d 633, ¶46 (citation omitted).

[10] Proceedings under Chapter 48 are confidential and, by default, closed to the general public. Wis. Stat. §§ 48.299; 48.396; 48.78.

or entity would not be entitled to notice but would be entitled to enter a plea would be an absurd[11] and unreasonable[12] construction of the notice and plea statutes.

In this case, Sara was not required to provide a copy of the petition, nor was the circuit court required to provide notice, to Corporation Counsel. *See* Wis. Stat. §§ 48.255(4); 48.27(3)(a)1. Instead, the court and Sara were required to provide such notice only to those expressly entitled to it. *See* Wis. Stat. §§ 48.255(4); 48.27(3)(a)1. Sara was the child and petitioner, so no additional notice to "the child" was necessary. Wis. Stat. §§ 48.255(4); 48.27(3)(a)1.; *see also, e.g.,* (3); Sara had no parents, so no notice to any parent was required. Wis. Stat. §§ 48.255(4); 48.27(3)(a)1.; *see also, e.g.,* (3). Sara provided notice to her guardian, who appeared through DCF's counsel at the plea hearing. Wis. Stat. §§ 48.255(4); 48.27(3)(a)1.; *see also* (31:3). Those who were entitled to notice received it.

Corporation Counsel implicitly conceded that the Legislature had not granted his office party status when he filed a letter asking the circuit court to "add" him as "an interested party." (11). Had Corporation Counsel been entitled to notice as a party, no such request would have been necessary.

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[11] *Kalal*, 271 Wis. 2d. 633, ¶46 (citations omitted).

[12] *See, supra,* n. 11.

In granting the Corporation Counsel's request to be added as a party, the circuit court did not analyze any of the relevant statutes described herein. (31:17-20). Instead, the court concluded, without citation to any statute or authority, that because Corporation Counsel has a right to file a CHIPS petition, Corporation Counsel must also have the right to contest those petitions he did not file. (31:17). While the court's commonsense conclusion was logical, it failed to abide by the relevant statutory authority.

While a corporation counsel may file a petition, the statutes, read in context together, reveal that it is not entitled to notice of a child's CHIPS petition, nor is it entitled to party status such that he may contest the allegations therein and demand a fact-finding hearing.

II. Even if this matter is moot, exceptions to mootness apply, and this Court should decide Sara's appeal.

An issue is considered moot where the underlying order at issue has since expired or there is some other reason why resolution of the appeal would not have a practical effect on the underlying controversy. *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. Absent an exception to this rule, Sara concedes that her appeal is likely moot. She turned 18 years of age on April 21, 2023. *See* (3). Now that she is no longer under the age of 18, the circuit court has lost jurisdiction to enter a CHIPS dispositional order to provide her

protection and services. *See* Wis. Stat. §§ 48.02(2); 48.13(intro.); 48.355(4). Therefore, as the circuit court aptly noted:

> I understand the – the significance of this decision, because if I determine that the office of Corporation Counsel is a party and has the ability to contest the petition, that will likely, based upon some following conversation, result in this matter being dismissed, and based on [Sara's] age, there will be no appellate relief.
>
> (31:18).

Despite the circuit court's thoughtful appreciation of the gravity of its decision, and despite no opportunity for practical relief for Sara, this Court may, and should, still decide this appeal.

Even when an appeal would have no practical effect on the underlying controversy, there are five exceptions to the mootness doctrine that will justify appellate review. *Marathon Cty. v. D.K.*, 2020 WI 8, ¶23, 390 Wis. 2d 50, 937 N.W.2d 901. Such exceptions that justify review are: 1) the issue is of great public importance; 2) the issue involves the constitutionality of a statute; 3) the issue arises often and a decision is essential; 4) the issue is likely to recur and must be resolved to avoid uncertainty; and 5) the issue is likely of repetition and evades review. *D.K.*, 390 Wis. 2d 50, ¶19. If an exception applies, a case should not be dismissed as moot. *Id.*

A. The exceptions to mootness apply to this case because of the statutory scheme whereby children may not receive placement and care under a TP case past their 18th birthdays.

The applicable mootness exceptions are premised upon, and stem from, the statutory scheme whereby children whose parents' parental rights have been terminated cannot receive placement and care under the TP case past their 18th birthdays; to appreciate the mootness exceptions, one must first understand this scheme.

In this case, Sara was a parentless child facing involuntary and premature independence. (20:1). The TP case under which DCF provided placement and services was set to expire, and unlike CHIPS dispositional orders, it could not be extended to bridge the gap between Sara's 18th birthday and high school graduation—a more natural and realistic start to adulthood. (20:2).

Any unadopted child turning 18 before graduating high school faces the same situation. When the government terminates a child's parents' parental rights, guardianship of the child must be granted to a person or entity before the child is later (hopefully) adopted. Wis. Stat. § 48.427(3m). Possible governmental guardians include a local child welfare agency, a county department of child protective services, and DCF. Wis. Stat. § 48.427(3m). If guardianship is granted to such a governmental

entity, the court must order that governmental entity to provide placement and care to the child. Wis. Stat. § 48.43(1)(am). The governmental entity must also engage in permanency planning for the child unless and until the child is adopted. Wis. Stat. § 48.43(1)(c). Further, the entity must provide annual updates on the status of the child until the child is adopted. Wis. Stat. § 48.43(5).

Yet, the governmental entity charged with providing "placement and care" for the unadopted child is not authorized to provide such assistance to the child beyond the child's 18th birthday. Wis. Stat. §§ 48.43(1)(am), (5)(a); 48.48(3); *see also* Wis. Stat. § 48.437 (authorizing the governmental entity to seek post-termination changes of placement as part of the post-termination care); *see also* Wis. Stat. §§ 48.02(2) and 48.023 (defining guardianship as having authority over a child, who is under the age of 18); *but see, cf.,* Wis. Stat. § 48.365(1m) (extension of CHIPS, not TP, orders). Chapter 48 only authorizes CHIPS dispositional orders to be extended beyond a child's 18th birthday; no similar provision exists permitting comparable extensions of TP case orders. Wis. Stat. § 48.365(1m); *but see, generally, cf.,* Wis. Stat. Ch. 48 (2021-22).

Therefore, a parentless child who has not been adopted by their 18th birthday cannot continue to receive agency-provided placement and services under a TP case. In comparison, a child placed out of home on a CHIPS dispositional order may still receive services and placement through high school

graduation. And, if the CHIPS order suddenly terminates for any reason, the CHIPS child could still return to their legal family without any court order, an option unavailable to a child who was receiving placement and care under a TP case who, therefore, has no legal family members from whom they could receive assistance.

However, the Legislature has not left the parentless child without a mechanism to maintain placement and services to prevent homelessness before high school graduation. A child may file their own CHIPS petition "requesting jurisdiction under this subsection" and alleging that she "is in need of special treatment or care[.]" Wis. Stat. § 48.13(9). Then, before the child turns 18, the circuit court may enter a CHIPS dispositional order providing placement and services to the parentless child that may extend until the child graduates high school. Wis. Stat. § 48.355(4). This would allow the child to maintain their placement and services previously provided under the TP case beyond the date at which the TP case expired. This is exactly what Sara sought to do here. (3).

B. Three exceptions to mootness apply here.

The statutory scheme that could result in the county depriving children from receiving placement and care past their 18th birthdays under expiring and non-extendable TP orders, but also provides a mechanism for children to seek and obtain placement and services through high school via a CHIPS order,

prompts the three exceptions to mootness applicable here, as follows:

> 1. Exception to mootness: the issue is of great public importance.

By deciding Sara's appeal, this Court can help clarify an issue of great public importance, for resolution of the issue will determine proper interpretation and implementation of the legislative purpose of the Children's Code. The Legislature determines "what public policy best serves the people of the state[.]" *Mulder v. Acme-Cleveland Corp.*, 95 Wis. 2d 173, 186, 290 N.W.2d 276, 282 (1980). Therefore, it follows that the "legislative purpose"[13] of the Children's Code describes that which is of great public importance.

The Legislature provides that, in the Children's Code, "the best interests of the child . . . shall always be of paramount consideration." Wis. Stat. § 48.01(1). The Children's Code is to be construed to "recognize that children have basic needs which must be provided for; . . . [and] the need to develop physically, mentally and emotionally to their potential[;]" to "ensure that children are protected against the harmful effects resulting from the absence of parents[;]" and, among other things, to "promote the adoption of children into safe and stable families rather than allowing children to remain in the impermanence of foster care." Wis. Stat.

[13] Wis. Stat. § 48.01.

§§ 48.01(1)(ag), (bg)1., (gg). According to the Legislature, children should not languish in the foster care system, but if they do, they should not be deprived of sufficient opportunities for development into adulthood or, more fundamentally, of their basic needs for shelter and care.

Therefore, it would be of great public importance to decide an issue of statutory interpretation that could, if not resolved, lead to results inconsistent with the Children's Code's legislative purpose. Indeed, a statutory interpretation that allows the government to "sever all rights and duties between the parent . . . and the child"[14] but also allows corporation counsel, tasked with representing the interests of the public,[15] to later thwart a child's efforts to maintain their necessary "placement and care"[16] is antithetical to the intent of the Children's Code, which is intended to protect children and prepare them for independence. This Court should grant review to ensure that the statutory interpretations of the Children's Code are consistent with the purpose thereof and, by extension, the public.

2. Exception to mootness: the issue is likely of repetition in a manner that will evade review.

By deciding Sara's appeal, this Court will help clarify an issue that is likely to recur in a manner that will evade appellate review. As the circuit court

[14] Wis. Stat. § 48.43(2).
[15] Wis. Stat. § 48.09(5).
[16] Wis. Stat. § 48.43(1)(am).

astutely observed, its decision to grant Corporation Counsel's request to intervene as a party was dispositive of Sara's ability to receive the protection and services she requested. (31:18). With Sara's 18th birthday quickly approaching, the circuit court would quickly lose jurisdiction over Sara to enter a CHIPS dispositional order. *See* Wis. Stat. §§ 48.02(2); 48.13(intro.); 48.355(4).

As stated above, a parentless child may only receive placement and care until the age of 18 unless they are placed under a CHIPS dispositional order before their 18th birthday. So, if a child files their own CHIPS petition, and if the district attorney or corporation counsel intervenes to contest that petition in a manner that delays resolution up to or past the child's 18th birthday, then the impractical benefit of an appeal of an adverse ruling, in and of itself, renders the issue likely to evade review. Sara acknowledges that nothing that this Court does could give her the protection and services that she sought to help her graduate high school because, once she turned 18, no CHIPS court could take jurisdiction over her. It follows that if another court makes the same determination as this circuit court did here, the child is not likely to seek appellate review with no hope of receiving the protection and services she sought. Thus, when this issue recurs, it will do so in a manner that will deprive the reviewing Court the opportunity to weigh-in. Therefore, this Court should take that opportunity now.

3. Exception to mootness: the issue is likely to recur and must be resolved to avoid uncertainty.

By deciding Sara's appeal, this Court can avoid uncertainty with an issue that is likely to recur. The Children's Code repeatedly and explicitly acknowledges the possibility that a child whose parents' parental rights are terminated may not be subsequently adopted. *See* Wis. Stat. § 48.01(1)(gg) (stating a legislative intent to seek to avoid the impermanence of foster care after termination of parental rights); *see also* Wis. Stat. § 48.43(5)(a) ("the agency shall report to the court on the status of the [parentless] child at least once each year *until the child is adopted or reaches 18 years of age, whichever is sooner*." (emphasis added)).

Indeed, children whose parents' parental rights are terminated have no guarantee of future adoption. It follows that other parentless children like Sara exist, and they have faced/will face the uncertainty of losing placement and care when their expiring and non-extendable TP case orders terminate upon their 18th birthdays. In this situation, the Legislature provides an option for these parentless children to seek protection and services through a CHIPS petition. The CHIPS petition will, for many of these children, provide the means to sustain themselves while continuing to pursue high school graduation.

Children often turn 18 in the midst of their senior year of high school. Children turn six on or before September 1 of, or immediately preceding, their first grade school year. Wis. Stat. § 118.14(1)(c). Projecting forward, students then must turn 17 before September 1 of their senior year of high school, leaving them to turn 18 sometime thereafter. *See Id.*

A typical school year lasts from September to June.[17] Thus, a child with a September birthday will turn 18 with almost the entirety of the nine-month school year remaining; children with October birthdays spend approximately eight months of their senior year as 18-year-olds; November birthdays mean seven months as 18-year-olds; and so on. The only children who turn 18 on or after they finish their senior year will be those born in June, July, and August. Assuming, *arguendo*, that children's births occur relatively evenly across the days of the calendar, then approximately 75% of children will turn 18 before their high school graduation.

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[17] Schools are required to provide at least 1,137 hours of direct pupil instruction to high school students. Wis. Admin. Code PI § 8.01(2)(f); *see also* Wis. Stat. § 119.18(6). In a school that provides seven hours of daily instruction, or 35 hours of instruction each week, the school year will last approximately 32.5 weeks. Considering vacations and breaks, a school year that commences in early September will end in June.

To receive enough instruction to graduate,[18] a high school senior cannot also maintain full time employment to provide their own shelter, food, and necessities. Thus, when a child loses placement and care under an expiring TP case order, that child lacks the practical opportunity to provide for her basic needs and stay in school. Thus, if such a child hopes to "develop . . . mentally and emotional to [their] potential[,]"[19] as the Legislature intended, they will need assistance.

Not all parentless children are adopted; and most children turn 18 before they graduate high school. There are children who fall into both categories: parentless children who turn 18 before they graduate high school. For these children, this Court should clarify the issue raised herein to avoid uncertainty should these children seek to utilize their statutory authority to petition for protection and services. These children should know, before they file their CHIPS petitions, whether the district attorney or corporation counsel has the authority to challenge their petitions. This Court can clarify an issue likely to recur by answering whether parentless children, who may need protection and services to develop into

[18] Schools are required to offer 1,137 hours of instruction to high school students. Wis. Admin. Code PI § 8.01(2)(f). While school attendance is not compulsory for students once they reach the age of 18, if a student wants to graduate, they must complete four full years of high school instruction. Wis. Stat. §§ 118.15; 118.33. Therefore, if a student wants to graduate high school, they must maintain a full caseload as a senior.

[19] Wis. Stat. § 48.01(1)(ag).

independence, must treat the district attorney and corporation counsel as a party to their CHIPS action.

CONCLUSION

For the reasons stated in this brief, Sara asks this Court to reverse the circuit court's decision granting the Waupaca County Corporation Counsel's request to be added as a party to contest Sara's CHIPS petition. Further, Sara asks this Court to decide her appeal, even if moot to her, given that multiple exceptions to mootness apply.

Dated this 16th day of May, 2024.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 8,001 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 16th day of May, 2024.

Signed:
Electronically signed by
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