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**COURT OF APPEALS**

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

CASE NO. 2024AP1116

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In re the termination of parental rights of L.N.U., a  
person under the age of 18:

A.K.B.,

Petitioner-Respondent

v.

J.J.G.,

Respondent-Appellant

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ON APPEAL FROM DECISION OF THE RACINE COUNTY CIRCUIT COURT,  
FAMILY COURT BRANCH, THE HONORABLE KRISTIN M. CAFFERTY,  
TRIAL COURT FILE #2023TP04

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**BRIEF OF THE PETITIONER-RESPONDENT**

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**STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

It is the Petitioner-Respondent's position that oral argument is not appropriate in this case as the issues are fact based and the existing case law is instructive for the court's determination.

**STATEMENT OF ISSUES**

1. Did the trial court error by accepting J.J.G.'s admission to voluntarily terminate his rights by using the procedures set forth in Wis. Stat. §48.41 rather than Wis. Stat. §48.422(7) when J.J.G. intended to oppose the termination of parental rights at the disposition?

The trial court found that J.J.G. voluntarily terminated his parental rights and was properly read the colloquy for his voluntary termination of parental rights as required under Wis. Stat. §48.41(2)(a).

**STATEMENT OF THE CASE**

The case was originally filed by A.K.B. on February 8, 2023. It was filed as an involuntary termination of parental rights claiming two (2) grounds; specifically, Wis. Stat. §48.415(1) abandonment and §48.415(6) failure to assume parental responsibility. J.J.G. was determined to be indigent and was appointed the assistance of a public defender throughout the pendency of this action. The first public defender and J.J.G. had a parting of the ways and a

second counsel was appointed. (R. 19). That occurred early on in the proceedings.

The case was made more challenging due to the fact that J.J.G. was residing in the state of Washington and did not make any personal appearances throughout the pendency of this case. J.J.G. appeared via Zoom hearings at each of the proceedings.

After a number of preliminary hearings, the case was calendared for a three (3) day contested jury trial on the grounds phase for a fact-finding hearing in accordance with Wis. Stat. §48.424 that occurred on October 10, 2023. Based upon prior court hearings, it was anticipated that J.J.G. would appear in person at the time of the trial. That did not occur. (R. 68). Instead at that hearing, J.J.G. through his counsel informed the court:

"MS. GIANISTSOS: At this point he is willing to stipulate to the grounds stage and waive jury trial. I would ask the court to do a colloquy with Mr. Goodman to make sure that this is what he wants to do." (R. 68, p. 3).

The trial court struggled with exactly what type of colloquy that J.J.G.'s counsel was asking the court to do. The court indicated that in its opinion it could entertain a voluntary agreement by J.J.G. to terminate his parental rights via Zoom as that is specifically provided for in Wis. Stat. §48.41(2)(b)(2). The court further explained

that it was its understanding that J.J.G. would be willing to stipulate as to the grounds for termination and argue that it is not in the minor child's best interest for the court to terminate J.J.G.'s parental rights. J.J.G. indicated in the affirmative to this process. (R. 68, p. 3-4).

The court then went on to question J.J.G., which included going through the elements that would be required to be proven for the involuntary termination of parental rights for both abandonment and failure to assume parental responsibility. At the end of the colloquy, however, J.J.G. answered questions as to whether or not he was agreeing to the voluntary termination solely because of his inability to physically be present in the state of Wisconsin and he indicated in the affirmative at that time. (R. 68, p. 13).

The Guardian ad Litem as well as the attorney for A.K.B. indicated a desire to go forward with the jury trial and not to have the matter adjourned further believing that there was sufficient case law authorizing such a jury trial on Zoom based upon the case of (In re Idella W., 708 N.W.2d 698, 2005 WI App 266 (Wis. App. 2005)). This case was cited by the Guardian ad Litem to the court. (R. 68, p. 18). The court, however, decided to afford J.J.G. the adjournment

and the case was continued over for additional proceedings and for another pretrial.

The next hearing date was December 1, 2023. Prior to this hearing, J.J.G. filed a motion questioning whether or not he was the natural father of the minor child and was requesting that genetic testing be performed. (R. 53). The majority of the hearing on December 1, 2023, focused upon the ability of J.J.G. to satisfy the legal requirement necessary to withdraw from his prior signed voluntary acknowledgement of paternity. (R. 72). In the end, the case was continued with another pretrial scheduled for December 14, 2023, and for jury trial on December 19, 2023.

At the hearing on December 14, 2023, the court was informed by J.J.G.'s counsel that J.J.G. was not going to be able to be in court. The specific comments of counsel were:

"MS. GIANISTSOS: Moving forward, the travel arrangements have not been made. We are prepared to proceed with a voluntary on the grounds."

The court then made an inquiry to J.J.G. directly.

"THE COURT: And you are willing to move forward with a voluntary termination of parental rights today?

MR. GOODMAN: Yes." (R. 73, p. 2).



The court then went on to conduct an extensive colloquy which was required under Wis. Stat. §48.41(2)(a)(b)(2).

J.J.G. appeals the circuit court's decision.

### **ARGUMENT**

**I. THE TRIAL COURT DID NOT ERROR IN ACCEPTING J.J.G.'S ADMISSION TO VOLUNTARILY TERMINATE HIS PARENTAL RIGHTS BY USING THE PROCEDURES AS SET FORTH IN WIS. STAT. §48.41 RATHER THAN WIS. STAT. §48.422 WHEN J.J.G. INTENDED TO OPPOSE THE TERMINATION AT THE DISPOSITION STAGE.**

The sole legal argument advanced by J.J.G. in this case is that the circuit court judge's colloquy concerning J.J.G.'s decision to waive his right to contest the allegations contained in the Petition through a voluntary termination of parental rights was not appropriate as Wis. Stat. §48.41 is not anticipated to be used by J.J.G. if he was still going to challenge the termination of his parental rights at disposition.

Wis. Stat. §48.41(1) specifically states:

"The court may terminate the parental rights of a parent after the parent has given his or her consent as specified in this section. When such voluntary consent is given as provided in this section, the judge may proceed immediately to a disposition of the matter after considering the standards and factors specified in subsection §48.426."

In other words, even with a voluntary consent to the termination of parental rights, the court is required to make a determination regarding the disposition using the standards and factors required for the disposition under Wis. Stat. §48.426. Whether the case proceeded through the voluntary process or involuntary process, the same procedure applies, and the same avenues lead to a best interest determination under Wis. Stat. §48.426 and §48.427.

J.J.G.'s argument is that the colloquy that was conducted by the court while meeting the test of the colloquy necessary for voluntary termination under Wis. Stat. §48.41(2) does not meet the colloquy required under the case law when it comes to the analysis of the elements required to be proven and the potential dispositions under Wis. Stat. §48.422(7). State v. Bangert, 131 Wis.2d 246, 389 N.W.2d 12 (Wis. 1986).

As stated by the circuit court judge in its oral decision concerning post judgment relief which is attached to J.J.G.'s appendix (R. 99), J.J.G. and his counsel made a strategic decision to proceed under the voluntary termination statute to avoid the finding of unfitness. That has a benefit to J.J.G. in that such a finding would be problematic in the event that J.J.G. has future children as

it would form the basis for a termination of parental rights to a subsequent child under Wisconsin law. Wis. Stat. §48.415(10). It was that calculation that the circuit court had in mind when finding that J.J.G.'s decision to forgo his right to a jury trial to contest the allegations in the Petition was being made.

It should also be noted, however, that there is specific testimony from J.J.G. himself acknowledging that the evidence existed to prove the grounds. J.J.G. answered the questions on the day of the colloquy on December 14, 2023, with the circuit court judge as follows:

“Q: Can you tell me in your own words why you are making your decision to go forward with the voluntary termination of parental rights?

A: Sorry. Give me a second. I understand they definitely have grounds to find me guilty. That is why I am asking for voluntary.

Q: Do you believe you thoroughly discussed this with your attorney and were you to continue with a jury trial, it would be unlikely for you to proceed based upon the information that you received.

A: Yes, ma'am.

Q: Can you confirm that you are not under any undue pressure 'to voluntarily agree to this termination?'

A: No. I am not.

Q: Then you reach this decision after careful thought?

A: Yes.

Q: Is this decision after careful thought?

A: Yes.

Q: Is your decision being made freely, voluntarily, and intelligently?

A: Yes, ma'am.

Q: Is your decision conditioned on any step in the future?

A: I am sorry. What was that?

Q: Is your decision based upon the agreement or step that is going to take place in the future, any promises made to you about something that might happen in the future?

A: No, ma'am." (R. 73, p. 9-11).

Should this court determine that the colloquy between the court and J.J.G. was insufficient to meet the grounds for the test at the hearing of December 14, 2023, the court should review the testimony taken on October 10, 2023, as well as the testimony from the dispositional hearing which occurred on December 19, 2023. This testimony clearly establishes a more than adequate record that the grounds as prayed for in the original petition of abandonment as well as failure to assume parental responsibility exist in this record to warrant an affirmation of the trial court's determinations.

Specifically, the court is directed to the transcript and the colloquy that was made by the circuit court judge beginning on October 10, 2023, wherein each of the elements of the statutory basis were discussed with J.J.G. (R. 68, p. 6-12). The matter was adjourned by the court following that hearing due to some of the answers of J.J.G. and seeking to potentially still challenge the factual basis for the two (2) statutory grounds.

The circuit court judge in its oral ruling on the post disposition (R. 99) specifically stated that it did not go through the standard colloquy for an admission on the petition on grounds for an involuntary determination because it believed, as did all counsel, that J.J.G. was making a decision with the assistance of his legal counsel to proceed as a voluntary termination. As the circuit court judge stated, however, the evidence ascertained through the testimony at the dispositional hearing corroborated the judge's determination that grounds existed for the termination of J.J.G.'s parental rights for both abandonment and failure to assume parental responsibility. J.J.G.'s own testimony acknowledged that he did not have any contact with the minor child for a period of time dating back to 2017 when he left the state of Wisconsin in violation of his probation. (R. 76, p. 56-59). (R. 56, p. 60-62).

With this testimony combined with the colloquy done and the answers by J.J.G. through all the various hearings that were held in this matter, it could hardly be said that the facts and circumstances did not support a finding that the grounds for the termination of J.J.G.'s termination of parental rights were appropriate under both abandonment and failure to assume parental responsibility. Therefore, even if this court determines that the procedures required under

involuntary termination should have been applied to the colloquy, the totality of the circumstances support the findings stated by the circuit court judge that the record establishes that the decision of the circuit court judge was appropriate based upon this record and that any error constitutes a harmless error to J.J.G. Waukesha County v. Steven H., 233 Wis.2d 344, 607 N.W.2d 607, 2000 WI 28 (Wis. 2000).

### **CONCLUSION**

A careful review of this record establishes that the court judge went over and above the call of duty to ensure that J.J.G.'s right to participate and challenge the allegations contained in the original involuntary petition for termination of parental rights were adhered to. This matter originally came on for hearing on March 9, 2023. It proceeded through the system with hearings on April 26, 2023; June 2, 2023; August 28, 2023; October 10, 2023; December 1, 2023; December 14, 2023; and concluding on December 19, 2023. J.J.G.'s post judgment motion for reconsideration was heard by the court on July 25, 2024. That is a total of nine (9) hearings held in this case.

J.J.G. was offered the right to participate and test the allegations in the original petition for involuntary termination of parental rights. J.J.G. was afforded an

adjournment of the original scheduled jury trial due to his inability to proceed in person. He was offered the opportunity to proceed with the jury trial even through Zoom. All of that was declined. J.J.G. was afforded the opportunity for a second jury trial, but ultimately decided with the assistance of his counsel to forego the jury trial and agree to a voluntary termination of parental rights. He still exercised his right to contest the actual disposition of his parental rights being terminated as not being in the best interest of the child. The court accepted his voluntary agreement that his parental rights be terminated subject to his right to contest the same at disposition.

A complete hearing was held at the time of the disposition in which J.J.G. participated and testified.

The circuit court judge made the discretionary determination based upon the factors required under Wisconsin law that it was in the best interest of L.N.U. that J.J.G.'s parental rights be terminated. That disposition was joined in by the Guardian ad Litem for the minor child.

The testimony of record established more than sufficient facts for this court to find that grounds existed for the termination of parental rights of J.J.G. regardless of whether or not he chose to voluntarily agree

upon the same (which he did) as outlined in the transcripts and in his brief. J.J.G. did many things throughout the pendency of this action to delay these proceedings and put roadblocks in to A.K.B.'s case. This appeal is another form of that given the record in this case and should be denied.

Dated at Kenosha, September 5, 2024.

RESPECTFULLY SUBMITTED:

Electronically signed by Attorney Thomas W. Anderson Jr.

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## CERTIFICATION

I certify that this Petitioner-Respondent's Brief meets the form and length requirements of Rule 809.19(8) (bm) (b) and (c) in that it is:

Typewritten (courier, 10 spaces per inch, non-proportional font, double-spaced, 1-1/2 inch margins on left and 1 inch on the other three sides)

The length of the Petitioner-Respondent's Brief is 2,868 words.

Dated September 5, 2024.

Signed,

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## CERTIFICATION

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

Dated September 5, 2024.

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