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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

In re the Termination of Parental Rights to L.N.U.,
A person under the age of 18:

A.K.B.,

Petitioner-Respondent,

v.

Case No. 2024AP1116

J.J.B.,

Respondent-Appellant,

ON NOTICE OF APPEAL FROM AN ORDER CONCERNING
TERMINATING PARENTAL RIGHTS AND ORDER DENYING POST-
DISPOSITIONAL MOTION ORDERED AND ENTERED IN RACINE
COUNTY CIRCUIT COURT, BRANCH 1, THE HONORABLE KRISTIN M.
CAFFERTY, PRESIDING

REPLY BRIEF OF RESPONDENT-APPELLANT

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TABLE OF CONTENTS

STATEMENT OF ISSUE3

STATEMENT OF THE CASE AND STATEMENT OF FACTS4

ARGUMENT.....4

THE TRIAL COURT ERRED BY ACCEPTING J.J.G.’S ADMISSION TO VOLUNTARY TPR BY USING THE PROCEDURES SET FORTH IN SEC. 48.41 RATHER THAN SEC. 48.222 WHEN J.J.G.. INTENDED TO OPPOSE TPR AT DISPOSITION.....4

CONCLUSION7

WISCONSIN STATUTES CITED

Sec. 48. 415

Sec. 48.422.....5

Sec. 48.424.....5

Se. 48.426.....5

Sec. 48.427.....5

Sec. 801.18(6)..... 5

Sec. 809.19(8)(b) and (c).8

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RESPONDENT-APPELLANT'S BRIEF

STATEMENT OF ISSUE

DID THE TRIAL COURT ERR BY ACCEPTING J.J.G.'S ADMISSION TO VOLUNTARY TPR BY USING THE PROCEDURES SET FORTH IN SEC. 48.41 RATHER THAN SEC. 48.222 WHEN J.J.G.. INTENDED TO OPPOSE TPR AT DISPOSITION?

The trial court answered this question in the negative.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

A.K.B. erroneously stated that J.J.G. resided in the State of Washington (page 6 of her brief). J.J.G. actually lived in the State of Oregon per the TPR petition and elsewhere in the record (2: 1).

ARGUMENT

THE TRIAL COURT ERRED BY ACCEPTING J.J.G.'S ADMISSION TO VOLUNTARY TPR BY USING THE PROCEDURES SET FORTH IN SEC. 48.41 RATHER THAN SEC. 48.222 WHEN J.J.G.. INTENDED TO OPPOSE TPR AT DISPOSITION.

A.K.B. , like the trial court, conflated the concept of admitting to grounds for TPR and a voluntary termination of parental rights (TPR) (page 9 of A.K.B.'s brief¹). This was based in part upon a misreading of the statute as to the permissibility of J.J.G. appearing by audiovisual means. See discussions on pages 14-16 of J.J.G.'s brief). Further confusion was generated by the trial court's statement on October 11, 2023 that that J.J.G. did not have the right to fight for his rights if he entered into a "voluntary." (72: 23). It was unclear exactly what

¹The pagination of A.K.B.'s brief is inconsistent and confusing. It does not appear to comply with Rule 809.19 (8). J.K.J.G. will use the pagination from the Court of Appeals, which also counted the cover page and table of contents.

the court meant by “voluntary.” It was clear that J.J.G. was interested in admitting to grounds for TPR but contesting at disposition that TPR was not in L.N.U.’s best interest. There was no meeting of the minds nor did A.K.B. explain how there was.

On December 12, 2023, Attorney Gianitsos stated that J.J.G. was prepared to “proceed with a voluntary on the grounds today” (73: 2). The court then placed J.J.G. under oath and conducted a colloquy that complied with the requirements of Sec. 48.41(a) . It did not comply with the requirements for an admission to grounds for TPR under Sec. 48.422.

Entering a “**voluntary**” TPR did not have the procedural safeguards set forth for an involuntary TPR in Secs. 48.422, 48.424, 48.426 and 48.427, Wis. Stats. The court did not (on December 12, 2023) and only partially on October 10, 2023 ascertain J.J.G.’s understanding of the nature of the acts and the potential dispositions. A.K.D. did not cite to anywhere in the record where it indicates otherwise. Further the trial court did not reference its colloquy from two months before at the hearing on December 12, 2023. It erred in its statement that J.J.G. still had the right to request substitution at the time he tendered a “voluntary” TPR created an atmosphere of confusion

as to exactly what the court proceeding was. A.K.B. did not contend otherwise.

A.K.B. also asked this court to include be reference the aborted colloquy of October 10, 2023 (page 12² of A.K.B.'s brief). She cited no authority that a colloquy with a respondent could be separated by over two months. The court itself did not reference its earlier colloquy on December 12, 2023.

Adding to the confusion was the lack of a written consent by J.J.G. to the termination of his parental rights using JC-1637, the Supreme Court recommended form.

A.K.B. also raised the issue that J.J.G. benefited by the “voluntary” procedure when he plead (page 10 of A.K.B.'s brief) because there wa no finding of unfitness to parent that might impact J.J.G. if he had additional children. This was also mentioned by the trial court when it denied the post dispositional motion (99: 12). However, that was not raised in any of the trial court proceedings except for a passing reference . There is no evidence that the unfitness issue was a consideration for J.J.G. in the plea that he entered.

The procedures in this case were fatally flawed and an erroneous exercise of trial court discretion because the trial court misunderstood the

2

law. The record did not show there was a meeting of the minds between J.J.G. and the court as to what J.J.G. was doing the legal situation he was putting himself in. The court erroneously believed it could not accept an admission to grounds by audiovisual means but could only accept a complete “voluntary” TPR.

CONCLUSION

For the reasons stated above and in his brief-in-chief, J.J.G.. asks this court to reverse the judgment of the trial court terminating J.J.G.’s parental rights to L.N.U. and denying J.J.G.’s post-dispositional motion and remand this matter to the trial court with instructions to conduct a new trial.

Dated this 10th day of September 2024

Electronically signed by Len Kachinsky

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Sec. 809.19(8)(b) and (c) for a brief and appendix produced with serif proportional font. This brief has 1347 words, including certifications.

Dated this 10th day of September 2024

Electronically signed by Len Kachinsky

LEN KACHINSKY

CERTIFICATION OF ELECTRONIC FILING

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

Dated this 10th day of September 2024

Electronically signed by Len Kachinsky

LEN KACHINSKY