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COURT OF APPEALS
DISTRICT IV

In re the Marriage of:

Rejani Raveendran,

Petitioner-Respondent,

Waushara County Child

Support Agency,

v.

Respondent,

Darwin Donald Airola, III,

Respondent-Appellant.

CASE NUMBER: 24AP2170

PETITIONER-RESPONDENT'S RESPONSE BRIEF

On appeal from judgment of the Waushara County Circuit Court Case Number 20FA41 on September 24, 2024 denying Motion for Judicial Recusal, The Honorable Guy D. Dutcher, presiding

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STATEMENT ON ORAL ARGUMENT

Oral argument is not necessary. The Petitioner-Respondent's arguments are intended to support the assertions made without further argument.

STATEMENT ON PUBLICATION

Publication of the Court of Appeal's decision is not requested.

STATEMENT OF THE CASE

Waushara County Family Court: Divorce Proceedings

Darwin Airola "Darwin" and Rejani Ravensdreen (AKA Airola) "Rejani" reached a Keller Agreement in their Waushara County divorce case on October 15, 2020. (246:1) (APP- 3) On November 9, 2020, the Keller Agreement was made the Family Court order granting the parties equal shared placement and joint legal custody. (246: 1-2) (App- 3-4) On July 12, 2021 the parties appeared, with their respective counsels, and agreed to impute Darwin's income at \$15.00/hour. (245: 2-3) (App- 38-40) Taking into account primary placement with Rejani and there were three minor children the Court calculated child support at \$748.00/month. On December 17, 2021 the parties appeared in court to resolve the property issues. At that time the Court summarized its findings made previously to support imputing income to Darwin at 15.00/hour. (233: 8) (App- 41)

The Court stated:

“I don’t have any basis upon which to impute earnings to Darwin beyond what I already had addressed when child support was established a long time ago. I did the algebra and reminded myself that 748 monthly, based upon the number of children that are in the picture here, would have meant that I imputed 15.00/hour to Darwin when establishing support. I think my algebra is correct. I did it a couple of times. Ant hat seems to the Court to be pretty a pretty reasonable place to go with that determination, recognizing that he , essentially, hasn’t worked in the last five to six years.”
(233: 8) (App- 41)

Portage County Child in Need of Protection and Services Case

On May 18, 2021 Portage County Child In Need of Protection and Services (CHIPS) Court adjudicated Darwin and Rejani’s three children in need of protection and services pursuant to Wis Stats. Wis. Stats. §48.13 (11) Emotional Damage. (246: 2) (App- 4, 10)
Subsequently, the Court entered a dispositional order granting Rejani sole legal custody and placement in home with Rejani. The Court provided Darwin with supervised visits. (246: 8) (App- 10) The Court noted that Rejani had completed numerous services that ameliorated the safety concerns allowing for an in home placement. (246: 4) (App- 6) The Court also noted that Darwin had not complied with the services offered by the Department and had not made any lifestyle changes. (246: 5-6,) (App- 7-8) The Court determined supervised visits were necessary to prevent Darwin from disrupting the gains the children had made at home, school and therapy. (246: 12, 8. 4) (App- 14, 10, 6)

A full day contested Case Closure Hearing, with both parties represented by counsel, was held on September 21, 2022. (246: 3) (App- 5) The Court found that the previously entered Family Court Order would resume an equal shared placement and joint legal custody of the children. (246: 8) (App-10) The Court did not find it was appropriate to place the children back in almost the same situation that caused them emotional harm and allowed them to be the subject of Portage County CHIPS action. (246: 8) (App- 10) The Portage County CHIPS Court ordered a case closure order with the following provisions: (1) Rejani shall have sole legal custody, (2) Rejani shall have primary placement, and (3) Darwin is to have reasonable supervised visitation upon reasonable request. (246: 12) (App- 13) The Portage County CHIPS Case Closure Order was entered into the Waushara County Family Court case on September 29, 2022. (246) (App- 3-14)

Waushara County Family Court: Post-Divorce Proceedings

On September 29, 2022 Darwin filed a letter in the Waushara County Family Court summarizing his perspective on the injustices perpetrated against him in the Portage County CHIPS case. (254) (App-15-23) He also requested: 1) the Waushara County Family Court deny Nash Law Group from acting as GAL, (2) the Waushara County Family Court order an evaluation of the children to confirm Darwin's suspicion that that he is the victim of Parental Alienation Syndrome, and (3) Waushara County Family court re-evaluate the

Portage County CHIPS Court's determinations that modified the preexisting Waushara County Family Court Order. (254: 8-9).

On September 30, 2023, the Court submitted a letter denying Darwin's request for modification of custody and placement entered by the Portage County CHIPS Court. (257) (App- 24) The Court alerted Darwin to the necessity of demonstrating a substantial change in circumstances to obtain a hearing to modify the Portage County CHIPS Case Closure Order that now doubles as the Waushara County Family Court Order. (257) (App- 24)

Darwin followed the Family Court's written denial of his requests with a motion to have Waushara County Health and Human Services supervise visits (259), a motion to replace the children's counselor (260), a motion to replace the Guardian ad Litem (261), a motion to have the children evaluated for Parental Alienation Syndrome (262) and a virtual visit summary from September 9, 2022. (263) These Motions were accompanied by a letter entitled, "Summary of Past Two Years Requests" summarizing Darwin's perspective on the case and providing "Some New Information". (265) (App-15-23) In addition, an accompanying letter requested Waushara County Family Court hear his motions. (268).

The Court denied Darwin's request to hear his motions. (267) (App-25) The Court reiterated that the matters had already been decided by the Portage County CHIPS Court and referred Darwin to the Court's September 30, 2022 letter for further explanation. (267) (App-25) The Court emphasized, again, that the Portage County Case

Closure Order could not be re-litigated in the Waushara County Family Court. (267) (App-25)

On October 5, 2022 Darwin submitted a third request for a motion hearing. (268). Darwin clarified he was not asking to relitigate the case, but rather for the Court to provide him a way to engage in visits with his children. Darwin also asked for his children to be evaluated for Parental Alienation Syndrome, for a new GAL to be appointed, and for the children to be transitioned to a counselor that aligns with Darwin's worldview. (268) The Waushara County Family Court denied Darwin's request, in writing, reiterating that the issues were heard by the Portage County CHIPS Court and may not be reconsidered in Waushara County. (269)

Although the Court denied Darwin's multiple requests for a hearing to relitigate issues resolved in the Portage County CHIPS Court, the Court held two hearings to address supervised visitation. Supervised visitation had not yet started because Darwin had not been able to locate a supervised visitation worker or facility that would work with him. (434-435) (App-26-32)

On July 5, 2023 the Court held a hearing to address Darwin's motion to approve the visitation worker identified by Darwin, but rejected by Rejani and her attorney. (435: 2) After hearing statements by both Darwin and Rejani, the Court declined to appoint Darwin's identified supervised visitation worker. (435: 18) The Court emphasized that Darwin has the right to worship and choose the faith of his choice, but having a person from his church and/or acting as his therapist was not an appropriate supervised visitation worker. (435:

11) The Court explained that it wanted the supervised visitation worker to be neutral and have the ability facilitate a meaningful process to rehabilitate Darwin's relationship with the children. (435: 12, 15) The Court feared that the children would be placed back in the same environment that precipitated the CHIPS case reversing the gains they had made. (435: 13, 15) The Court also listed the qualities of a supervised visitation worker: someone who Darwin has not previously met, a qualified therapist, and someone who can be neutral. (435: 19).

On July 17, 2023 the Court reconvened to address the next supervised visitation worker identified by Darwin. The suggested person met the Court's supervised visitation worker criteria, however, Darwin, fearing the visitation worker would be poisoned against him, insisted that the supervised visitation worker have no contact with anyone or any documents that could provide a background for why supervised visits were required. (434: 5) Rejani, through her attorney, did not express concern about the suggested supervised visitation worker, but did express concern about the worker not having an understanding of the children's trauma history and the events that led to a CHIPS adjudication. The Court insisted that the supervised visitation worker must be aware of the CHIPS case and the events that precipitated Darwin's order for supervised visitation. (434: 14)

The Court took time to provide Darwin feedback about his inability to find an acceptable supervised visitation worker. The Court stated that Darwin's approach was problematic. Specifically, that Darwin accepted no responsibility nor demonstrated contrition for his contribution to the CHIPS adjudication. (434: 12) Moreover, the Court identified that Darwin verbally assaults anyone who does not see the world as he feels they should. (434: 12) The Court repeatedly endorsed Darwin resuming his relationship with his children, and explained the Court was duty bound to have a clear understanding of how Darwin's interactions with the children would resume. (485: 9)

To facilitate movement in the case, the Court appointed a GAL with whom the Court expressed great confidence and who had served as the GAL for the CHIPS Case Closure Hearing. (434: 9, 13) Darwin did not agree with the appointment of this GAL because he felt that she "sold out his children's interests" in the past. (485: 4) Darwin summarized the GAL's alleged deficiencies in Objection to Selection of the GAL filed on July 26, 2023. (411) (App-28-33)

In the Objection Darwin disagrees, point by point, with the statements he perceives were made by the GAL. (411) (App-28-33) Darwin, once again objected to this GAL or any attorney from this GAL's firm representing the best interests of his children. (411) (App-28-33 #11) Darwin further disagreed with any firm having any dealings with Portage County from representing his children's best interests. (411) (App-28-33 #13)

The Court conducted a Status Conference on October 16, 2023 to determine if Darwin's supervised visits had started, or alternatively,

hear the results of the Guardian ad Litem's investigations and recommendations. (485: 2) The Guardian ad Litem reported that Rejani cooperated with the GAL's investigatory efforts, but that Darwin had not cooperated with her investigation (485: 2) Darwin continued to object to the appointment of this Guardian ad Litem. (485: 3, 4) (App- Court Order) The Court informed Darwin that the Court had already denied his motion for a different Guardian ad Litem and declined to address the issue further.. (485: 3)

The Court emphasized that Darwin's visits would not start until Darwin had cooperated with the process and the Guardian ad Litem had evaluated the situation. (485: 3) The Court then inquired as to whether or not Darwin was going to cooperate with the Guardian ad Litem. (485: 4) Darwin would not commit to cooperating with the Guardian ad Litem or the process. (485: 4) He continued to posit that he was a good father and insisted the Court examine the facts of the case. (485: 5, 6) The Court indicated that it had examined the facts of the case and concluded that there is nothing more to be done until Darwin cooperates with the process and the Guardian ad Litem. (485: 6)

Rejani's Attorney asked the Court to dismiss Darwin's motion for Reunification because Darwin had not engaged in the necessary activities to support reunification. (485: 7) In addition, Rejani's Attorney requested Darwin be held solely responsible for the Guardian ad Litem fees as a consequence for his failure to cooperate with the Guardian ad Litem's investigation. (485: 7)

The Court dismissed Darwin's Motion for Reunification. (485: 8) (APP- 2) The Court noted that Darwin's contact and interactions with the children on prior occasions had been problematic necessitating a CHIPS order in Portage County and a supervised visits order in the CHIPS Case Closure Order. (485: 8-9) The Court emphasized that Darwin had done absolutely nothing to effectuate the process and was totally unwilling to do anything to reunify with his children except question the integrity of the Court and protest the results of the process in the Portage County CHIPS case. (485: 9) The Court determined that Darwin's motion for reunification was a frivolous motion because he never had any intention of doing what is necessary to grant his motion; he would not even speak to the Guardian ad Litem.

The Court also limited Darwin's ability to file additional motions to reunify until he had articulated clear intention to comply with the Guardian ad Litem's investigative protocols and paid the Guardian ad Litem fees in full. (485: 12) (App- 2) The Court discharged the Guardian ad Litem. (485: 14)

The Court also addressed Darwin's motion seeking modification of his child support or suspension of his child support order until the appeals have been exhausted. The Court found the motion inappropriate:

"The propriety of the child support order that the Court had imposed, which, if I recall correctly, was based upon earnings information that had actually been communicated to the Court by Mr. Airola during a process of evaluating the economic circumstances and when he was represented by counsel. The court has exhaustively addressed child support. And there is absolutely nothing in this record that would suggest Mr. Airola should not

be required to provided financial support to his children, as every other non-primary placement in the State of Wisconsin is required to do absent very unusual circumstances, none of which are present here. And the Court will enter an order accordingly”. (485:14) (App- 36-37)

The Court held Darwin exclusively responsible for the Guardian ad Litem fees. (485: 12) (App- 2) Darwin objected to the GAL’s bill. (471) (App-34) Darwin also filed a motion to correct the GAL’s bill. (483) (App-35) (485:14) Subsequently, Darwin submitted a Proposed Order on Motion to Correct GAL Payment. (APP -42) On March 22, 2024 the Court declined Darwin’s proposed correction and approved the GAL Invoice in the amount of \$345.00. (APP - 42)

The Waushara County Child Support Agency filed a Motion to Modify Child Support. On April 17, 2024 the Court found that no change in circumstances since Darwin last stipulated to earning \$15.00 per hour had taken place. (App-43) On April 22, 2024 the Court signed the order with the statement The Court declines to modify child support. (APP - 43)

On September 23, 2024 Darwin Ariola submitted an Order for Judge Dutcher to recuse himself. Judge Dutcher summarily declined to recuse himself and signed the order on September 24, 2024. (App-44)

Darwin filed his Notice of Appeal on October 23, 2024. This brief is a Response to the issues raised by Darwin.

STANDARD OF REVIEW

The Standard of Review is discretionary.

ARGUMENT

I. Whether the Court properly declined to recuse itself from the case?

The Court properly declined a request for judicial recusal where Darwin failed to demonstrate a statutory violation that mandates recusal and has not demonstrated the Court violated Darwin's due process right to an impartial fact-finder. There is a presumption that a judge acted fairly, impartially and without prejudice. State v. Allen, 2010 WI 10 ¶ 269, 322 Wis. 2d 372, 778. The Legislature provided a list of situations where a judge MUST recuse him or herself related to relationships: (1) related to any party or a party's attorney, (2) a party or witness to the case (3) previously acted as counsel in the same action, (4) prepared a legal document that is at issue, (5) previously handled the case while a judge in a lower court, (6) has significant person or financial interest in the outcome of the case. Wis. Stats. § 757.19 (2) (a-e). The Legislature also identified that a Court must recuse itself where a judge subjectively determines that he or she cannot act or appear to act impartially. Wis. Stats. § 757.19 (2)(f)

Here, Darwin has not demonstrated that Judge Dutcher has a relationship to the case that mandates recusal. Wis. Stats. §757.19(2)(a-e). Furthermore, Darwin has not demonstrated that Judge Dutcher acted in a discriminatory manner that shows he cannot act or appear to act impartially. Wis. Stats. § &57.19(2) (f) , State v. Allen. ¶ 269. Darwin misperceives disagreement and Court guidance as discriminatory.

The court repeatedly endorsed Darwin resuming his relationship with his children. The Court appointed a Guardian ad Litem to investigate and facilitate visitation between Darwin and his children. (434: 9, 13) The Court emphasized that Darwin's visits would not start until Darwin had cooperated with the process and the Guardian ad Litem had evaluated the situation. (485: 3) Darwin would not commit to cooperating with the Guardian ad Litem or the process. (485: 4) He continued to posit that he was a good father and insisted the Court examine the facts of the case further to ostensibly agree with him after further introspection. (485: 5, 6) The Court indicated that it had examined the facts of the case and concluded that there is nothing more to be done until Darwin cooperates with the process and the Guardian ad Litem. (485: 6)

The Court disagrees with Darwin's approach to reunifying with his children, not his religion or his choice to homeschool. The Court demonstrated the requisite impartiality in relationships and decision-making; the Court properly declined Darwin's Order to Recuse.

CONCLUSION

Judge Dutcher acted fairly, impartially, and without prejudice throughout the post-divorce proceedings. The Court of Appeals should affirm Judge Dutcher's decision to decline Darwin's request for recusal where Darwin has failed to demonstrate that Judge Dutcher has a suspect relationship or the Court was unable to act impartially.

Dated: January 2, 2025

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CERTIFICATIONS

I hereby certify that:

This brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 3377 words.

I further certify that separately filed is an appendix that complies with Wis. Stat. § 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 809.23 (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings 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 of 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.

Electronically Signed by Karen Lueschow

DATED: January 2, 2025

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