STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2022AP000030

In re the Termination of Parental Rights to B.J.L.,
a Person Under the Age of 18:

PORTAGE COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Petitioner-Respondent

v.

A.K.,
Respondent-Appellant-Petitioner

PETITION FOR REVIEW

JILL C. VENTO
3215 Golf Road, #342
Delafield, WI 53018
262-968-3000
State Bar No. 1016418
jillcvento@gmail.com

Attorney for Respondent-
Appellant-Petitioner

TABLE OF CONTENTS

A.K., the respondent-appellant-petitioner, by her attorney, Jill C. Vento, respectfully petitions to the Supreme Court of the State of Wisconsin, pursuant to §808.10 and (Rule) 809.62, to review the decision of the Court of Appeals, District IV, dated August 11, 2022.

ISSUES PRESENTED

THIS IS AN ISSUE OF FIRST IMPRESSION IN WISCONSIN.

1. If a person appears and fails to raise an objection to personal jurisdiction, is the defense waived, even if the appearances are not voluntary?

The Circuit Court and the Court of Appeals both said yes. This Court should reverse.

2. If a person is not served with a Petition to Terminate Parental Rights (TPR), is the Court deprived of personal jurisdiction thereby rendering the TPR Order void?

The Circuit Court and the Court of Appeals both said no. This Court should reverse.

CRITERIA FOR REVIEW

The general rule in Wisconsin is that a person who appears and fails to raise an objection to personal jurisdiction in accord with statute waives it. §802.06(8), Wis. Stats.

It is also the rule in Wisconsin that the rules pertaining to service must be strictly adhered to. "Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may be harsh." Mech v. Borowski, 116 Wis.2d 683, 686, 342 N.W.2d 759 (Ct. App. 1983). The rules have even been described as being "unbending." "If the statutory prescriptions are to be meaningful, they must be unbending." Id. These rules are based upon the Constitutional right a person has to due process.

However, in a termination of parental rights case, there is an even greater Constitutional right at stake, the Constitutional right to the care and custody of one's child guaranteed under the liberty interest of the 14th Amendment. Consequently, it has been determined that parents in a TPR case must be afforded enhanced or heightened procedural protections, at least in the grounds phase. Santosky v. Kramer, 455 U.S. 745, 753 (1982).

However, those rights are not absolute. Whether a parent has a "substantial relationship" with his child determines the nature and scope of rights to which he is entitled. If a parent does not have a substantial relationship, then he is afforded only statutory

rights. On the other hand, if it is determined that a parent does have a substantial relationship, then he is afforded the full panoply of Constitutional rights delineated by the liberty interest of the 14th Amendment. See e.g. Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed. 551 (1972); Caban v. Mohammed, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979).

Therefore, it seems reasonable to conclude that in a TPR case, when a parent has a substantial relationship with his child, that he would be afforded the full benefit of Constitutional protection so that strict adherence to the rules of service would prevail over the statutory rules of waiver.

As such, a decision from this Court will help to clarify the law. See Rule 809.62(1r)(c) 2.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

Atty Arendt represented A.K. in several legal proceedings, however, he swore under oath that he did not represent A.K. in the TPR proceedings.[1]

That notwithstanding, the Office of Portage County Corporation Counsel asked him via email correspondence if he represented A.K. in the TPR proceedings and if so, would he accept service of the TPR Summons. (R.131)

---

[1] *"I represented [A.K.] in two Portage County CHIPS cases regarding two of her children that were placed out of her home, a Portage County criminal case criminal case relating to abuse of her children and related child support cases."* Affidavit of Patrick Arendt. R.105.

He replied in email correspondence that he did represent A.K. (R.131) As a result, the Office of Corporation Counsel personally delivered the TPR Summons to Atty Arendt's office. (R.131)

Atty Arendt then prepared, signed and filed an Admission of Service with the Court, wherein he stated clearly and unequivocally that he represented A.K. in the TPR proceedings and was accepting service of the TPR Summons at his request. He signed the Admission as the attorney for A.K. (R.11)

However, because he never represented A.K. in the TPR proceedings, the State Public Defender's Office apointed an attorney to represent A.K. (R.17) This appointment was made after Atty Arendt filed his Admission of Service with the Court.

No one questioned whether service was properly made and in turn, whether the Court had personal jurisdiction. Not the Trial Judge. Not the Office of Corporation Counsel. Not the GAL. And, not A.K., by her counsel.

Accordingly, believing that service was proper, so that there was no reason to raise a jurisdictional issue, the case proceeded. A.K. appeared. A.K. eventually voluntarily terminated her parental rights.

As a result, the Court entered the Order terminating her parental rights on August 10, 2021. (R.77)

On January 4, 2022, A.K., by her attorney, Jill C. Vento, filed a No-Merit Notice of Appeal. (R.88)

On January 19, 2022, A.K. by her attorney, Jill C. Vento, filed a Motion to Withdraw No-Merit Notice of Appeal and Motion for Remand to Circuit Court.

On January 21, 2022, the Court of Appeals changed this appeal to a regular appeal, denied the Motion for Remand because it did not include an Affidavit and extended the time to re-file the Motion for Remand. Therefore, on January 24, 2022, A.K., by her attorney, Jill C. Vento, re-filed the Motion for Remand along with Affidavit. (R.98)

On January 25, 2022, the Court of Appeals granted the Motion for Remand, thereby remanding the record to the circuit court. (R.99).

The Circuit Court heard the Motion for Remand on March 31st and April 8th, 2022.

On April 28, 2022, the Circuit Court entered its Order denying the Motion. (R.135).

A.K. appealed the Order, raising these two issues:

- If a person is not served in accord with the Rules of Civil Procedure, but, nonetheless believes that she is, has she waived the objection to personal jurisdiction by subsequently participating in the proceedings; and

- Was there an agency relationship between A.K. and Atty Arendt so that he was explicitly authorized to accept service of the TPR Summons for A.K.

On August 11, 2022, the Court of Appeals affirmed the Trial Court. It determined that because A.K. did not raise the objection to personal jurisdiction and appeared in the proceedings, that she waived the right to object. The Court determined that this issue was dispositive and as a result, did not reach the second issue.

ARGUMENT

I. GIVEN THAT A.K. DID NOT VOLUNTARILY SUBMIT TO THE JURISDICTION OF THE COURT §801.04(2)(b) DOES NOT APPLY HERE.

Simply put, A.K. contends that because she was not personally served with the TPR Summons, nor did she voluntarily submit to the jurisdiction of the court, the Trial Court lacked personal jurisdiction from the first instance, in accord with §801.04(2), Wis. Stats.

Consequently, the TPR Order is void. Mech v. Borowski, 116 Wis.2d 683, 342 N.W.2d 759 (Ct. App. 1983).

Section 801.04(2), Wis. Stats., provides that courts have personal jurisdiction only if one or more of the jurisdictional grounds set forth in §§801.05 or 801.06 exists and additionally, if: 1) a summons is served upon a person; and 2) personal service is dispensed with under §801.06 because the person appears in the action and waives the defense of lack of jurisdiction.

Here, both the Court of Appeals and Trial Court determined that because A.K. appeared and participated in the proceedings, the court had personal jurisdiction. Consequently, the Court of Appeals concluded that it was not necessary to determine whether A.K. was served. App. 105-106.

"*The term 'appearance' is generally used to signify an overt act by which one against whom suit has been commenced submits himself to the court's jurisdiction*". Artis-Wergin, 151 Wis. 2d 445, 444 N.W.2d 750, 753 (Ct. App. 1989)

However, implicit in both the meaning and application of what constitutes an "appearance" is that the "appearance" be voluntary. If the appearance is

not voluntary, then it cannot be said that the defendant submitted himself to the jurisdiction of the court.

The nature of a "voluntary appearance" was addressed by the Supreme Court in State v. Monje, 109 Wis.2d 138, 325 N.W.2d 695 (1982). In Monje, a man who was unlawfully arrested, nonetheless, personally appeared in Court. His attorney objected to personal jurisdiction. The Court of Appeals held that the trial court did not have personal jurisdiction over the defendant because his unauthorized arrest was unlawful and therefore that his appearances were not voluntary. The Supreme Court reversed on other grounds.

However, the Court relied upon language from Walberg v. State, 73 Wis.2d 448, 243 N.W.2d 190 (1976) that "*personal jurisdiction is dependent upon the defendant's physical presence before the court pursuant to a properly issued warrant, a lawful arrest or a voluntary appearance.*" Id. at 145.

The Appellate Court, however, defined the nature of a voluntary appearance.

> *A voluntary appearance acknowledges the court's jurisdiction over the defendant's person.* State v. Monje, 105 Wis.2d 138, 312 N.W.2d 827, 833 (Ct. App. 1981).

Consequently, even though Monje was a criminal

case, the nature of a voluntary appearance is consistent. As such, A.K. did not voluntarily appear here because her appearances were based upon the mistaken belief that she was personally served, (or in the alternative, that service was properly made). Therefore, since her appearances were based upon mistake,[2] they lacked the requisite *mens*, the intent, of being voluntary. Consequently, without such intent, A.K.'s appearances were not voluntary. Therefore, because A.K.'s appearances were not voluntary, she did not submit to the jurisdiction of the court.

Accordingly, the second prong of §801.04(2), relied upon by the Court of Appeals, is inapplicable here.

Consequently, justice implores this Court to determine whether A.K. was served with the TPR Summons.

II. GIVEN THAT A.K. WAS NOT SERVED WITH THE TPR SUMMONS THE TRIAL COURT DID NOT HAVE PERSONAL JURISDICTION AND THE TPR ORDER IS VOID.

The Court of Appeals asserts that A.K. did not raise the defense of lack of personal jurisdiction in a motion or responsive pleading under §802.06. App. 105.

While that is correct, that does not eliminate the

[2] *Black's Law Dictionary, Fifth Edition, defines mistake as follows: "A mistake exists when a person under some erroneous conviction of law or fact, does, or omits to do, some act which, but for the erroneous conviction, he would not have done or omitted."*

Trial Court's duty to ensure that it had personal jurisdiction before proceeding.

"*The laws of this State require Courts to observe the limits of their powers and inquire into their jurisdiction over an action even though the parties do not raise the issue.*" Isermann v. M.B.L. Life Assurance Corp., 231 Wis. 2d 136, ¶33, 605 N.W.2d 210 (Ct. App. 1999).

This inquiry is especially important in TPR proceedings because they work a unique kind of deprivation by permanently destroying all legal recognition of the parental relationship, Evelyn C.R. v. Tykila, 246 Wis.2d 1, 2001 WI 110, 629 N.W.2d 768 (2001). "*[T]ermination proceedings require heightened legal safeguards against erroneous decisions,* Id. *at ¶21, and heightened protection against government interference.*" Troxel v. Granville, 530 U.S. 57, 65 (2000).

Therefore, even though A.K. did not raise an objection to personal jurisdiction during the proceedings, the trial court was still duty bound to ensure that it had personal jurisdiction.

Moreover, the Supreme Court holds that "*jurisdiction is always a proper question to consider*

even if we [the Supreme Court] raise it sua sponte." Milwaukee County v. Caldwell, 31 Wis.2d 286, 143 N.W.2d 41, 43 (1966).

Therefore, given that A.K. did not voluntarily submit to the Court's jurisdiction, and, given the Constitutional rights at stake in TPR proceedings, it is appropriate for this Court[3] to now evaluate whether A.K. was personally served because "*Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may appear to be harsh."* Mech v. Borowski, 116 Wis.2d 683, 686, 342 N.W.2d 759 (Ct. App. 1983).

In that regard, the Supreme Court holds that:

> *Given that a defendant's constitutional right to due process is at stake, 'Wisconsin requires strict compliance with its rules of statutory service, even though the consequences may appear to be harsh.' (Citation omitted). In particular, 'the service of a summons in a manner prescribed by statute is a condition precedent to a valid exercise of personal jurisdiction,' (citation omitted), as any action taken by a court over a defendant not properly served is a deprivation of that defendant's constitutional protection, (citation omitted). Significantly, a defendant's*

[3] *The Court of Appeals determined that because §801.06 conferred personal jurisdiction over A.K. that it was not necessary to "reach the parties' arguments as to whether service of the summons and petition was proper. See Barrows v. American Fam. Ins. Co., 2014 WI App 11, ¶9, 352 Wis.2d 436, 842 N.W.2d 505 (2013) ("An appellate court need not address every issue raised by the parties when one issue is dispositive.") App. 106, fn.4.*

> *actual notice of an action is not alone enough to confer personal jurisdiction upon the court; rather, 'service must be made in accordance with the manner prescribed by statute.' (Emphasis added).* Johnson v. Cintas Corp. No. 2, 2012 WI 31, 339 Wis.2d 493, 507, 811 N.W.2d 756.

The Mech Court emphasizes strict adherence to the rules of service by stating:

> *Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice. If the statutory prescriptions are to be meaningful, they must be unbending.*

Mech, at 686.

Consequently, whether and how A.K. was served must now be evaluated under §801.04(2)(a).

First, it is without dispute that the County did not personally serve A.K. with the TPR Summons.

Instead, Atty Arendt accepted service of the TPR Summons as A.K.'s attorney. After accepting the TPR Summons from the County, Atty Arendt prepared, signed and filed an Admission of Service with the Court wherein he acknowledged several times that he accepted service as A.K.'s attorney.

> *I, Patrick Arendt, attorney for [A.K.], hereby accept personal service of the following documents on behalf of my client, [A.K.] and at my request.*

Atty Arendt then signed the Admission,

> *Patrick Arendt, Attorney for Mother.*

Thus, by his own admission, Atty Arendt clearly and unequivocally accepted service of the TPR Summons as A.K.'s attorney,[4] and did so even though an attorney is precluded from accepting service of a Summons under §801.14(2), Wis. Stats.

Therefore, in order to salvage the court's personal jurisdiction, and ultimately, the TPR Order, and notwithstanding the clear language of Atty Arendt's Admission of Service, the Trial Court found that Atty Arendt accepted service as A.K.'s agent. R.135.

While an attorney can accept service in an agent capacity, the mere fact that Patrick Arendt is an attorney by profession does not equate to him being A.K.'s agent for purposes of service. *"An attorney, however, is not authorized by general principles of agency to accept, on behalf of a client, service of process commencing an action."* Gimenez M.C. v. State of Wisconsin Medical Examing Board, 229 Wis.2d 312, 317, 600 N.W.2d 28 (Ct. App. 1999).

Even when an attorney represented a person in a

---

[4] *In fact, Atty Arendt never represented A.K. in the TPR proceedings. See Affidavit of Patrick Arendt Regarding Admission of Service. R.105. "I represented [A.K.] in two Portage County CHIPS cases regarding two of her children that were placed out of her home, a Portage County criminal case relating to abuse of her children and related child support cases."*

That notwithstanding, the Court of Appeals implies that he did, through its statement that Atty Arendt withdrew as A.K.'s attorney in the TPR proceedings, even though that was not the case. See App. 102.

legal proceeding and had a broad Power of Attorney, the Court held that did not authorize him to accept service in a different proceeding. Schultz v. Schultz, 436 F.2d 635 (1971).

In reaching its decision, the Trial Court relied upon the language of §801.11(1)(d), Wis. Stats., which states *inter alia* "*upon an agent authorized by appointment or by law to accept service of the summons for the defendant.*"

In Mared Industries, Inc. V. Mansfield, 2005 WI 5, 277 Wis.2d 350, 690 N.W.2d 835 (2005), the Supreme Court explained that this language required the principal to "*designate the agent to perform the function, job, or duty of accepting service...In other words, the agent must have actual express authority.*" The Court further explained that while actual express authority does not need to be in writing, "*it must be set forth in clear and unambiguous terms.* Id. at ¶33.

Atty Arendt's testimony does not establish that A.K. gave him "authority to accept service" in "clear and unambiguous" terms. This was acknowledged by Judge Baker:

> *[w]hen pressed by Ms. [A.K.]'s attorney he added that they had discussed this as early as September 2020, however he was unable to*

give a specific date or time of the discussion stating that the conversations had 'blended together.'" R.135:2

On cross-examination, Atty Vento asked Atty Arendt when A.K. asked him to accept service. He was unable to provide a specific date. R.137:114:14-16.

He was also unable to recite exactly what A.K. said to him that authorized him to accept service of the TPR Summons for her. R.137:116:9-25; 117:1-3.

Additionally, Atty Arendt could not remember whose idea it was that he accept service. R.137:83:25 to 84:1-4.

Lastly, while not necessary, the agency relationship was not reduced to writing. R.137:86:22-25.

Therefore, these colloquies show that A.K. did not give Atty Arendt actual express authority to accept the TPR Summons. In contrast, A.K. offered clear and unambiguous testimony that she never created an agency relationship with Atty Arendt and never explicitly authorized him to accept service of the TPR Summons as her agent. R.137:6:19-25; 7:1-9.

VENTO: At any time and under any circumstances, did you ever authorize Attorney Arendt to accept service of the TPR summons and petition for you or on your behalf?

A.K.: No, I did not.

VENTO: At any time either before or after the TPR petition

was filed, did you have a conversation alone with Attorney Arendt about him accepting service of the TPR summons and petition for you?

A.K.: No. R.138:52:10-25.

VENTO: Did you ever enter into an agency relationship with Attorney Arendt?

A.K.: No.

VENTO: That notwithstanding, did you ever authorize Attorney Arendt to act as your agent to accept service of the TPR summons and petition on your behalf?

A.K.: No I did not.

VENTO: During his representation of you in other legal matters, did you tell him he had authority to accept service of the TPR summons and petition?

A.K.: No.
R.138:52:10-25.

Thus, the Trial Court's finding that Atty Arendt accepted service as A.K.'s agent simply does not comport with the facts.

Therefore, since the County did not personally serve A.K. with the TPR Summons, and Atty Arendt is precluded by statute from accepting service, and he did not have actual express authority to accept service as A.K.'s agent, A.K. was not personally served with the TPR Summons.

As such, the Court did not have personal jurisdiction under §801.04(2), Wis. Stats.

"When a court has no jurisdiction, it is *coram non judice.* The Judgement is void and acts done by a court without jurisdiction over a person are *coram non*

judice." Lenahan's Estate, 258 Wis. 404, 46 N.W.2d 352 (1951). Put another way, *"[w]hen a suit is brought and determined in a court which has no jurisdiction in the matter then it is said to be coram non judice, in presence of a person not a judge, and the judgment is void."* Black's Law Dictionary, Fifth Edition.

Therefore, without personal service, the Court had no jurisdiction over A.K. from the first instance.

Consequently, the TPR Order is void.

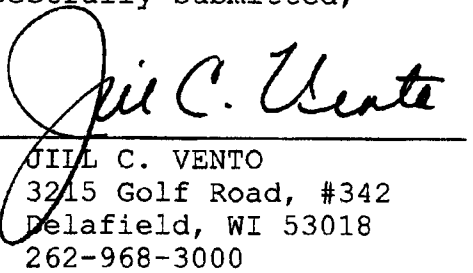
While this may be a harsh result, it can be no harsher than the result A.K. has been made to endure, the extinguishment of a Constitutional right held most dear, the care and custody of her son.

CONCLUSION

For these reasons, A.K. respectfully requests that the Court grant her petition for review.

Dated this 30th day of August, 2022.

Respectfully submitted,



By: JILL C. VENTO
3215 Golf Road, #342
Delafield, WI 53018
262-968-3000
State Bar No. 1016418
jillcvento@gmail.com
Attorney for Respondent-
Appellant-Petitioner

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules combined in §809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of the brief is 16 pages.

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this petition, excluding the appendix, if any, which complies with the requirements of §80.19(12). I further certify that this electronic petition is identical in content and format to the printed form of the petition filed on or after this date.

A copy of this certificate has been served with the paper copies of this petition with the court and served on all opposing parties.

Dated this 30th day of August, 2022.

Signed:

Jill C. Vento

APPROVED:

BY: Amanda Kranski

AMANDA KRANSKI