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OF WISCONSIN

DISTRICT IV

In re the award of Guardian ad Litem fees in:

Vernon County Department of Human Services,

Petitioner-Respondent,

v.

Appeal No. 2018AP000863,
2018AP000864,
2018AP000865,
2018AP000866

K.F. and M.F.,

Respondents-Appellants.

ON APPEAL FROM THE CIRCUIT COURT FOR VERNON COUNTY,

THE HONORABLE WILLIAM ANDREW SHARP, PRESIDING.

APPELLANT'S BRIEF OF K.F and M.F

K.F. and M.F.
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TABLE OF AUTHORITIES

Michael T. v. Briggs, 204 Wis. 2d 401, 555 N.W.2d 651 (Ct. App. 1996), 96-1297.

Michael T v. Briggs, 555 NW 2d 651, 204 Wis 2d

WI Statute 48.235(8) Guardian Ad Litem, Compensation, and *Judicial Council Notes 1990.*

WI Statute 977.07 Determination of indigency.

STATEMENT OF ORAL ARGUMENT AND PUBLICATION

Appellants believe oral argument will not be needed as the brief sufficiently provides the facts and arguments for the court to render a decision. However, if the court wishes the petitioner to present oral arguments in this case they will be happy to do so.

Appellants encourage publication of this case.

STATEMENT OF THE ISSUES

- I. Whether the trial court erred in ordering K.F. and M.F., each to reimburse Vernon County 50% of the total \$6,870.50 paid to Angela L. Palmer-Fisher, court appointed guardian ad litem for their children during CHIPS proceedings, when parties were previously found indigent. Petition and Order for Fees were submitted to the court by guardian ad litem, which was signed by Judge Sharp, without allowing K.F. and M.F. an opportunity to show their inability to pay due to continued severe financial hardships and indigency. Order for court-appointed attorney fees for the GAL was made without consideration of current financial situation of indigent parties.
- II. Whether trial court erred in denial of K.F. and M.F.'s motion to modify by dismissing the March 8, 2018 and March 9, 2018 court orders to reimburse Vernon County for GAL's fees, because of severe and continuing poverty.

STATEMENT OF THE CASE

On April 28, 2017, Vernon County Department of Human Services removed three children of K.F. and M.F., filing a temporary physical custody request and later, a Children in Need of Protection or Services petition under WI Statute 48.13 (10), claiming parents were unable to provide adequate supervision and care. Both parents, K.F. and M.F., contested claims. App.01, App.02.

On May 3, 2017, the court appointed Angela Palmer-Fisher as guardian ad litem for the three children. App.03.

K.F. wrote a letter to Judge Michael Rosborough, who was at time the presiding judge involved with case. App.04. The letter stated concerns about being allowed only 2 hours with children in 5 weeks and the continued placement of children in a foster home, with the county refusing to put together a safety plan addressing any concerns they had, in order to return the children home. In the last section of the letter, K.H. requests a court appointed attorney due to inability to afford one. Attached with letter, was Petition for Waiver of Fees and Costs-Affidavit of Indigency. App.05

During the June 6, 2017 plea hearing, Judge Rosborough granted K.H.'s request for an attorney, stating she would be contacted by the court when they found an attorney to represent her, and the plea hearing was adjourned to July 11, 2017. An order to appoint counsel was filed on June 9, 2017, and attorney Brian Murphy was appointed to represent K.F. App.06

On July 12, Judge William Sharp was assigned to the cases for the children, replacing Judge Rosborough.

On July 17, three days after birth of K.F. and M.F.'s newborn daughter, Theresa Berger, the social worker for Vernon County, removed the baby from hospital, filing another Petition for temporary custody and CHIPS petition, giving notice of hearing before Judge Rosborough on July 20, 2017. At the hearing, Rosborough granted the petition and baby was placed with her three siblings in foster care.

Immediately after temporary custody was given to the county, she was added to that of the siblings, and assigned to Judge William Sharp. Soon after Judge Sharp took over cases, a question of possible bias against K.F. by social worker, Theresa Berger, in regard to motivation for removal of children, was brought up in court. A different social worker, Olivia Skildum, replaced Theresa Berger in the cases.

The guardian ad litem continued to have involvement in this matter until dismissal of all four cases on June 8, 2018.

Attorney Brian Murphy, appointed by court, due to parties indigency, to represent K.F., submitted two petitions and orders for attorney fees, filed September 5, 2017 and October 31, 2017. App. 07, App.08. His fees were paid by the Vernon County Circuit Court. The INDEX of the record on appeal, lists both as "ORDER FOR REIMBURSEMENT OF GAL OR ATTORNEY"; However, K.F. and M.F. were not ordered to reimburse county for Attorney Murphy's fees.

In mid-March 2018, K.F and M.F., received a letter from Sue Amundson, Register in Probate and Juvenile Court Clerk, App.09, stating K.F. and M.F. were court ordered to reimburse the county for the GAL fees. She attached the petition and order for fees, filed by guardian ad litem Angela Palmer-Fisher on March 8, 2018, App.10, and the order regarding court-appointed attorney fees/expenses, filed March 9, 2018. App.11. Both orders surprisingly ordered parents, M.F. and K.F., to reimburse Vernon County for the GAL's fees in the sum of \$6,870.50.

K.H. and M.F filed a motion to modify orders on April 6, 2018, requesting dismissal of the order to reimburse the county, due to poverty. App.12.

They received back another letter from Sue Amundson, Register of Probate and Juvenile Court Clerk, stating their motion was denied, enclosing copy of their motion in which Judge Sharp wrote on bottom of page 2, "4-11-18 Motion denied. The parties were found indigent to qualify them for court-appointed attorneys that they would repay. There has been no showing of long term, total indigence." Judge Sharp's signature following statement. App.13, App. 14 (handwritten order on bottom).

ARGUMENT

- I. Trial court erred in ordering K.F. and M.F., each to reimburse Vernon County 50% of the guardian ad litem fee, totaling \$6870.50, when parties were previously found indigent and continue being indigent. Petition and Order for Fees were submitted to the court by guardian ad litem, which was signed by Judge Sharp, without allowing K.F. and M.F. an opportunity to show their inability to pay due to continued severe financial hardships and indigency, total income for family of 11, being well below federal poverty levels.

M.F. and K.H. are married and have nine children. They receive public assistance, including receiving assistance from Vernon County Department of Human Services throughout this case. They have had severe financial problems including a pending foreclosure on their very home. K.H. is disabled and receives only disability income. M.F. has income but it far from provides enough to support entire family without public assistance.

The guardian ad litem was aware of their financial hardship and indicated to both parents and their social worker, Olivia Skildum, she didn't know the judge would order them to reimburse the county for her fees. Being in their current financial situation, which they have been for years, they could not afford minimal payments monthly to the county for the reimbursement order. Being a court ordered reimbursement, in the event they were unable to pay the monthly payments, which is likely, incarceration is not only possible, but a real possibility as jailing individuals on contempt due to inability to pay court ordered fines/fees is common practice in Vernon County.

WI Statute 48.235(8) Guardian Ad Litem, Compensation:

(a) A guardian ad litem appointed under this chapter shall be compensated at a rate that the court determines is reasonable, except that, if the court orders a county to pay the compensation of the guardian ad litem under par. (b) or (c) 2., the amount ordered may not exceed the compensation payable to a private attorney under s. 977.08 (4m) (b).

(b) **Subject to par. (c)**, the court may order either or both of the parents of a child for whom a guardian ad litem is appointed under this chapter to pay all or any part of the compensation of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court may order either or both of the parents of the child to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If one or both parents are indigent or if the court determines that it would be unfair to a parent to require him or her to pay, the court may order the county of venue to pay the compensation and fees, in whole or in part. If the court orders the county of venue to pay because a parent is indigent, the court may also order either or both of the parents to reimburse the county, in whole or in part, for the payment.

(c)

1. In an uncontested termination of parental rights and adoption proceeding under s. 48.833, the court shall order the agency that placed the child for adoption to pay the compensation of the child's guardian ad litem.
2. In an uncontested termination of parental rights and adoption proceeding under s. 48.835 or 48.837, the court shall order the proposed adoptive parents to pay the compensation of the child's guardian ad litem. If the proposed adoptive parents are indigent, the court may order the county of venue to pay the compensation, in

whole or in part, and may order the proposed adoptive parents to reimburse the county, in whole or in part, for the payment.

3. In a proceeding under s. 813.122 or 813.125, the court may not order the child victim or any parent, stepparent, or legal guardian of the child victim who is not a party to the action, to pay any part of the compensation of the guardian ad litem

Sub. (8) retains the current law that, unless the court otherwise orders, the county pays the fees of the guardian ad litem in matters under this chapter, but it creates an exception for uncontested termination proceedings and uncontested adoptions, in which cases the adoptive parents or the agency are required to pay this fee unless the court finds they are unable to do so. The court is given the authority to require advance payment of the guardian ad litem fees into an escrow account. [Re Order effective Jan. 1, 1990]. **Judicial Council Notes 1990.**

Except as provided in sub. (8), a guardian ad litem appointed under ch. 48 is to be paid by the county, regardless of the type of action or the parent's ability to pay. **Michael T. v. Briggs, 204 Wis. 2d 401, 555 N.W.2d 651 (Ct. App. 1996), 96-1297.**

The cases in this situation were *not* that of uncontested adoptions or terminations under 48.23(8)(c); thereby, according to Statutes, are to be paid by the county.

Previously determined by the trial court as indigent for costs under standards of **WI Stat 977.02(3) and 977.06**; and therefore was appointed an attorney for representation, Brian Murphy, who in turn was paid for those services by Vernon County. No reimbursement order for the court appointed attorney for parents made. To make determination of Indigency for parties, waiving costs, for one attorney, yet ordering reimbursement at same time for another attorney (GAL for children), makes no sense. Additionally, if the court believed their financial situation had improved, the court failed to make any redetermination of their financial situation

(lest it would have been determined that they remain well below poverty levels, receive public benefits, therefore, remain indigent). Ordering indigent parties to endure further hardships would negatively affect the entire family, create further hardship; such practice is unfair and unjust to the indigent parties.

- I. The trial court erred when denied K.F. and M.F.'s motion to modify, requesting dismissal of the March 8, 2018 and March 9, 2018 court orders to reimburse Vernon County for GAL's fees, because of severe and continuing poverty and Indigency.

WI Stat 977.07 Determination of indigency.

(1) (a) Determination of indigency for persons entitled to counsel shall be made as soon as possible and shall be in accordance with the rules promulgated by the board under s. 977.02 (3) and the system established under s. 977.06. No determination of indigency is required for a child who is entitled to be represented by counsel under s. 48.23 or 938.23 or a person who is entitled to be represented by counsel under s. 51.60, 55.105, or 980.03 (2) (a).

It appears in this case that the trial court refuses to make a finding of Indigency for K.H. and M.F. for the costs of GAL fees, despite their financial situation, and they clearly being indigent and completely unable to pay. Nor will the court allow the parties to appear in court to make a showing of their Indigency. No redetermination was made nor was their any showing of improvement in their financial situation, nor that there is expected to be improvement.

In making its separate determination of whether a defendant is indigent for purposes of court-appointed counsel, the trial court should consider federal poverty guidelines. If a defendant has no assets and an income well below the poverty level, the trial court should set forth why it determined that the defendant could afford counsel. *State v. Nieves-Gonzales, 2001 WI App 90, 242 Wis. 2d 782, 625 N.W.2d 913, 00-2138.*

In a case involving dispute of guardian ad litem fees, ***Michael T v. Briggs, 555 NW 2d 651, 204 Wis. 2d 401 - Wis: Court of Appeals, 1996***, with case of harrassment and parties seeking injunctions, where parties were appointed guardian ad litem; reimbursement of fees for the GAL became a separate issue:

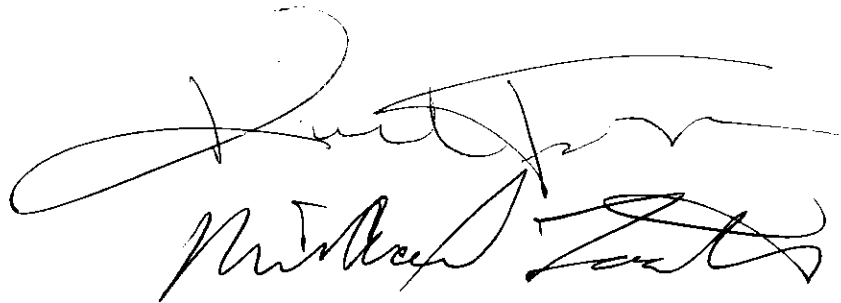
"The statement in the child-abuse injunction statute, § 813.122(3)(b)1, STATS., that guardians ad litem in such proceedings are to be appointed "in accordance with s. 48.235" plainly brings Briggs's *408 appointment squarely under chapter 48—at least with respect to the child-abuse petition. And § 48.14(10), WIS. STAT. ANN. (West Supp. 1995), in equally straightforward language, brings both of Katie T.'s petitions within the "exclusive jurisdiction" of the juvenile court. Given the language of the statutes, we do not see how Briggs's appointment can be other than under chapter 48, and § 48.235(8) unequivocally states, with exceptions not relevant here, "[T]he guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue...." (Emphasis added.)" ***Michael T v. Briggs, 555 NW 2d 651, 204 Wis 2d***

CONCLUSION

These parents have been center of discrimination in Vernon County for the last two years and ordering payment of fees for the GAL, knowing the family cannot afford legal counsel, is just another way to cause great harm to this family. Clearly within the statues it can be ascertained that finding parties indigent, just to revoke the meaning of Indigency at the conclusion of the case, without any redetermination of their financial situation, particularly when court records throughout this case of CHIPS proceedings made multiple references to the families severe

financial hardships, with difficulty even providing clothing for their children, the court as well as the GAL who submitted the petition and order, is unjust and a miscarriage of justice.

We respectfully request the Court of Appeals to overturn the trial court's decision and dismiss both orders for reimbursement of the guardian ad litem fees.

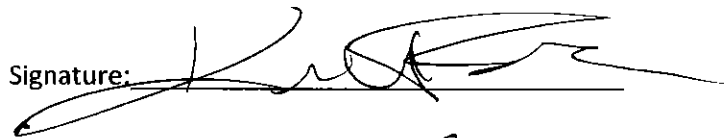
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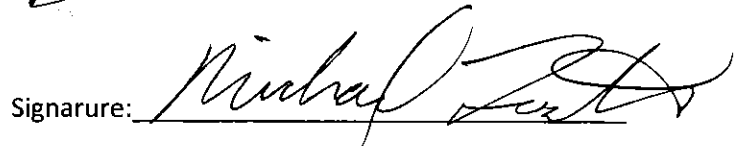
FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis Stat. 809.19(8)(b) and (c) for a brief produced with a proportional serif font.

The length of this brief is 3010 words.

Date: Dec. 7 2018

Signature: A handwritten signature in black ink, appearing to read "Michael Zent".

Signature: A handwritten signature in black ink, appearing to read "Michael Zent".

APPELLANT'S BRIEF APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as part of 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; and the (3) 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 judgement 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 first names and last initials instead of full names or persons, specifically including juveniles and parents of juveniles, with a notation that portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Date Dec 7 2018

Signature _____

Signature _____