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STATE OF WISCONSIN  
IN SUPREME COURT  
Appeal Case Nos. 2022AP76 & 2022AP77  
Dane County Case Nos. 2019TP68 & 2019TP69

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IN RE THE TERMINATION OF PARENTAL RIGHTS  
TO A.F. and L.F, PERSONS UNDER THE AGE OF 18:

DANE COUNTY DEPARTMENT OF HUMAN SERVICES,  
Petitioner-Respondent,

vs.

A.D.,

Respondent-Appellant-Petitioner.

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RESPONSE TO PETITION FOR REVIEW

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### STATEMENT OF THE CASE

A.D. argues in support of his Petition for Review that the termination of parental rights (TPR) default “standard” set forth in *Dane Co. DHS v. Mable K.*, 2013 WI 28, 346 Wis. 2d 396, 828 N.W.2d 198, has been “effectively and unlawfully overruled” by the Wisconsin Court of Appeals over the last decade, and that the Court of Appeals has redefined “egregious” to mean “a parent’s failure to appear at one pre-trial TPR hearing.” (A.D. Pet. for Rev., p. 4). This is incorrect. Accordingly, none of the three (3) Wis. Stat. § 809.62 criteria for review by this Supreme Court cited by A.D. are applicable.

It is simply untrue that “[u]nless this Court grants review, egregious now means: ‘a parent that fails to appear at one pre-trial hearing.’” (A.D. Pet. for Rev., p. 32). The 12 additional unpublished Court of Appeals decisions cited by A.D. (See A.D. Pet. for Rev., pp. 24-31) each appropriately apply the existing law to the distinct facts present in each individual case --- In each case, facts exist beyond a parent’s

failure to appear at one hearing. As set forth below, those additional facts considered by the circuit courts and the Court of Appeals include: failure to appear at multiple hearings, failure to appear at court ordered depositions, failure to file any answer in opposition to the termination petition altogether, failure to appear at trial itself, and failure to follow the circuit courts' instructions to contact the public defender's office. This case also presents its own, distinctive set of facts. A.D. does not contest that "the specific facts and circumstances in A.D.'s case may be somewhat unique ..." (A.D. Pet. for Rev. p. 4). During the extraordinarily drawn out procedural posture of this case, A.D. failed to comply with more than one circuit court order (both by ignoring repeated orders, and by failing to comply with orders to appear *and* orders to provide an address). Those failures form an appropriate factual basis for the circuit court's discretionary default finding.

Separate from the issue of what facts constitute the basis for a well-reasoned default finding, there is an



alternative ground for supporting the Court of Appeals' decision: "The County is correct that A.D. forfeited his motion to vacate the default judgments when he abandoned the proceedings." *Dane Co. DHS v. A.D.*, unpublished slip op., No. 2022AP76, ¶ X, (Mar. 31, 2022) (citation omitted). (See Pet. Appx. 14). A.D.'s Petition for Review can be denied for this reason alone. Wis. Stat. § 809.62(3)(e).

### FACTS

A.D.'s Petition for Review fails to fully describe the underlying facts which properly formed the basis of the circuit court's decision to enter default as a sanction.

On October 24, 2019 (now nearly 2 years and 7 months ago), Dane County filed petitions to terminate A.D.'s parental rights to A.F. and L.F. R. 3 (2022AP76); R. 3 (2022APP77).<sup>1</sup> On November 12, 2019, A.D. was personally served with the corresponding Summons and Petition for each termination case. R. 20; R. 20 (2022AP77). The Summons *personally served* upon A.D. in each termination case

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<sup>1</sup> All subsequent citations to the record will reference 2022AP76, unless otherwise noted.

included the following written notice, on paper, handed to

A.D.:

**NOTICE OF MOTION FOR  
DEFAULT JUDGMENT**

**If you fail to appear at this hearing, or any subsequent hearing, the court may proceed to hear testimony and enter an order terminating your parental rights.** Petitioner will move for such judgment if you fail to appear in court as required.

R. 6-5; R. 9-5 (2022AP77).

A.D. was ordered to appear, in person, at risk of default, on the following additional occasions:

First, on November 12, 2019, A.D. participated in an initial hearing on the TPR actions, in person. During this hearing, he was given instructions to appear personally at all future hearings, and warned of default:

MS. RAMAKER: Right. They would bring that new notice of hearing and the petition and the summons to the Public Defender's Office. I would also ask, your Honor, that you provide the information for them on the requirement that they personally appear at all hearings at risk of default. That information is included in the summons, but I think it's always fair to parents to be very clear that

they need to come to the TPR hearings at risk of being found in default which could result in the termination of their parental rights without their consent and participation.

A.D.: I mean, you're going to do it anyway.

(R. 180, 28:7-21).

...

MS. RAMAKER: I just want to state for purposes of the record that [A.D.] does have notice of hearing in hand. And Your Honor, if you could just give him the default warning as I stated before.

THE COURT: Thank you. So [A.D.], if you do not appear for that court hearing coming up on December 10<sup>th</sup> at 1:15, the court could make a finding of default and that would mean that you are forfeiting your right to contest the grounds from termination of parental rights. So it is important for you to personally attend that hearing and all subsequent hearings on the petition.

A.D.: And you said it could be – if I don't show up, my rights are terminated, correct?

THE COURT: Well, it's actually not – it doesn't go quite that far, but it could make a finding that there are grounds to terminate ...

(R. 180, 38:16-39:10).

Second, on January 24, 2020, A.D. participated personally in a subsequent hearing on the TPR petitions. At this pre-pandemic hearing, the circuit court set both parents' cases for jury trial, to occur together in April of 2020. R. 55:

MS. RAMAKER: I guess I would ask, Your Honor, and I think that you made the statement at the – well, you wouldn't have made the statement at this last hearing because this is your first hearing on this case. I would ask for an order for personal appearance for the parents at those hearings and then for any reasonably noticed depositions.

THE COURT: All right. So this applies to both parents, both [A.D.] and [J.F.]. Let me just explain. Both [A.D.] and [J.F.] are required to be personally present at these hearings that we just scheduled, the trial, the final pretrial on April 10<sup>th</sup>, and the hearing on motions in limine on March 26<sup>th</sup>. So you have to be personally present. If you're not personally present, you could lose the rights that we just talked about today and you could end up with a default judgment.

(R.55, 26:21-27:12).

Third, on March 26, 2020, A.D. appeared by telephone at another hearing on the TPR actions. At this hearing, due to the pandemic and the Wisconsin Supreme Court's Order suspending all jury trials until May 22, 2020, at the earliest,



the circuit court expressed a need to reschedule the April 2020 jury trial. R. 188, 3:14-23. Mother, J.F., did not appear at this hearing. A.D. clearly understood the possible ramifications of failing to appear at hearing as ordered:

A.D.: The mother, [J.F.] did -- did not -- did not answer her phone. Does it -- that means her rights is terminated, correct?

THE COURT: No.

A.D.: No?

THE COURT: No.

A.D.: Well, I thought if -- if we weren't to show up to court our rights will be terminated.

THE COURT: They can be. I'm not taking that step today under these circumstances, so the answer to your question is no.

(R. 188, 14:23-15:9).

A.D. appeared at this March 26, 2020 hearing from custody. R. 188, 20-21. There was discussion about A.D. possibly being released from Dane County Jail prior to the next hearing date, and the importance of A.D. keeping the circuit court informed of a mailing address:

THE COURT: Okay. So right now, we're still working with the conference system that we had, but we may be switching to one that lets people call in instead of us having to call them. If we do that, we'll provide a call in number. So it's going to be really important is that you mail us immediately if you're released. Immediately mail a -- your new address so we can get a notice to you at the correct address.

A.D.: All right.

THE COURT: So that's on you.

(R. 188, 18:1-10).

...

THE COURT: Okay. All right. It's going to be very important then for you to mail us your address immediately when you're released. Okay?

A.D.: All right.

THE COURT: If we don't have a current address and we send out a notice and you don't get it and so you miss a court date, I'm going to consider that a default if you haven't given us the new address that you can receive mail at. You do have the notice already of the next court date because that was set before.

(R. 188, 19:25-20:10).

...

THE COURT: Okay. So the next hearing is April 10<sup>th</sup> at 1:30 p.m., and that will again be by telephone. And [A.D.] is going to get us an address as soon as he gets out of jail where he can receive mail.

A.D.: All right. Thank you.

(R. 188, 20:25-21:4).

Finally, no less than three (3) Scheduling Orders were entered in these TPR proceedings. Each Scheduling Order contained orders for personal appearance.

The Scheduling Order signed February 7, 2020, stated: “Parties shall appear in person for the final pre-trial and for each day of jury trial. Failure to appear can and may result in default findings.” It further stated:

**IF YOU FAIL TO APPEAR, the court may hearing testimony of the allegations in the petition and grant the request of the petitioner to terminate your parental rights ...**

**NOTICE OF WAIVER: Please take notice that, in the case of your failure to appear in person, after specific court instructions requiring your physical presence, the Court may determine that you have waived the right to counsel and the right to appear by counsel.**

(R. 53-2).

The Scheduling Order signed August 20, 2020, was unequivocal regarding A.D.’s responsibility to appear at all hearings, and the consequences for failing to do so:

9. Parties shall appear via ZOOM for the final pre-trial and for each day of jury trial as determined by the Court at final pre-trial. At the August 14, 2020 status conference as the pre-trial date was being set [J.F.] stated that she would be unable to appear on January 4, 2020 for the final pretrial because it was her mother's birthday. She did not identify any planned activity or explain how her mother's birthday would prevent her from appearing for an 8:30 status conference. The court ultimately stated she could appear or not as she chose. **Because her non-appearance would make it difficult for the parties to know at that time whether she intended to go ahead with the trial, whether it would be a bench trial or jury trial and whether to continue preparing for the trial, the court reverses itself and ORDERS that her appearance, and [A.D.'s], at the final pretrial are required. Failure to participate/appear as ordered can and may result in default findings.** Failure to participate/appear as ordered can and may result in default findings. Appearance by the attorney without the body of the party is not sufficient unless otherwise ordered in advance.

...

**IF YOU FAIL TO APPEAR, the court may hear testimony in support of the allegations in the petition and grant the**



**request of the petitioner to terminate your parental rights.** The effect of a default judgment may be a finding by the Court that statutory grounds exist to terminate your parental rights to the above-named child, and the loss of your right to object to or contest anything that is or may be incorrect in the petition for termination of your parental rights. A default judgment would result in the loss of important legal rights you currently possess, including without limitation your right to have a jury determine whether there is a basis for grounds, to call witnesses, to compel the appearance of witnesses, and the right to cross-examine the witnesses presented by any other party. A default judgment may ultimately result in the loss of your parental rights to the above-named child. Orders of the Court may be enforced as provide by law. **You have the right to have an attorney present.** If you desire to contest the matter and cannot afford an attorney, the state public defender may appoint an attorney to represent you. If you fail to appear and the court terminates your parental rights, either a motion to seek relief from the judgment or a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after the judgment is entered, in order to preserve the right to pursue such relief.

(R. 92-2).

A third Scheduling Order, made on February 26, 2021,  
included substantially similar language:

**IF YOU FAIL TO APPEAR, the court may hear testimony in support of the allegations in the petition and grant the request of the petitioner to terminate your parental rights.** The effect of a default judgment may be a finding by the Court that statutory grounds exist to terminate your parental rights to the above-named child, and the loss of your right to object to or contest anything that is or may be incorrect in the petition for termination of your parental rights. A default judgment would result in the loss of important legal rights you currently possess, including without limitation your right to have a jury determine whether there is a basis for grounds, to call witnesses, to compel the appearance of witnesses, and the right to cross-examine the witnesses presented by any other party. A default judgment may ultimately result in the loss of your parental rights to the above-named child. Orders of the Court may be enforced as provide by law. **You have the right to have an attorney present.** If you desire to contest the matter and cannot afford an attorney, the state public defender may appoint an attorney to represent you. If you fail to appear and the court terminates your parental rights, either a motion to seek

relief from the judgment or a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after the judgment is entered, in order to preserve the right to pursue such relief.

**NOTICE OF WAIVER:** Please take notice that, in the case of your failure to appear in person, after specific court instructions requiring your presence, the Court may determine that you have waived the right to counsel and the right to appear by counsel.

(R. 101-2).

At hearing on May 13, 2021, with A.D. present via video (Zoom) and in the community, it became clear that trial for A.D. would be heard independently from mother's case, and postponed until at least October of 2021 – with this new information, the Guardian ad Litem sought a short recess to confer. (R.184, 33-34). During that recess, with several attorneys of record outside of the courtroom, A.D. asked to be excused for the remainder of that hearing, due to having to get to work on that day. In response to that request, the Court stated:

THE COURT: So whenever you feel you need to leave **to get ready to go to work**, just go ahead and then you can just excuse yourself and you can leave **the meeting**, okay?

(R. 184, 35:15-18). (Emphasis added).

At no point during the May 13, 2021 hearing did the circuit court excuse A.D. from any future hearings. At no point during the May 13, 2021 hearing did the circuit court modify the multiple written and oral orders for personal appearance previously made. At no time during the May 13, 2021 hearing did A.D. express any concern about his ability to receive notice from the Court via mail or otherwise.

We know that, following the May 13, 2021 hearing, A.D.'s trial counsel was "in communication with him over the summer [of 2021]." (App. Brief of Respondent-Appellant, p. 15). A.D. "did appear at a deposition after the May 13, 2021 final pre-trial hearing." (*Id.*). A.D. was in communication with his trial counsel both before and after that deposition, which was taken on July 26, 2021. (*Id.*); R. 232, 14:3-6.

However, in violation of repeated oral and written orders to appear in person, after multiple oral and written



warnings regarding the default consequences for failing to appear, after clear orders to provide the Court with an address at which he could receive notice, and after demonstrating he understood the repercussions of a failure to appear, A.D. subsequently failed to show up for his own final pre-trial, on September 21, 2021. R. 232. The result was a default finding, the same consequence A.D. had been warned of over and over again during the preceding 21 months.

### ARGUMENT

- I. THIS CASE DOES NOT PRESENT ANY APPLICABLE CRITERIA FOR REVIEW. THERE IS NO SUBSTANTIAL OR COMPELLING REASON FOR THE SUPREME COURT TO EXAMINE THIS CASE.

- A. **It is not necessary to clarify *Mable K.* – The existing discretionary standard is clear and well applied.**

There is no need to clarify the existing law. Wis. Stat. § 809.62(1r)(c). In *Mable K.*, Mable appeared for the entire first day of jury trial, but later failed to appear at the second day of jury trial until after the jury was already excused and an unfitness finding had been made. *Dane Co. DHS v. Mable*

*K.*, 2013 WI 28, ¶¶6-15, 346 Wis. 2d 396, 828 N.W.2d 198.

The circuit court in *Mable K.* did not allow Mable's attorney to participate any further in the fact finding hearing, or to present any evidence.<sup>2</sup> *Id.* at ¶18. Mable, after ultimately arriving late at the circuit court, provided coherent testimony in support of her attorney's motion to reconsider the default judgment. *Id.* at ¶¶15-17. The *Mable K.* circuit court made no reference to egregiousness or bad faith when the default finding in question was made. *Id.* at ¶71. The majority's decision in *Mable K.* was clear that, "[h]ad the record clearly indicated that the default was imposed as a sanction, then our analysis would have been different." *Id.*

Despite ultimately holding that the *Mable K.* circuit court did not or failed to properly order default as a sanction, the majority opinion outlines when default in a TPR

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<sup>2</sup> Similarly, in *Shirley E.*, the circuit court held both phases of the proceedings (fact finding and best interest/disposition) without Shirley E. or her attorney present. 2006 WI 129, ¶18, 298 Wis. 2d 1, 724 N.W.2d 623.

proceeding is an appropriate sanction for failure to follow a circuit court's orders:

- “In order for a sanction dismissing a civil case to be ‘just,’ the non-complying party must act ‘egregiously or in bad faith.’” *Id.* at ¶69 (citing *Indus. Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶43, 299 Wis. 2d 81, 726 N.W.2d 898).
- This sanction standard is equally applicable to and available in TPR proceedings. See *Id.* (referencing *Shirley E.*, 2006 WI 129, ¶13, 298 Wis. 2d 1, 724 N.W.2d 623).
- “Where a circuit court concludes that the party’s failure to follow court orders, though unintentional, is ‘so extreme substantial and persistent’ that the conduct may be considered egregious, the circuit court may make a finding of egregiousness.” *Mable K.* at ¶70 (citing *Hudson Diesel, Inc. v. Kenall*, 194 Wis. 2d 531, 543, 535 N.W.2d 65 (Ct. App. 1995)).

In contrast to the facts of *Mable K.*, A.D. failed to appear *at all* to his own final pre-trial, after it was stipulated his case would be tried separately from the mother’s case. (Pet. Appx. 21). And, here, the circuit court clearly applied default as a sanction:

... I will find that he is in default and in violation of the orders for personal appearance and that it is egregious given

the number of times that personal appearance has been ordered in this case, even though he was not personally present when this date was set.

(232:16; Pet. Appx. 36).

In its decision, the circuit court here explicitly identified **two types of orders** with which A.D. failed to comply – “repeated orders for personal appearance,” and “repeated orders to keep the court informed of his address.” (232:15; Pet. Appx. 35).

There is no dispute that A.D.’s counsel was allowed to participate during the remainder of the fact-finding testimony, and at the dispositional hearing. (A.D. Pet. for Rev., pp. 16-17; Pet. Appx. 37).

Finally, unlike *Mable K.*, when given an opportunity to testify as to any confusion, lack of knowledge, or other reason to vacate the default judgment, A.D. repeatedly answer “I don’t know” to straightforward questions and then chose to leave the courtroom. (233:13-14; Pet. Appx. 49-50).

“A [trial] court properly exercises its discretion when it examines the relevant facts, applies a proper standard of



law, and using a demonstrated rational process reaches a conclusion that a reasonable judge could reach.” *Mable K.*, 2013 WI 28 at ¶39. In A.D.’s case, the circuit court explicitly applied default as a sanction after A.D. persisted in violating two types of repeated court orders over 21 months. This decision was consistent with *Mable K.*, and there is no reason to clarify the law.

**B. The Court of Appeals’ decision-making in this case, and in the line of 12 additional cases cited by A.D., is not in conflict with *Mable K.***

This case, and the 12 other unpublished cases cited by A.D. in his Petition for Review, are each limited to their own distinct set of facts. As set forth above, the circuit court’s application of A.D.’s specific case facts to the law was harmonious with the existing standard, and is without the need for clarification. Wis. Stat. § 809.62(1r)(d).

Because each case is limited to its own facts, the circuit court is in the best position to determine “egregiousness.” The circuit court has broad authority to grant a default judgment in TPR cases, as was done here, and

that decision rests soundly in the discretion of the circuit court. "[A] circuit court has both inherent authority and statutory authority under Wis. Stat. §§ 802.10(7), 804.12(2)(a), and 805.03 to sanction parties for failing to obey court orders." *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768. "Pursuant to this authority, a circuit court may enter a default judgment against a party that fails to comply with a court order." *Id.* "The decision whether to enter a default judgment is a matter within the sound discretion of the circuit court." *Id.* at ¶18 (citation omitted). In each case cited by A.D., the circuit court properly exercised its discretion and the Court of Appeals applied the correct law when affirming the lower court's decision. As such, there is no need for clarification by this Court. (See Pet. Appx. 60-244).

1. In *State v. Samantha J.*, 2014 WI App 110, 357 Wis. 2d 723, 855 N.W.2d 905 (unpublished slip op., Nos. 2014AP988, 989, 1017) mother failed to appear at three hearings and her deposition. ¶¶16-21.
2. In *State v. T.N.*, 2015 WI App 82, 365 Wis. 2d 348, 871 N.W.2d 692 (unpublished slip op., Nos.

2014AP2407, 2408) T.N. failed to attend multiple hearings, failed to contact his attorney, and failed to contact the court. ¶¶5-7, 24-25.

3. In *Barron Co. DHHS v. M.B.-T.*, 2017 WI App 30, 375 Wis. 2d 327, 897 N.W.2d 68 (unpublished slip op., Nos. 2016AP1381, 1382, 1383) M.B.-T. failed to timely answer the TPR petition at all. ¶¶17-19.
4. In *State v. K.C.*, 2017 WI App 34, 375 Wis.2d 799, 899 N.W. 2d 738 (unpublished slip op., No. 2017AP32) K.C. sought an adjournment on the morning of trial, for purposes of a psychological and neurological evaluation. ¶¶12-13. K.C. was ordered to appear the next morning and clear default warnings were given, but K.C. did not appear. *Id.* K.C. provided false information to the Court about being admitted to in-patient treatment, in an effort to avoid default and manipulate the circuit court's calendar. ¶¶13-15.
5. In *State v. K.P.*, 2017 WI App 56, 377 Wis.2d 731, 902 N.W.2d 810 (unpublished slip. op., Nos. 2017AP612, 613) K.P. failed to appear at multiple hearings, including his jury trial. ¶¶9-12.
6. In *Kenosha Co. DHS v. V.J.G.*, 2018 WI App 8, 379 Wis. 2d 768, 909 N.W.2d 211 (unpublished slip op., Nos. 2017AP1150, 1151) V.J.G. failed to appear at multiple hearings, including his pre-trial hearing and trial. ¶¶1-7.

7. In *Barron Co. DHHS v. S.R.T.*, 2019 WI App 33, 388 Wis.2d 145, 930 N.W.2d 288 (unpublished slip op., Nos. 2018AP1574, 1575) S.R.T. failed to appear at more than four scheduled hearings. ¶¶4-6.
8. In *State v. C.M.*, 2020 WI App 1, 389 Wis.2d 625, 937 N.W.2d 306 (unpublished slip op. No. 2019AP14833) C.M. failed to appear at multiple hearings and failed to follow the circuit court's instructions to contact the public defender's office to secure counsel. ¶¶8-11.
9. In *State v. Z.J.*, 2020 WI App 1, 937 N.W.2d 307 (unpublished slip op., Nos. 2019AP1623-1626) Z.J. failed to appeared at deposition, multiple hearings, and the dispositional hearing. ¶¶10, 13-18, 32-33, 39.
10. In *State v. L.C.*, 2020 WI App 55, 948 N.W.2d 503 (unpublished slip op., No. 2019AP796) L.C. failed to attend five court ordered depositions, refused to enter the courtroom at one hearing, and failed to attend another two hearings. ¶¶1-9.
11. In *State v. A.M.-C.*, 2021 WI App 27, 397 Wis.2d 245, 959 N.W.2d 98 (unpublished slip op., Nos. 2021AP94, 95) A.M.-C moved to New York City contrary to orders for personal appearance and failed to return for her trial, in addition to missing prior hearings. ¶¶5-9.
12. In *State v. M.R.K.*, 2022 WI App 7, 970 N.W.2d 593 (unpublished slip op., No. 2021AP141) M.R.K. failed to follow orders for personal appearance at one hearing, and also failed to contact the public



defender's office as instructed by the Court. ¶¶7-12, 19.

13. In this case, *Dane Co. DHS v. A.D.*, unpublished slip op., Nos. 2022AP76, 77 (Mar. 31, 2022) A.D. failed to follow orders for personal appearance, failed to provide the circuit court with an address where he could receive notice, and failed to participate in his own motion to vacate the default finding.

First, as it relates to *Barron Co. DHHS v. M.B.-T.* in particular, there is a substantive procedural difference between failing to answer a petition for termination of parental rights vs. failing to appear after a denial is entered by way of answering the petition. Wis. Stat. § 806.02(1) (“A default judgment may be rendered [ ] if no issue of law or fact has been joined and if the time for joining issue has expired”); Wis. Stat. § 48.422(3) (“If the petition is not contested[,], the court shall hear testimony in support of the allegations in the petition[.]”).

Second, every case advanced by A.D. for the purpose of arguing “there is now no meaningful difference between a parent’s failure to appear at a single TPR hearing” and “*extreme, substantial and persistent*” conduct shows the

opposite. In each case, including this one, something was required, ordered, and found to be egregious beyond missing a single hearing. The circuit court is the ultimate arbiter of credibility and can draw reasonable inferences from the facts. See *Plesko v. Figgie Intern.*, 190 Wis. 2d 764, 775-76, 528 N.W.2d 446 (Ct. App. 1994). This is especially relevant here where A.D. testified briefly in support of his (ultimately abandoned) motion to vacate the default finding.

**C. The issue presented by A.D. is not likely to recur in a meaningful way.**

The termination case against A.D. was filed in October of 2019. R. 3 (2022AP76); R. 3 (2022APP77). A.D. was found in default in September of 2021. R. 232. These termination cases were pending for an extraordinarily long time, during which A.D. received an extraordinary number of orders and default warnings. These facts alone are unlikely to repeat themselves, short of another global pandemic.

**II. THE COURT OF APPEALS' DECISION IS SUPPORTED BY A.D.'S FORFEITURE, WHICH IS SEPARATE FROM ANY *MABLE K.* ANALYSIS.**

Trial counsel for A.D. made a motion to vacate the default judgment at the circuit court, but A.D. chose not to pursue his own motion when he left the courtroom in the middle of providing evidence in support of said motion. (Pet. for Rev. pp.17-19). Where a litigant fails pursue a motion, it is effectively abandoned. See *State v. Woods*, 144 Wis. 2d 710, 716, 424 N.W.2d 730 (Ct. App. 1988). A motion is deemed abandoned where a moving party fails to appear at the hearing on it. *Laska v. Steinpreis*, 69 Wis. 2d 307, 317, 231 N.W.2d 196 (1975).

Here, where A.D. abandoned the motion to vacate, the circuit court was never given the opportunity to exercise its discretion to vacate a default judgment, beyond finding that A.D. had abandoned said motion. A reviewing court may not exercise the discretion vested in the trial court. *Matter of Est. of Olson*, 149 Wis. 2d 213, 218-219, 440 N.W.2d 792 (Ct. App. 1989) (holding party waived right to argue motion to vacate default after failure to seek relief from default

judgment at trial court) (“As a general rule, we will not decide a matter not presented to the trial court.”).

The Court of Appeals agreed with this analysis:

When the circuit court gave A.D. every reasonable opportunity to explain what happened and possibly have the default judgments vacated, the excerpt from the transcript noted above is how A.D. conducted himself and refused to answer questions in any meaningful manner. The County is correct that A.D. forfeited his motion to vacate the default judgments when he abandoned the proceedings.

*Dane Co. DHS v. A.D.*, unpublished slip op., No. 2022AP76, ¶17, (Mar. 31, 2022) (citation omitted). (See Pet. Appx. 14).

A.D.’s Petition for Review can be denied for this reason alone. Wis. Stat. § 809.62(3)(e).

### CONCLUSION

A.D. does not identify any applicable criteria for review. As set forth above, there is no need to clarify or correct the existing law. A.D.’s case facts are unique and unlikely to recur. And, A.D. has forfeited argument regarding the subject default judgment. As such, there is an alternative ground to support the underlying decision.



Dated this 11<sup>th</sup> day of May, 2022.




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**CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm) and (c), for a brief produced with a proportional serif font. The length of this document is 5077 words.

Dated this 11<sup>th</sup> day of May, 2022.



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**CERTIFICATE OF COMPLIANCE WITH  
Wis. Stat. § 809.19(12)**

I hereby certify that I have submitted an electronic copy of this Response to Petition for Review, including the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that this electronic Response to Petition for Review, is identical in content and format to the printed form of the Response to Petition for Review filed on or after this date.

A copy of this certificate has been served with the paper copies of this Response to Petition for Review filed with the court and served on all opposing parties.

Dated this 11<sup>th</sup> day of May, 2022.



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