COURT OF APPEALS
DECISION
DATED AND FILED

October 21, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1549

Cir. Ct. No. 2014TP12

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

IN RE THE TERMINATION OF PARENTAL RIGHTS TO T.G.,
A PERSON UNDER THE AGE OF 18:

X. J.,

PETITIONER-RESPONDENT,

V.

G. G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County: WILLIAM M. GABLER, SR., Judge. *Affirmed*.

¶1 SEIDL, J.[1] G.G. appeals an order terminating his parental rights to his son. G.G. argues he is entitled to a new trial because the circuit court erroneously declined to sequester the child's stepfather, J.J., at trial. We reject G.G.'s argument and affirm.

BACKGROUND

¶2 X.J. and her husband, J.J., jointly petitioned to terminate G.G.'s parental rights to X.J.'s and G.G.'s son. At trial, G.G.'s counsel requested sequestration of J.J. The circuit court denied the request, indicating it was "not going to exclude spouses." The court believed J.J. was not a party, observing, "He signed the petition, but he doesn't—I don't think he has any legal standing to sign the petition." Nonetheless, the court reasoned that "spouses should be present when their other spouse has a lawsuit," and that it was convinced the spouses had already discussed the case at length and was "satisfied [J.J.] [wa]sn't going to get any undue advantage by listening to the testimony."

¶3 The trial proceeded, with J.J. being the last of three witnesses called by X.J. The jury found X.J. proved the alleged termination grounds, and the court ultimately determined it was in the child's best interests to terminate G.G.'s parental rights. G.G. now appeals.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

DISCUSSION

¶4 G.G. argues the circuit court erroneously failed to sequester J.J., based on two statutes, in both instances because J.J. was not a party. First, he relies on the sequestration statute, WIS. STAT. § 906.15(1), which provides: "At the request of a party, the judge or a circuit court commissioner shall order witnesses excluded so that they cannot hear the testimony of other witnesses." While there are several enumerated exceptions, including one for parties to the action, *see* § 906.15(2)(a), G.G. claims none of the exceptions apply. Second, he relies on WIS. STAT. § 48.424(2)(b), which requires that termination of parental rights trials "shall be closed to the public."

¶5 G.G.'s arguments are, however, based on a false premise. As X.J. argues, J.J. was, in fact, permitted to be a petitioning party as the child's adopting stepparent. *See* WIS. STAT. §§ 48.42(1), 48.835(3)(b).

¶6 In his reply, G.G. concedes that if J.J. was a party, then he was not excludable from the trial under either statute on which G.G. relied in his primary brief. However, he argues J.J. was not permitted to be a named petitioner in addition to X.J., because WIS. STAT. § 48.42(1) speaks in the disjunctive: "A proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child's parent, an agency or a[n] [adopting stepparent] authorized to file a petition under … [WIS. STAT. §] 48.835." G.G. asserts, "The clear language of this statute makes it clear that only one person or entity is allowed to file a petition under this section …. It seems clear that either the petitioner or her husband could have signed the petition, but not both."

¶7 Interpretation and application of a statute to undisputed facts presents a question of law subject to de novo review. ***McNeil v. Hansen***, 2007 WI

56, ¶7, 300 Wis. 2d 358, 731 N.W.2d 273. Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially defined words or phrases are given their technical or special definitional meaning. ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. Statutes must be interpreted in context, and reasonably, to avoid absurd results. ***Id.***, ¶46.

¶8 We reject G.G.'s interpretation as unreasonable. WISCONSIN STAT. § 48.42(1) merely identifies those persons or entities that "may" file termination petitions; it does not purport to set forth any limit on the number of such petitioners. Indeed, under G.G.'s view, if the legislature had instead worded the statute in the conjunctive, it would have been requiring all potential petitioners to join in a petition, even if such petitioners did not exist. In that case, no petition could ever be filed unless there was an adoptive stepparent joining the petition. That would be absurd.

¶9 We conclude J.J. was a proper party to the termination action. Accordingly, he was not subject to sequestration.[2] *See* WIS. STAT. § 906.15(2)(a).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

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[2] We are concerned with whether the decision being reviewed is correct, rather than with the reasoning employed. If the holding is correct, it should be sustained, and we may do so on a theory or on reasoning not presented to the circuit court. ***State v. Baudhuin***, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987).