

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 6, 2000

Cornelia G. Clark  
Acting Clerk, Court of Appeals  
of Wisconsin

**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.

**Nos. 99-1743  
99-1744**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**No. 99-1743**

**IN THE INTEREST OF AMANDA R.M., A PERSON UNDER  
THE AGE OF 17:**

**WAUSHARA CO. DEPARTMENT OF HEALTH AND FAMILY  
SERVICES,**

**PETITIONER-RESPONDENT,**

**v.**

**MICHAEL M.,**

**RESPONDENT-APPELLANT.**

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**No. 99-1744**

**IN THE INTEREST OF ZETH M.M., A PERSON UNDER  
THE AGE OF 17:**

**WAUSHARA CO. DEPARTMENT OF HEALTH AND FAMILY  
SERVICES,**

**PETITIONER-RESPONDENT,**

V.

**MICHAEL M.,**

**RESPONDENT-APPELLANT.**

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APPEAL from orders of the circuit court for Waushara County:  
LEWIS MURACH, Judge. *Affirmed.*

¶1 DYKMAN, P.J.<sup>1</sup> Michael M. appeals from two orders extending two dispositional orders in CHIPS cases pertaining to his two children. The extension orders are dated June 18, 1999, and extend for one year two dispositional orders dated June 22, 1998. Though Michael M.'s notice of appeal is specific in appealing only the two extension orders, and although the time to appeal previous matters in the CHIPS cases has expired, Michael M. spends most of his brief asserting error in matters heard prior to the extension orders. We conclude that we cannot consider the various orders issued prior to the June 18, 1999 extension orders. We further conclude that Michael M.'s complaints about the June 18, 1999 hearing attack the credibility of witnesses at that hearing. We cannot overturn a trial court's credibility determinations. We therefore affirm.

¶2 On April 3, 1998, the Waushara County Corporation Counsel and a social worker filed a petition alleging that Amanda R.M. was in need of protection or services because her father, Michael M., had sexually assaulted her. Her brother, Zeth M.M., was added to the proceedings. On June 22, 1998, the court entered dispositional orders placing Amanda R.M. and Zeth M.M. with their

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98).

maternal grandparents. The order made provisions for visitation and for psychological examinations, among other things.

¶3 Michael M. did not appeal from the June 22, 1998 order, nor from following orders which addressed placement modification and visitation. WISCONSIN STAT. RULE 809.30(2)(b) (1997-98),<sup>2</sup> in conjunction with RULE 809.30(1)(b), required Michael M. to file a notice of intent to pursue postconviction relief within twenty days of those orders. He did not do so, and those matters are therefore not before us. Michael M. recognizes that he is not appealing any orders prior to the court's June 18, 1999 extension orders because his notice of appeal reads: "Michael [M.] appeals to the court of appeals ... from the final judgment entered on June 18, 1999 ...."

¶4 We have examined Michael M.'s brief. He has arranged it chronologically, and we are able to determine that, except for his statement on issues, the first thirty-four pages of his brief pertain to issues or errors which Michael M. asserts occurred prior to the June 18, 1999 extension hearing. These are matters not before us on this appeal, and we therefore do not address them.

¶5 It is difficult to address Michael M.'s complaints about the June 18, 1999 hearing. Only two witnesses testified at the hearing, one for the County and one called by Michael M. The County's witness, social worker Colleen Rogalski, testified that Michael M. had not had visitation with his children because of a concern that he had the potential to influence and intimidate them. She also testified as to the steps the children's mother had taken to regain custody of the

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

children. She concluded that there were still obstacles to reuniting the children with their mother, and that it was presently unsafe to do so. However, she saw reunification as possible in the future. Two notices of change of placement received in a supplemental return show that this prediction was accurate. On October 29, 1999, the children were reunited with their mother. Michael M., who had been convicted of sexually assaulting his daughter and sentenced to prison, was not included in the change in placement.

¶6 Michael M.'s attacks on the June 18, 1999 order are, in reality, assertions of his belief that witnesses had lied. For instance, he notes at pages fifteen and sixteen of the transcript: "P. 15, 16 shows again about the lie of no visitation. Please note Judge Murach is allowing this lie to be told and he spoke many times in prior hearings in reference to my visitation condonation unbound." Pages fifteen and sixteen of the June 18 transcript are portions of Michael M.'s cross examination of Ms. Rogalski. Michael M. asked Ms. Rogalski:

Q: Okay. I'm asking about visitation was not granted, liberal visitation just as Dawn was in the beginning.

A: I don't recall you being granted liberal visitation.

Q: Did I not have liberal visitation in the beginning except she could spend the night but I couldn't. She could spend a night once a week and visit anytime and my visitation was that I could visit them anytime I like but I couldn't spend the night.

A: I don't recall those specifics at this time, Mike.

Q: Do you recall on 4/8 and 4/15 knocking my visits from liberal visits to three times—on the 8th it was three times a week and for me, three hours three times a week and for Dawn she had three hours three times a week and she could spend the night. On the 15th you came and you—I'll slow down. I have got it here. This is what I was trying to tell the Court that my attorney has most of this information. Here is the visitation change on the 8th. What I'm trying to get at, did you change my liberal visitation

on the 8th to three times a week, three hours per visit on 4/8?

A: I recall those visitations being specific for Dawn and I don't recall specifically for you. What I recall, you have had no authorized visitation with the children.

¶7 Though it is difficult to follow Michael M.'s argument, it seems that he believes that his recollection of facts differs from the social worker's recollection of the same facts. From this he concludes that the social worker is lying. There is nothing we can do about this situation. We do not know to what Michael M. refers when he says that "it" was three times a week. An appellate court cannot second-guess a trial court's determination of whom to believe. We have nothing but Michael M.'s statement in his brief that his recollections are not those of the social worker. Though the record is voluminous, it is mostly filled with Michael M.'s assertions that various people have lied, leading to his separation from his children. A trial judge, when acting as a fact finder, is considered the "ultimate arbiter of the credibility of a witness." *Johnson v. Merta*, 95 Wis. 2d 141, 152, 289 N.W.2d 813 (1980). The trial court could have believed Ms. Rogalski or it could have believed Michael M. Either way, we accept its determination.

¶8 Extension orders in CHIPS cases are governed by WIS. STAT. § 48.365. The requirements for an extension are found in this statute. The portions of Michael's brief which pertain to the extension orders appealed from do not mention this statute nor do they pertain to matters made relevant by § 48.365. Nothing in this section of his brief gives a valid reason why the trial court erred. We therefore conclude that Michael M. has shown nothing which would lead to a reversal of the trial court's extension orders and affirm. We further conclude that this appeal is frivolous, pursuant to WIS. STAT. § 809.103 and WIS. STAT.

§ 814.025(3), in that Michael M. should have known that this appeal was without any reasonable basis in law or equity, and could not be supported by a good-faith argument for an extension, modification or reversal of existing law.

¶9 On April 3, 2000, Michael M. filed several motions. He moved to expedite this appeal. He also moved to disqualify the trial judge, the Honorable Lewis Murach, for three reasons: (1) because the trial judge allegedly lied in a letter dated March 3, 2000; (2) because the trial judge made a decision against him on March 24, 2000, without Michael M. being present; and (3) because the trial judge did not allow him to defend allegations against him. Pending our decision on Michael M.'s motion to disqualify Judge Murach, Michael M. has moved for relief consisting of replacing Judge Murach. Michael M. also moves to waive the fees and transcript costs for this appeal.

¶10 Because we have now decided this appeal, Michael M.'s motion to expedite the appeal is moot. Michael M. filed his notice of appeal in this case on June 25, 1999. The reasons Michael M. gives for disqualifying Judge Murach pertain to Judge Murach's actions which post-date Michael M.'s notice of appeal filed on June 25, 1999. Appeals do not embrace matters arising subsequent to the notice of appeal. See *Chicago & N.W. R.R. v. Labor & Indus. Review Comm'n*, 91 Wis. 2d 462, 473, 283 N.W.2d 603 (Ct. App. 1979), *aff'd*, 98 Wis. 2d 592, 297 N.W.2d 819 (1980). We therefore deny Michael M.'s motion to disqualify Judge Murach. Michael M.'s motion to replace Judge Murach pending our ruling on his previous motion is therefore moot. On August 5, 1999, we found Michael M. indigent and granted him permission to proceed without payment of a filing fee. On August 10, 1999, the trial court found that Michael M. was entitled to a waiver of transcription fees. Michael M.'s motion to waive fees and costs for this

appeal is therefore moot. Michael M. only wastes his time and the time of this court by making repetitive motions for fee and transcript costs waiver.

*By the Court.*—Orders affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

