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DISTRICT IV

February 24, 2016

To:

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W. J. S.
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You are hereby notified that the Court has entered the following opinion and order:

2015AP838

C. M. W. v. W. J. S. (L.C. # 2015CV45)

Before Kloppenburg, P.J., Sherman, and Blanchard, JJ.

W.J.S. appeals a child abuse injunction that limits his contact with V.W.S. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

W.J.S. first argues that the evidence was insufficient to find that the child was suffering from “emotional damage,” as that term is defined by statute. *See* WIS. STAT. § 48.02(5j). As part of that argument, W.J.S. argues that the testimony of a psychologist should have been

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

excluded under WIS. STAT. § 907.02. The respondent and guardian ad litem assert that no objection was made on this ground in the circuit court. W.J.S. did not identify any such objection in his opening brief or explain how the circuit court ruled on the issue, and W.J.S. did not file a reply brief that might have done so. Therefore, we conclude that this issue is being raised for the first time on appeal. We usually do not address issues that are raised for the first time on appeal, *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), *superseded on other grounds by statute as recognized in Wilson v. Waukesha County*, 157 Wis. 2d 790, 797, 460 N.W.2d 830 (Ct. App.1990), and we see no reason to do so in this case.

We further conclude that the evidence was sufficient to support the finding of emotional damage. Without recounting the details here, there was testimony about the child's emotional health and behavior from a psychologist and a school social worker that fully supported the court's finding.

W.J.S. next argues that the circuit court failed to make a finding that he neglected, refused, or was unable for reasons other than poverty to obtain the necessary treatment or take steps to ameliorate the symptoms of the child's emotional damage. That requirement is found in WIS. STAT. § 48.02(1)(gm) as part of the definition of "abuse." Contrary to W.J.S.'s argument, the court made such a finding when it stated that W.J.S. is "unable to ameliorate these symptoms" because W.J.S. "is a substantial factor in causing the emotional damage, and because of his personality disorder apparently doesn't recognize that he is a substantial factor in contributing to the child's emotional damage."

To the extent that W.J.S. may also be arguing that the evidence would not support such a finding, we disagree. He argues that he did not have legal custody, and therefore did not have

the authority to seek evaluation or therapy for the child. This argument fails because it is not responsive to the circuit court's finding that W.J.S. failed to modify *his own behavior* that was a cause of the child's symptoms.

Finally, the respondent and guardian ad litem ask for a finding that this appeal is frivolous under WIS. STAT. RULE 809.25(3). We are not able to entertain that request because they did not seek that relief by motion. See *Howell v. Denomie*, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621.

IT IS ORDERED that the appealed order is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals