

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 24, 2026

Samuel A. Christensen
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. 2025AP2239

Cir. Ct. No. 2024JG23

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN THE MATTER OF THE GUARDIANSHIP OF G. L. W.:

MONROE COUNTY,

PETITIONER-RESPONDENT,

V.

G. L. B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Monroe County:
RICHARD A. RADCLIFFE, Judge. *Affirmed.*

¶1 BLANCHARD, J.¹ G.L.B. appeals an order of the circuit court appointing a guardian of the person for his minor child, G.L.W., pursuant to the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

court's authority under WIS. STAT. § 48.977.² G.L.B. argues that the circuit court erred by failing to dismiss the petition of the Monroe County Department of Human Services (the County) that initiated this action on the grounds that the Ho Chunk Nation tribal court had jurisdiction over an earlier guardianship petition for G.L.W. In the alternative, G.L.B. argues that the circuit court erred by failing to transfer the instant case to the tribal court. I conclude that G.L.B. has forfeited these arguments by failing to present them to the circuit court and that application of the rule of forfeiture is appropriate under the circumstances. Accordingly, I affirm the circuit court's order appointing a guardian.

BACKGROUND

¶2 G.L.W. was born in January 2021. While still at the hospital following birth, G.L.W. was removed from the custody of T.L.B. and G.L.B. G.L.W.'s out-of-home placement continued pursuant to a dispositional order that was entered pursuant to CHIPS proceedings in June 2021.³

¶3 G.L.W. was placed with his maternal aunt and uncle in October 2021, and has remained placed with them since then.

² G.L.B.'s spouse, T.L.B., separately appeals the circuit court's order appointing a guardian for G.L.W., in Appeal No. 2025AP2519, raising issues that are different from G.L.B.'s arguments. This court addresses T.L.B.'s appeal in a separate opinion that is being issued simultaneously with this opinion.

³ "CHIPS" is a commonly used acronym for "child in need of protection or services." *Eau Claire Cnty. DHS v. S.E.*, 2020 WI App 39, ¶1 n.3, 392 Wis. 2d 726, 946 N.W.2d 155, *aff'd*, 2021 WI 56, 397 Wis. 2d 462, 960 N.W.2d 391. Procedures specified in WIS. STAT. ch. 48 permit a circuit court to find that a child is in need of protection or services and, when such a finding is made, the court shall issue a dispositional order that can direct that the child be placed outside of the home of the child's parents. See WIS. STAT. §§ 48.345, 48.355.

¶4 G.L.W.’s mother, T.L.B., is an enrolled member of the Ho-Chunk Nation. This makes G.L.W. eligible for enrollment with the Nation, although he was not enrolled at any pertinent time in this litigation. Because G.L.W. is eligible for enrollment, the Wisconsin and federal versions of the Indian Child Welfare Act apply to child custody proceedings involving G.L.W. See WIS. STAT. § 48.02(8g)(b) (defining “Indian child” to include any child “who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe”); WIS. STAT. § 48.028(3)(a) (describing applicability of “Indian child welfare” statute to “Indian child custody proceedings”).

¶5 In September 2022, the County initiated a guardianship proceeding for G.L.W. in the circuit court. But, in February 2023, the circuit court transferred the case to the Ho Chunk Nation tribal court. We will call this “the older case.” The aunt and uncle were nominated in the older case to become G.L.W.’s guardians.

¶6 In September 2024, while the transferred case remained pending in the tribal court, the County commenced this guardianship action by filing a new petition with the circuit court.⁴ We will call this “the newer case.” Again, in the newer case, as in the older case, the aunt and uncle were nominated to become guardians.

⁴ The County’s petition in this action alleged facts that the County contended satisfied the grounds necessary to allow the court to appoint a guardian. See WIS. STAT. § 48.977(2) (the circuit court “may” appoint a guardian if the conditions listed in sub. (2) are found by the court). In her appeal, T.L.B. raises issues challenging whether these conditions were met. Here, in contrast, G.L.B. raises only issues related to the circuit court’s jurisdiction.

¶7 The Ho Chunk Nation moved to intervene in the newer case. At a circuit court hearing regarding this intervention motion, held in October 2024, G.L.B. represented that the older case remained pending in the tribal court. The County represented to the circuit court that the older case “had stalled in tribal court” because of delays in the assignment of a trial court judge and the appointment of a guardian ad litem. The County also represented to the circuit court that the aunt and uncle had requested that the tribal court dismiss the older case. Further, in response to a request by the aunt and uncle, the County sought a subsidized guardianship under WIS. STAT. § 48.977(3r). The County took the position that the tribal court could not grant such a subsidized guardianship. Both the County and counsel for the Ho Chunk Nation expressed the belief that the older case had not yet been dismissed by the tribal court, and that it had no assigned tribal court judge who could take action on the request to dismiss or any other action.

¶8 Also at the motion hearing, the circuit court expressed the tentative view that the circuit court had concurrent jurisdiction with the tribal court over “the same or similar matters.” One consequence, according to the circuit court, was that, if the tribal court had made a determination in “the same or similar matters,” then the circuit court would defer to that determination under the Indian Child Welfare Act. But, the circuit court said, it appeared that such a determination had not occurred. The circuit court concluded that, under the circumstances, there was no basis to doubt that the circuit court had competency to exercise concurrent jurisdiction.

¶9 Also at this hearing, counsel for G.L.B. proposed that the circuit court allow the newer case to proceed while G.L.B. reserved the right to raise a jurisdiction issue later “if ... necessary.” The circuit court essentially adopted this

approach, indicating that it would at least temporarily “suspend the proceedings” in the newer case if any party objected to the court’s “continuing jurisdiction,” at which point the court would allow the parties to brief the issue. None of the parties objected to this approach.⁵

¶10 In December 2024, a social worker for the County submitted a letter to the circuit court stating the following. The County had been in contact with an attorney “of the Ho-Chunk Nation,” who had informed the County that a tribal court judge had been assigned to the older case.⁶ This attorney told the social worker “that a conference either on or off the record would need to be held between the Circuit Court Judge and the Tribal Court Judge to discuss jurisdiction.” The County had learned that a status hearing had been scheduled in the older case in the tribal court on a date that had by then passed, but that this hearing had not occurred as scheduled. The social worker’s letter did not explain why the hearing had not occurred and I discern no reason from the record. The social worker reported that the County had later been “made aware of” another possible hearing scheduled in the tribal court, but that the County had “verified” that in fact no hearing had been scheduled. The social worker’s letter concluded by asking the circuit court whether, in the newer case, a conference with the tribal court to address the jurisdiction of the circuit court in the new case had been scheduled, or whether jurisdiction had otherwise been addressed.

⁵ There was no objection to the Ho Chunk Nation’s motion to intervene in the newer case, which the circuit court granted.

⁶ This attorney was different from the counsel representing the Ho Chunk Nation in the newer case.

¶11 In response to the social worker’s letter, the circuit court issued an order in the form of a letter to the parties. The court explained that it viewed itself as having concurrent jurisdiction with the tribal court over the pending guardianship cases under pertinent state and federal statutes. The circuit court also stated that, while it had the authority to communicate with the tribal court regarding the pending cases, the circuit court saw “no compelling reason to do so at this time.” (Capitalization omitted.) The court further stated its intention to proceed with a contested trial in the newer case. The court considered the older case to have “languished” in the tribal court for years and noted that no party to the newer case had objected to the circuit court exercising its jurisdiction.

¶12 G.L.B. later filed a discovery motion that stated the motion was filed “subject to the parent[s’] challenges, if any, to the Court’s jurisdiction.”

¶13 At a pretrial conference, after addressing matters that included motions in limine, the court asked the parties if they had any additional matters that they wanted the court to address before trial. The County noted the statement regarding jurisdiction in G.L.B.’s discovery motion and questioned whether any additional “record need[ed] to be made” regarding jurisdiction in light of the court’s order in the form of a letter on the topic. Without directly addressing this point, the court asked the other parties if they had any issues that they wanted addressed before trial. Counsel for the Ho Chunk Nation briefly argued that the court’s letter-ruling had sufficiently addressed jurisdiction. Counsel for the other parties did not raise any additional issues or arguments. The court adjourned the hearing without further addressing the topic, leaving the strong impression that the failure of any party to question the circuit court’s jurisdiction settled the issue for the reasons explained in the court’s letter.

¶14 Shortly before the trial scheduled in the circuit court, the County submitted to the circuit court what the County represented was an order of the tribal court dismissing the older guardianship case pursuant to a request by the aunt and uncle. The purported tribal court order reflected that all parties except the parents supported dismissal from the tribal court.

¶15 On the anticipated schedule, the circuit court held a contested trial on the County's guardianship petition. The court determined that the grounds for appointing a guardian were met and that dispositional factors outlined by statute favored the appointment of the aunt and uncle as guardians. *See* WIS. STAT. § 48.977(2), (4)(d), (fm)-(h). Accordingly, the court appointed them as guardians.

¶16 G.L.B. appeals.

DISCUSSION

¶17 G.L.B. contends that the circuit court should have dismissed the newer case or transferred it to the tribal court. G.L.B. supports this position with three arguments. The following summaries of G.L.B.'s three arguments are brief, because I do not address them on the merits, for reasons explained below:

- The circuit court's transfer of the older case to tribal court had the effect of depriving the circuit court of the ability to exercise jurisdiction over matters addressing whether to appoint the aunt and uncle as G.L.W.'s guardians. *See* WIS. STAT. § 48.028(3)(c) (discussing, "upon the petition" of certain parties, the "transfer [of] the proceeding to the jurisdiction of the tribe" for "an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe"); 25 U.S.C. § 1911(b).

- Statutory provisions in the Wisconsin and federal IWCA required that the circuit court give “full faith and credit” to not only adjudications by the tribal court (of which there appear to be none that matter here), but also to any “judicial proceedings” in the tribal court. See § 48.028(3)(f); 25 U.S.C. § 1911(d). G.L.B. argues that applying this requirement here meant that the circuit court could not address the County’s newer petition while “judicial proceedings” on the older petition remained pending in the tribal court.
- Although no party requested that the newer case be transferred to tribal court, the circuit court erred in its order conveyed in the letter by determining that there was good cause not to transfer the case to the tribal court. See § 48.028(3)(c)3. (narrowly defining what may constitute good cause to deny transfer to tribal court); 25 U.S.C. § 1911(b).

¶18 As the background summarized above reflects, G.L.B. did not raise any of these three arguments at any point during circuit court proceedings. This includes during the time between when the issue of jurisdiction was first raised at the motion hearing in October 2024, through the court’s December 2024 letter addressing jurisdiction, and then further through the several months between the court’s letter and trial in January 2025. At most, G.L.B. indicated several times that he contemplated the possibility of *later* raising an objection to circuit court jurisdiction. Yet, G.L.B. never raised an objection. Moreover, G.L.B. appeared to indicate at the final pretrial conference that he had no such objection. Because of the failure to timely raise the above arguments, G.L.B. forfeits them. **Townsend v. Massey**, 2011 WI App 160, ¶¶19-27, 338 Wis. 2d 114, 808 N.W.2d 155 (court of appeals generally declines to consider arguments raised for the first time on appeal, which are forfeited).

¶19 After the County on appeal argues that G.L.B. failed to preserve the three arguments for appeal, on reply G.L.B. makes the following argument against applying the forfeiture rule here.⁷ G.L.B. points out that, at the hearing on the Ho Chunk Nation’s motion to intervene, the circuit court indicated that the court “immediately understood” that there was a potential issue regarding jurisdiction after G.L.B. said that he was reserving the right to raise an objection to jurisdiction later “if ... necessary.” Based on this, he argues that the circuit court would not be “blinside[d]” by addressing his jurisdictional arguments in this appeal. See *Townsend*, 338 Wis. 2d 114, ¶25 (“the ‘fundamental’ forfeiture inquiry is whether a legal argument or theory was raised before the circuit court, as opposed to being raised for the first time on appeal in a way that would ‘blindsight’ the circuit court” (quoted source omitted)). However, merely referring to the topic of jurisdiction in the circuit court by suggesting that it might be addressed later, without also presenting any of the arguments now presented on appeal, was insufficient to preserve the appellate arguments. See *id.* (“the forfeiture rule focuses on whether particular arguments have been preserved, not on whether general issues were raised before the circuit court”). Indeed, G.L.B. did not at any time in the circuit court present any argument in support of the position that the circuit court should

⁷ I recognize that the County’s forfeiture argument is not strong on its face. The County refers to G.L.B. as having “waived” his jurisdictional arguments, when, as G.L.B. notes, the issue is whether G.L.B. forfeited them. See, e.g., *State v. Huebner*, 2000 WI 59, ¶11 n.2, 235 Wis. 2d 486, 611 N.W.2d 727 (“forfeiture rule” is a more precise label for failure to timely invoke a right, as opposed to the intentional relinquishment of a right, which is a waiver). Further, as T.L.B. also notes, the County does not develop its mislabeled forfeiture argument in a supported manner, citing only unpublished precedent of this court that was issued before 2009. See WIS. STAT. RULE 809.23(3) (unpublished opinions may not be cited in a court of Wisconsin except for limited purposes such as law of the case or unless issued after July 1, 2009). Despite these deficiencies, however, it is self-evident that the forfeiture rule could be applied here, and further I conclude that under the circumstances the rule should be applied for reasons explained in the text.

not exercise its jurisdiction over the newer case, or that it should dismiss or transfer the newer case for that or similar reasons.

¶20 In the alternative, G.L.B. notes that the forfeiture rule is one of “judicial administration,” and he asserts that this court should exercise its discretion to address the merits of arguments raised for the first time on appeal. *See id.*, ¶23; *State v. Kaczmariski*, 2009 WI App 117, ¶¶7, 9, 320 Wis. 2d 811, 772 N.W.2d 702. However, G.L.B. does not present a developed argument that the circumstances here support disregarding forfeiture, and I conclude that the forfeiture rule should be applied under the circumstances. I now explain my conclusion further.

¶21 It is true that this court may choose to “review issues not raised first in the circuit court ‘where the issue is one of law, the facts are not disputed, the issue has been thoroughly briefed by both sides and the question is one of sufficient interest to merit a decision.’” *Kaczmariski*, 320 Wis. 2d 811, ¶9 (quoted source omitted). And here, some of these considerations appear to apply to each of G.L.B.’s newly raised arguments to varying degrees. In particular, each of G.L.B.’s arguments involve, to some degree, the legal issues of interpreting and applying of procedural statutes.

¶22 But I decline to exercise my discretion to disregard forfeiture because major purposes underlying the forfeiture rule weigh heavily in favor of applying the general rule under these circumstances. “The purpose of the ‘forfeiture’ rule is to enable the circuit court to avoid or correct any error with minimal disruption of the judicial process, eliminating the need for appeal.” *State v. Ndina*, 2009 WI 21, ¶30, 315 Wis. 2d 653, 761 N.W.2d 612. Further, creating parties to raise arguments in order to avoid their forfeiture “gives both parties and

the circuit court notice of the issue and a fair opportunity to address the objection; encourages attorneys to diligently prepare for and conduct trials; and prevents attorneys from ‘sandbagging’ opposing counsel by failing to object to an error for strategic reasons and later claiming that the error is grounds for reversal.” *Id.*

¶23 Had G.L.B. raised any of the specific arguments in the circuit court that he now makes, the court and other parties would have had opportunities to more thoroughly develop the record regarding relevant factual considerations or refine pertinent legal points. Further, had G.L.B. timely raised his current arguments, this could have prompted more judicially efficient means of addressing any potential problem with the circuit court exercising concurrent jurisdiction. For example, this might have prompted the tribal court to more formally or at an earlier point articulate that it was dismissing the older case, which could have brought the jurisdictional issues into sharper focus.

¶24 In addition, it is relevant that the entire record reflects that the circuit court here acted in a consistently reasonable and thoughtful manner, not hastily or in disregard of the legal rights of any party that were brought to the court’s attention. This includes both the circuit court’s repeated invitations to the parties to weigh in on any issues they wanted to address, as well as the seemingly valid tribal court order that was presented to the court appearing to dismiss the older case. If G.L.B. means to suggest that the circuit court prevented him from making objections to the court’s jurisdiction ruling, this suggestion is not supported by the record. G.L.B. does not identify any action by the court, including the court’s ruling on jurisdiction, that precluded him from raising the specific points he now raises. For example, nothing prevented G.L.B. from moving the court, based on his current arguments, to transfer or dismiss the newer case, or at least to reconsider whether it would pursue a conference with the tribal court.

CONCLUSION

¶25 For all of these reasons, I affirm the circuit court's appointment of a guardian for G.L.W.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

