

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 12, 2016**

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. 2015AP2469**

**Cir. Ct. No. 2014TP52**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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

**ROCK COUNTY HUMAN SERVICES DEPARTMENT,**

**PETITIONER-RESPONDENT,**

**v.**

**W. J.,**

**RESPONDENT-APPELLANT.**

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

¶1 SHERMAN, J.<sup>1</sup> W.J. appeals from an order of the circuit court terminating his parental rights to T.J. W.J. contends that Rock County

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

Department of Human Services did not have authority to file a petition to terminate his parental rights to T.J. on the ground of abandonment and that his trial counsel was ineffective for failing to challenge the circuit court's competency to enter an order terminating his parental rights on that ground. For the reasons discussed below, I conclude that Rock County DHS had authority to file the petition and that W.J.'s trial counsel was not ineffective.<sup>2</sup>

### BACKGROUND

¶2 W.J. is the biological father of T.J., who was born in September 2009. In October 2014, Rock County Department of Human Services petitioned the circuit court for the termination of W.J.'s parental rights to T.J. W.J. contested the termination and a jury was asked to determine whether there were grounds to terminate W.J.'s parental rights. *See* WIS. STAT. § 48.424. A jury found two grounds for terminating W.J.'s parental rights: (1) abandonment, six-month period, *see* WIS. STAT. § 48.415(1)(a)3.; and (2) continuing status as a child in need of protection and services (CHIPS), *see* WIS. STAT. § 48.415(2). Thereafter, the circuit court held a dispositional hearing and, exercising its discretion, found that termination of W.J.'s parental rights to T.J. was in T.J.'s best interest and entered an order of termination.

¶3 W.J. filed a notice of appeal of the circuit court's order. Thereafter, he moved this court to remand the matter to the circuit court to determine, among

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<sup>2</sup> My conclusion that Rock County DHS had authority to file the petition for the termination of W.J.'s parental rights on the ground of abandonment is dispositive of the other issues raised by W.J. on appeal. Accordingly, I do not address those issues. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if a decision on one point disposes of the appeal, the court will not decide other issues raised).

other things, whether his trial counsel was ineffective for failing to challenge Rock County DHS's authority to file a termination of parental rights petition on the ground of abandonment. This court granted W.J.'s motion.

¶4 On remand, W.J. argued that the order terminating his parental rights to T.J. should be vacated because his trial counsel was ineffective for failing to argue that Rock County DHS did not have authority to file a petition to terminate his parental rights on the ground of abandonment and because evidence related to the issue of abandonment may have prejudicially affected the jury's determination as to whether the CHIPS ground was proven. The circuit court denied W.J.'s motion following a hearing.

## DISCUSSION

¶5 W.J. contends that the circuit court erred in failing to determine that his trial counsel was prejudicially ineffective for not challenging the circuit court's competency to enter an order terminating his parental rights to T.J.

¶6 This court's review of an ineffective assistance of counsel claim presents mixed questions of law and fact. *See State v. Johnson*, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). A circuit court's findings of fact will not be disturbed unless they are clearly erroneous. *Id.* However, "[t]he ultimate determination of whether counsel's performance was deficient and prejudicial ... are questions of law which this court reviews independently." *Id.* at 128.

¶7 To establish ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that he was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prove deficient representation, a defendant must point to specific acts or

omissions by the lawyer that are “outside the wide range of professionally competent assistance.” *Strickland*, 466 U.S. at 690. We need not address both aspects of the *Strickland* test if the defendant does not make a sufficient showing on either one. *See Strickland*, 466 U.S. at 697.

¶8 As best I can tell, W.J. is arguing that under WIS. STAT. § 48.25, Rock County DHS was not authorized to petition for the termination of W.J.’s parental rights on the ground of abandonment because Rock County DHS had not been ordered by the court to file the petition for termination on that ground and the court did not have CHIPS jurisdiction over T.J. during the period of alleged abandonment.<sup>3</sup>

¶9 To determine whether W.J. is correct, this court must interpret and apply to undisputed facts the relevant statutes in WIS. STAT. ch. 48, which this court does de novo. *State v. Moore*, 2015 WI 54, ¶53, 363 Wis. 2d 376, 864 N.W.2d 827. “[S]tatutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.’” *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoted source omitted); *Barritt v. Lowe*, 2003 WI App 185, ¶6, 266 Wis. 2d 863, 669 N.W.2d 189 (we construe statutory language based on its common and ordinary meaning). In conducting this analysis, we read statutory language not in isolation but as it relates to the statute as a whole. *Kangas v. Perry*, 2000 WI App 234, ¶8, 239 Wis. 2d 392, 620 N.W.2d 429.

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<sup>3</sup> W.J. argues, and Rock County DHS does not dispute, that the period of alleged abandonment was April 29, 2011 thru October 4, 2013, and that the court did not have CHIPS jurisdiction over T.J. until October 4, 2013 and beyond.

¶10 W.J. bases his argument on WIS. STAT. § 48.25(1), which “designates the individuals who can file specified petitions that initiate juvenile court proceedings.” *Michael J.L. v. State*, 174 Wis. 2d 131, 138, 496 N.W.2d 758 (Ct. App. 1993). Subsection 48.25(1) provides:

A petition initiating proceedings under this chapter shall be signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. The district attorney, corporation counsel or other appropriate official specified under s. 48.09 may file the petition if the proceeding is under s. 48.13 [CHIPS] .... The counsel or guardian ad litem for a parent, relative, guardian or child may file a petition under s. 48.13 or 48.14 [other matters related to children].... The district attorney, corporation counsel or other appropriate person designated by the court may initiate proceedings under s. 48.14 in a manner specified by the court.

W.J. argues that under § 48.25(1), Rock County DHS could file a petition to terminate his parental rights under WIS. STAT. § 48.14 if ordered to do so by the circuit court, which the court did not do in this case. W.J. argues that under § 48.25(1), Rock County DHS had authority to file a petition without authorization by the court only if the circuit court had CHIPS jurisdiction during the time period of the alleged abandonment, which the court did not have.

¶11 W.J. ignores WIS. STAT. § 48.42. Subsection 48.42(1) addresses the procedure for filing a termination of parental rights petition. It provides: “PETITION. 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 person authorized to file a petition under s. 48.25 ....” Under § 48.42(1), Rock County DHS had authority to petition the circuit court to terminate W.J.’s parental rights to T.J. on any ground.

¶12 It is a well settled rule of statutory construction that where two statutes conflict, a more specific statute controls over a more general statute. *State ex rel. Hensley v. Endicott*, 2001 WI 105, ¶¶19-21, 245 Wis. 2d 607, 629 N.W.2d 686. W.J. argues that under the circumstances in this case, WIS. STAT. § 48.25(1) is a more specific statute than WIS. STAT. § 48.42(1), and therefore, its language as to who is authorized to file a petition for termination controls. W.J. does not explain why § 48.25 is a more specific statute, other than to assert in conclusory fashion that it is. *See Associates Fin. Servs. Co. of Wis., Inc. v. Brown*, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56 (generally, this court does not consider conclusory assertions and undeveloped arguments). However, even if W.J. had developed such argument, I would conclude that W.J.’s argument is without merit and that WIS. STAT. § 48.42 is a more specific statute than § 48.25(1).

¶13 WISCONSIN STAT. § 48.25 addresses who is authorized to file a petition in any type of procedure under WIS. STAT. ch. 48. WISCONSIN STAT. § 48.42(1) more specifically addresses who is authorized to file a petition in a proceeding to terminate parental rights, and it states that in addition to the parties identified in that section, those parties authorized under WIS. STAT. § 48.25 to file a petition are also authorized to file a petition to terminate parental rights. Section 48.42(1), not § 48.25, is the more specific statute, and therefore, it controls.

¶14 There is no dispute that Rock County DHS is an agency. *See* WIS. STAT. § 48.40(1) (defining “agency” as “the department, a county department, or a licensed child welfare agency”). As such, Rock County DHS was authorized under WIS. STAT. § 48.42(1) to file a petition for the termination of W.J.’s parental rights on any ground. Because Rock County DHS had the authority to file a petition

with the circuit court for the termination of W.J.'s parental rights on the ground of abandonment, W.J.'s trial counsel was not deficient in failing to argue that Rock County DHS did not have the authority to do so. Accordingly, I affirm the order terminating W.J.'s parental rights.

### CONCLUSION

¶15 For the reasons discussed above, I affirm.

*By the Court.*—Order affirmed.

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

