

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 3, 2018**

Sheila T. Rieff  
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 Nos. 2018AP124  
2018AP125**

**Cir. Ct. Nos. 2016TP188  
2016TP189**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE TERMINATION OF PARENTAL RIGHTS TO D.M.W. JR., A PERSON  
UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**D. M. W., SR.,**

**RESPONDENT-APPELLANT.**

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**IN RE THE TERMINATION OF PARENTAL RIGHTS TO D.W., A  
PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**D. M. W., SR.,**

**RESPONDENT-APPELLANT.**

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APPEAL from orders of the circuit court for Milwaukee County:  
CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

¶1 KESSLER, J.<sup>1</sup> D.M.W., Sr. appeals the orders terminating his parental rights to two of his children, D.M.W., Jr. and D.W. D.M.W., Sr. contends that the circuit court erroneously severed his fact finding and disposition hearings, *sua sponte*, from those of the children's mother. We affirm.

**BACKGROUND**

¶2 On June 9, 2016, The State filed a petition to terminate D.M.W., Sr.'s parental rights to D.M.W., Jr. and D.W. The petition also sought to terminate the parental rights of the children's mother.<sup>2</sup> As to D.M.W., Sr., the petition

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

<sup>2</sup> This appeal only concerns D.M.W., Sr.

alleged three grounds: continuing need of protection or services; failure to assume parental responsibility; and prior involuntary termination of parental rights.

¶3 At the initial appearance on June 27, 2016, the court informed D.M.W., Sr. that it was going to sever the parents' fact finding hearing based on their history of domestic violence:

Based on the pleadings and history set forth in some of the reports for the permanency review hearing, I am sua sponte severing these cases; they're going to be handled separately. There's a significant history of alleged domestic violence in this case and I don't believe that they're appropriately handled jointly. I am going to afford [the mother] ... of that determination. If she objects to that, I certainly will afford her the opportunity to address that issue and/or [D.M.W., Sr.] to address that issue at an appropriate time.

D.M.W., Sr. did not object. At the same hearing, D.M.W., Sr. told the court that he opposed the termination petition and wished to represent himself with the assistance of standby counsel. The State informed the court that D.M.W., Sr. had experience representing himself in a previous termination of parental rights case and a prior criminal case. The court appointed standby counsel and instructed counsel to explain to D.M.W., Sr. that the grounds hearing would be severed. Neither D.M.W., Sr. nor standby counsel objected to the severance.

¶4 The State moved for partial summary judgment on the issue of prior involuntary termination. The circuit court granted the motion and made the requisite finding of unfitness. At the summary judgment hearing, D.M.W., Sr. informed the court that he no longer wished to represent himself and wanted standby counsel to represent him. The court granted D.M.W., Sr.'s request.

¶5 At a subsequent hearing, the State asked the circuit court whether the parents’ disposition hearings would be combined, prompting an objection from the mother’s counsel. The court agreed with the mother’s counsel that the parents’ disposition hearings should be held separately, stating that it did not wish to “revictimize” the mother by requiring her to sit in the same courtroom as her alleged abuser. D.M.W., Sr.’s counsel did not object.

¶6 Following D.M.W., Sr.’s disposition hearing, the circuit court issued a written decision finding termination of D.M.W., Sr.’s parental rights to be in the best interests of his children. This appeal follows.

## DISCUSSION

¶7 On appeal, D.M.W., Sr. argues that the circuit court erroneously “ordered the parents’ cases to be severed *sua sponte*.” (Bolding and capitalization omitted.) D.M.W., Sr. also contends that “[he did not have] an opportunity to be heard regarding severance at the dispositional phase.”

¶8 Whether to grant severance is an issue submitted to the circuit court’s discretion. See *Holmes v. State*, 63 Wis. 2d 389, 399, 217 N.W.2d 657 (1974). This court will not reverse a circuit court’s decision on severance absent an erroneous exercise of discretion. See *State v. Hall*, 103 Wis. 2d 125, 140, 307 N.W.2d 289 (1981).

¶9 We conclude that D.M.W., Sr. waived his right to appellate review of the circuit court’s decision to *sua sponte* sever the parents’ hearings. Prior to the fact finding hearings, the circuit court informed D.M.W., Sr. that it would sever the fact finding hearings because the parents had a history of domestic abuse

and the court did not find it appropriate to conduct fact finding simultaneously.<sup>3</sup> D.M.W., Sr., *pro se* at the time, did not object. The court also explained its decision to standby counsel and asked counsel to explain the severance issue to D.M.W., Sr. The court informed the parties that they would have an opportunity to address any concerns pertaining to severance. D.M.W., Sr. did not raise any concerns as to this issue. Nor did counsel raise any objections to the severance of the parents' disposition hearings after the court explained the basis for its decision. Now, however, D.M.W., Sr. vaguely asserts that he was prejudiced by the severance because the circuit court did not have an opportunity to hear "all relevant evidence" to determine the best interests of his children. It is well-established law that an issue not raised in the circuit court is deemed waived for appellate review. *See State v. Nelson*, 146 Wis. 2d 442, 457, 432 N.W.2d 115 (Ct. App. 1988) (Issues raised in the appellate court for the first time are deemed waived and will not be addressed on appellate review.). Because D.M.W., Sr. did not address the circuit court's *sua sponte* severance decision with the circuit court itself, we conclude that he has waived appellate review of the issue.

¶10 Moreover, the circuit court did not erroneously exercise its discretion in severing the parents' hearings. The court articulated its reason by expressing concern for the well-being of the mother based on the parents' history of abuse. D.M.W., Sr. has not established how he was prejudiced by the severance. The court considered separate evidence as to each parent and its written decision addresses the WIS. STAT. § 426.426(3) statutory factors in thoughtful detail. The court properly exercised its discretion.

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<sup>3</sup> The mother's fact finding was conducted before a jury.

¶11 For the foregoing reasons, we affirm the circuit court.

*By the Court.*—Orders affirmed.

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

