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**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT III**

May 12, 2026

To:

Hon. Carrie A. Schneider  
Circuit Court Judge  
Electronic Notice

Barb Bocik  
Clerk of Circuit Court  
Outagamie County Courthouse  
Electronic Notice

Kim Louise Stelow  
Electronic Notice

Antonio Marques Smith 275561  
Columbia Correctional Institution  
PO Box 900  
Portage, WI 53901-0900

Waupun Correctional Institution  
Business Office  
P.O. Box 351  
Waupun, WI 53963-0351

You are hereby notified that the Court has entered the following opinion and order:

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2023AP921

Kim Louise Stelow v. Antonio Marques Smith  
(L. C. No. 2022CV1128)

Before Stark, P.J., Hruz, and Gill, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Antonio Smith appeals from an order that changed the legal name of his minor daughter, upon the petition of the child's mother, without Smith's consent. Based on 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 (2023-24).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

The decision whether to grant or deny a name change petition lies within the discretion of the circuit court. *R.I.B. v. Brown Cnty. Cir. Ct.*, 2023 WI App 9, ¶15, 406 Wis. 2d 170, 986 N.W.2d 325. We will sustain a discretionary decision so long as the court rationally discussed and applied the proper standard of law to the facts of record to reach a reasonable result. *Id.*, ¶16.

Under WIS. STAT. § 786.36(1m)(b), a circuit court may grant a parent’s petition to change the name of a child under the age of 14 without the consent of the nonpetitioning parent unless the nonpetitioning parent shows that he or she has not abandoned the child or failed to assume parental responsibility for the child. The definitions for abandonment and failure to assume parental responsibility under the name change statute are the same as those used as grounds for the termination of parental rights (TPR). *See* WIS. STAT. §§ 786.36(1m)(b), 48.415(1)(a)3., (1)(b), (1)(c), (6). Those definitions include the failure to visit or communicate with a child for a period of over six months and the failure to exercise a significant responsibility for the daily supervision, education, protection and care of the child. Sec. 48.415(1)(a), (6).

Here, the circuit court took sworn testimony from both parents at a hearing held on March 31, 2023. The child’s mother testified that: (1) the child was seven years old; (2) the child had not had contact with Smith since she was about one and one-half years old and did not know Smith as her father; (3) although the child’s birth certificate included both of the parents’ last names as the child’s last name, the child had never used Smith’s last name as part of her last name; (4) the child had questioned why her school records included Smith as part of her last name and wanted what she believed to be that “mistake” fixed; and (5) Smith had never sent the child’s mother a check for child support.

Smith testified that he had been incarcerated since a month before the child's birth and admitted that he had met the child in person only once, in 2017. Smith acknowledged that he had never paid child support or sent letters to the child, but he asserted that happened because the child's mother had notified the prison that she did not want to have any contact from him. Smith asserted that he had indirectly sent the child clothing and shoes through his own mother (whom the child knew as "Grandma Rhonda") and that he was more than willing to pay child support from income he derived from two businesses operated by his family.

The circuit court determined that Smith did not have a substantial parental relationship with his daughter and had failed to show both that he had not abandoned her or that he had assumed parental responsibility for her. In doing so, the court explicitly cited WIS. STAT. § 786.36(1m)(b) and the cross-referenced definitions from the TPR statute. The court emphasized that the question was not whether Smith wanted to have a relationship with his daughter or provide support for her in the future, but rather whether he had done so in the past.

The circuit court's discussion demonstrates that it applied the proper standard of law to the facts of record, and we are satisfied that the result it reached was reasonable. It was undisputed that the child did not even know that Smith was her father, much less that she had any substantial relationship with him. Smith argues on appeal that the court should not have considered any periods during which Smith was prohibited by judicial order from communicating with the child, but Smith did not provide either the circuit court or this court with a copy of any such order. Rather, he testified that it was the child's mother, not a court, who was obstructing his efforts to establish a relationship with the child. Additionally, as the trier of fact, the court could find the mother's testimony that Smith had not provided support more credible than Smith's testimony that he had tried to provide support or had done so indirectly.

Smith further contends that the circuit court erred by not holding an evidentiary hearing before making the determination that he had abandoned his daughter or failed to assume parental responsibility for her, thus violating his due process rights. But the March 31 hearing *was* an evidentiary hearing because sworn testimony constitutes evidence. *See* WIS JI—CIVIL 50 (stating that “[e]vidence” includes “testimony of witnesses given in court, both on direct and cross-examination, regardless of who called the witness”); *see also Evidence*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defining “evidence” as “[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact”). Smith was provided with notice of the hearing over a month in advance, so if he wanted to present additional evidence, he had the opportunity to do so. The record does not show that Smith asked to present any additional testimony or evidence that the court refused to admit.

Upon the foregoing,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*