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DISTRICT I

June 24, 2025

To:

Hon. William S. Pocan
Circuit Court Judge
Electronic Notice

Travis M. Goeden
Electronic Notice

Y.B.

Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals Processing
Division
Electronic Notice

Kimberly J. Schreiber
Electronic Notice

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

2024AP838

In the interest of L.R., a person under the age of 18: Y.B. v. R.R.
(L.C. # 2023JI149)

Before Donald, P.J., Geenen, and Colón, 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).

R.R. (“Roger”)¹ appeals from a juvenile court order granting a two-year injunction requiring him to have no contact with his daughter, L.R. (“Luna”). 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 (2023-24).² The order is summarily reversed as a sanction against Y.B. (“Yara”), *see* WIS. STAT. RULE 809.83(2), and the cause is remanded with directions to vacate the injunction.

¹ For ease of reading, we have assigned pseudonyms to the parties.

² All references to the Wisconsin Statutes are to the 2023-24 version.

Yara and Roger are Luna's parents. At the time of the injunction petition in this case, Luna was just over three years old. Yara and Roger were not in a romantic relationship at the time but were "co-parenting in the same environment." Yara filed a petition on September 26, 2023, seeking a temporary restraining order against Roger and an injunction hearing based on alleged child abuse in the form of unlawful sexual contact. A court commissioner entered a temporary restraining order. The injunction hearing was originally scheduled for October 6, 2023, but adjourned to allow time for a police investigation.³ The rescheduled injunction hearing was held on November 3, 2023.

During the injunction hearing, Yara testified that one night while getting Luna ready for bed, Luna said, "[D]addy touched my coochie." Roger objected on hearsay grounds. The guardian ad litem offered her opinion that because this was a child sexual assault case, the statement was admissible under the residual hearsay exception, WIS. STAT. § 908.03(24), and the excited utterance exception, § 908.03(2). The circuit court identified five cases it had reviewed ahead of the hearing, noting it had anticipated the objection and wanted to be prepared. Roger's attorney noted that one of those cases set out three factors to consider when applying the excited utterance exception in child sexual assault cases. See *State v. Gerald L.C.*, 194 Wis. 2d 548, 557-58, 535 N.W.2d 777 (Ct. App. 1995). Applying the second factor in that test, counsel argued that Luna's statement should not be admitted because there was no evidence at all of when the incident allegedly occurred. The circuit court ultimately overruled the objection and

³ As of the date of this decision, it does not appear that criminal charges have been filed against Roger.

allowed Yara to testify about Luna's statement.⁴ At the close of the hearing, the circuit court found "reasonable grounds to believe that the respondent has engaged in ... abuse as defined in [WIS. STAT.] § 813.122" and entered a two-year permanent injunction. Roger appealed.

Roger filed his appellant's brief and appendix on August 12, 2024, resulting in a statutory deadline of September 11, 2024, for Yara's responsive brief. *See* WIS. STAT. RULE 809.19(3). Yara did not file a brief by that deadline. By order dated October 4, 2024, we directed Yara to file the brief within five days or request an extension for good cause. Yara did not respond to that order. By order dated October 22, 2024, we extended Yara's filing deadline on our motion, setting November 12, 2024, as the new deadline. On November 12, 2024, Yara filed an extension motion; however, that motion was unsigned. We took no action on the unsigned motion, but once again extended the filing deadline on our own motion, to December 16, 2024.

Yara did not file a brief or seek further extension. By order dated February 5, 2025, we informed Yara that the respondent's brief was again overdue. On our own motion, we extended the filing deadline through February 26, 2025, and cautioned Yara that a failure to file a respondent's brief puts the appeal at risk of summary reversal. There was no response to the February 5 order.

By order dated March 24, 2025, we expanded our warning about the consequences for failing to file a respondent's brief. We explained that the "[f]ailure to file a respondent's brief tacitly concedes that the trial court erred," *State ex rel. Blackdeer v. Township of Levis*, 176

⁴ After the discussion on the objection, the guardian ad litem resumed questioning Yara and asked her to repeat what Luna had said. This time, Yara testified that Luna said, "[D]addy touched my cheene." A short while later, Yara testified that Luna said, "My daddy touched my cheene and bootie."

Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993) (citation omitted), and allows this court to assume that the respondent concedes the issues raised by the appellant, *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). Thus, if a respondent fails to brief an appeal, we may exercise our discretion and summarily reverse the circuit court provided we determine that the respondent has abandoned the appeal or has acted egregiously or in bad faith. *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 660 N.W.2d 647; *see also Blackdeer*, 176 Wis. 2d at 259-60.

Our March 24 order also acknowledged, however, that “other judicial interests may not be served by summarily reversing an order on procedural grounds.” Therefore, the matter was ordered submitted to the court without a respondent’s brief. We cautioned Yara that if the court determined that a respondent’s brief was necessary, we would issue a further order directing Yara to file a respondent’s brief or face summary reversal.

In an order dated May 16, 2025, we concluded that a responsive brief was indeed “necessary to the resolution of this appeal.” Pursuant to the supreme court’s directive in *Raz*, 260 Wis. 2d 614, ¶36, we stated that failure to file the respondent’s brief constituted abandonment of the appeal, and we directed Yara to file her respondent’s brief within 15 days or “this court will summarily reverse the judgment or order appealed from.” *See id.*; *see also* WIS. STAT. RULE 809.83(2).

To date, no respondent’s brief has been filed. Therefore,

IT IS ORDERED that the circuit court’s order is summarily reversed as a sanction for Yara’s failure to file the respondent’s brief, and the matter is remanded to the circuit court with directions to vacate the injunction against Roger.

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

Samuel A. Christensen
Clerk of Court of Appeals