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DISTRICT III

April 16, 2021

To:

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

2020AP2004

In re the termination of parental rights to J.V.:
Pierce County Department of Health and Human Services v. M.K.
(L.C. # 2019TP10)

Before Stark, P.J.¹

M.K. filed a notice of appeal under WIS. STAT. RULE 809.107, from an order terminating his parental rights. The termination of M.K.'s parental rights was voluntary. Generally a person forfeits the right to appeal where he or she stipulated to the entry of a judgment. *See Post v. Schwall*, 157 Wis. 2d 652, 657, 460 N.W.2d 794 (Ct. App. 1990). *Cf. State v. Kelty*, 2006 WI 101, ¶18 n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (A guilty or no contest plea forfeits the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights.).

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20).

WISCONSIN STAT. § 48.43(6)(a) provides that judgments terminating parental rights are *final and appealable according to the procedure in WIS. STAT. RULE 809.107* and “are subject to a petition for rehearing or a motion for relief only as provided in § 48.46(1m) and (2).” Under § 48.46(2), a parent who has consented to the termination of his or her parental rights may move the court for relief from the judgment under WIS. STAT. § 806.07 and shall file the motion within thirty days of entry of the order terminating parental rights. When a timely notice of intent to pursue postdisposition relief is filed—as here—the motion for relief from the order must be filed within the time permitted by WIS. STAT. RULE 809.107(5), that is, within thirty days of the service of the transcripts or circuit court case records. Moreover, WIS. STAT. § 48.465(1) provides: “The person shall file a motion for postdisposition relief in circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

M.K. did not file a motion for relief from the order before filing his notice of appeal. M.K. did not move for remand under WIS. STAT. RULE 809.107(6)(am) to pursue a motion for relief from the termination order in the circuit court. It appeared, therefore, that any issue M.K. intended to raise may be an issue raised for the first time on appeal.

In an order issued by this court, we noted that it may be that § 48.46(2) requires a motion for relief from the termination order as a prerequisite to filing a notice of appeal and that in the absence of the motion for relief from the order, no issues are preserved for review from the voluntary termination. “Where a specified method of review is prescribed by statute, the method so prescribed is exclusive.” *Perkins v. Peacock*, 263 Wis. 644, 653, 58 N.W.2d 536 (1953). Further, generally, issues not presented to the circuit court will not be considered for the first time on appeal. See *State v. Caban*, 210 Wis. 2d 598, 604, 563 N.W.2d 501 (1997). “[W]hen a

party seeks review of an issue that it failed to raise before the circuit court, issues of fairness and notice, and judicial economy are raised.” *Id.* at 605. Although a party forfeits the opportunity to urge on appeal as of right the unpreserved issues, there is the opportunity to argue that the appellate court should exercise its discretion to consider forfeited issues in the interests of justice. *See Hartford Ins. Co. v. Wales*, 138 Wis. 2d 508, 518, 406 N.W.2d 426 (1987).

We ordered the parties to file memoranda addressing whether noncompliance with Wis. STAT. § 48.46(2) affects this court’s appellate jurisdiction. The parties were further ordered to address whether any issues are preserved for appeal and if not, whether forfeited issues should be reviewed in the interests of justice.

In his response to our order, M.K. argues that this court’s jurisdiction is not affected by strict compliance with Wis. STAT. § 48.46(2) “where the opportunity to file a motion for post-dispositional relief is permissive and both the motion for post-dispositional relief and appeal are ... recognized as exclusive remedies.” Because the statute does not require the filing of a Wis. STAT. § 806.07 motion before appeal, M.K. argues that the failure to do so does not impact our jurisdiction.

M.K. further argues that a Wis. STAT. § 806.07 motion was inappropriate because he is not proposing that his consent to terminate was involuntary or that his attorney was ineffective in negotiating the consent, nor that there was a basis for a timely § 806.07 motion. Rather, he claims the primary issues arise from the alleged violations of his due process rights. Specifically, M.K. asserts that “[s]everal non-jurisdictional issues exist,” including: (1) what constitutes a promise that invalidates the voluntariness of consent in the termination of parental rights (“TPR”) context; (2) whether the District Attorney promised something he could not

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deliver in exchange for consent; (3) what relief is available to M.K. when the County fails to fulfill its promise to forgive arrears due in a CHIPS case to which he is no longer a party; (4) whether the court violated due process by failing to consider dispositional factors before terminating M.K.'s rights; (5) whether the court improperly placed emphasis on permanency rather than M.K.'s right to parent and the child's best interests; (6) whether due process required the guardian ad litem to address best interests; and (7) whether the primacy of the county's financial interests is of concern.

Ultimately, M.K. acknowledges that "these perplexing non-jurisdictional issues" may not have been preserved for appeal. M.K. argues that his issues should nevertheless be reviewed in the interests of justice "to ensure the integrity of Wisconsin's TPR proceedings." A number of the issues, however, appear to require fact-finding, and M.K. ultimately fails to show that we should consider the issues without the benefit of circuit court review. Because we are not persuaded that the interests of justice warrant appellate review of these otherwise forfeited issues, we will dismiss this appeal.²

Upon the foregoing,

IT IS ORDERED that this appeal is dismissed.

Sheila T. Reiff
Clerk of Court of Appeals

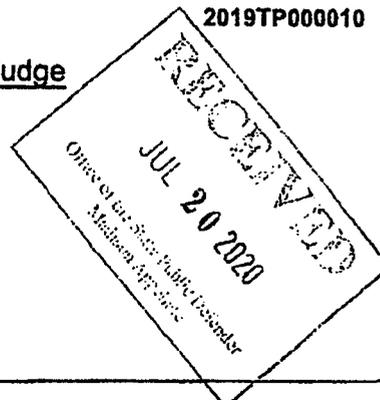
² Because we are dismissing this appeal on the ground that no issues are preserved for appeal, we need not address whether noncompliance with WIS. STAT. §48.46(2) affects this court's appellate jurisdiction. *See, e.g., Patrick Fur Farm, Inc. v. United Vaccines, Inc.*, 2005 WI App 190, ¶8 n.1, 286 Wis. 2d 774, 703 N.W.2d 707 ("[W]e decide cases on the narrowest possible grounds.").

FILED
03-06-2020
Juvenile Court Clerk
Pierce County
2019TP000010

BY THE COURT:

DATE SIGNED: March 6, 2020

Electronically signed by Joseph D. Boles, Pierce County Circuit Judge
Circuit Court Judge



STATE OF WISCONSIN, CIRCUIT COURT, PIERCE

COUNTY

IN THE INTEREST OF

**Order Concerning Termination of Parental Rights
(Voluntary)**

[REDACTED]
Name

Case No. 19TP10

8/18/2012
Date of Birth

This termination of parental rights hearing was held on [Date] 3/6/2020, which is the effective date of this Order.

THE COURT FINDS:

1. Notice was given to all those entitled to notice.
2. The provisions of the Indian Child Welfare Act do not apply. An inquiry has been made on the record to each participant in this proceeding as to whether the participant knows or has reason to know that the child is an Indian child. [For an Indian child, use the Indian Child Welfare Act version (IW-1638) of this order.]
3. The parent(s) are
 - A. Parent #1's name: [REDACTED] Date of birth: 7/21/1972
 - B. Parent #2's name: _____ Date of birth: _____
 - C. Other possible parent(s):
 - Name: _____ Date of birth: _____
 - Name: _____ Date of birth: _____
 - Name: _____ Date of birth: _____
4. There was no declaration of paternal interest.
5. Testimony supporting the allegations in the petition was presented to the court and the allegations are true. Findings made on the record are incorporated.
6. The Petition to terminate the parental rights of the Parent #1 Parent #2(s) is not contested, and the terminating parent(s) have freely, voluntarily and knowingly consented to a termination of their rights.
7. It is in the best interest of the child that the parental rights of the Parent #1 Parent #2(s) be terminated after considering the following factors:
 - The likelihood of the child's adoption after termination.
 - The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
 - Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
 - The wishes of the child.

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- The duration of the separation of the parent from the child.
- Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

8. Reasonable efforts to achieve the permanency goal of the permanency plan, including through an out-of-state placement if appropriate, were *[Complete one of the following only if there is a permanency plan]*

made by the department or agency responsible for providing services.

The Department has provided ongoing case management, AODA services, mental health services, and domestic violence services.

not made by the department or agency responsible for providing services.

9. Any parent who appeared was informed of the provisions of §§48.432, 48.433 and 48.434, Wis. Stats.

10. Other: _____

THE COURT ORDERS:

1.A. The parental rights of (Name of Parent(s)) M. K. [REDACTED] is/are terminated.

Guardianship, placement and care responsibility, and custody of the child

remain with the parent whose rights have not been terminated.

are transferred pending adoption to State of Wisconsin Department of Children and Families

Other: _____

If guardianship or custody is transferred to an agency, that agency shall be responsible for securing the adoption of the child or establishing the child in a permanent family setting. The child's permanency plan

was filed.

is attached.

will be filed within 60 days.

The provisions of §§48.432, 48.433 and 48.434, Wis. Stats., are attached.

1.B. The Petition to terminate parental rights of (Name) _____ is dismissed.

2. Other: _____

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

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ORDER APPOINTING COUNSEL

Client's Full Name: Michael Kirkland
Address: 408 Johnson Street
 Woodville, WI 54028

Client ID: MAP1329891
SPD ID: 204700301Z
File No: 20P-47-A-F00301
Case Group #: 2576838
Date of Birth: 7/21/1972
DOC #:

In the Interest of: J.V.(D.O.B. 08/18/2012)

Statutes:

Nature of Case: Chapter 48 Termination of Parental Rights 1 Cnts:

County and Court: Pierce Circuit Court **Case No:**
Other Information: Judge: Boles, Joseph 19TP10
 Record Created: September 23, 2020
 Judgment Entered: March 06, 2020
 Type: Termination of Parental Rights: Court Trial - 2-3 days

IN ACCORDANCE WITH CHAPTER 977 OF THE WISCONSIN STATUTES, I HEREBY APPOINT THE FOLLOWING ATTORNEY TO REPRESENT THE ABOVE NAMED INDIVIDUAL IN RELATION TO THE ABOVE ENTITLED PROCEEDINGS.

Attorney's Name: Karen Lueschow Local Counsel
Address: 1222 E Washington Ave # 332 SPD Office Handling: Madison
 Madison, WI 53703 3035 **Appointed By:** Joseph N. Ehmann
State Bar No: 1070885 Case Opened, Court Record & Transcripts Ordered:
 September 23, 2020
Phone Number: (608) 351-2717

Office of the State Public Defender - Notice to Clients - File Retention Policy

When an attorney represents an individual, s/he makes and keeps a file of the documents and work done on the case. Attorneys on staff with the Office of the State Public Defender (SPD) create and maintain such files for each case. This notice applies only to cases handled by staff attorneys of the Office of the State Public Defender. If your case has been assigned to a private attorney, please consult that attorney about his or her file retention policy.

Upon the conclusion of the representation in this case, the SPD will, upon your request, deliver the original file or any portion requested, to you, along with any of our original documents or other property that the SPD has in its possession.

If you do not request your file, the SPD will retain it for a period of at least five years after the matter is closed. At any point during this period, you may request delivery of the file. If you do not request the file before the end of the five-year period, the SPD may, in its discretion, destroy the file and its contents without further notice to you.

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