

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

Nos. 98-1660-NM, 98-1661

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 98-1660-NM

**IN RE THE TERMINATION OF
PARENTAL RIGHTS OF SARA B.,
A PERSON UNDER THE AGE OF 18:**

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SAMANTHA E.,

RESPONDENT-APPELLANT.

No. 98-1661

**IN RE THE TERMINATION OF
PARENTAL RIGHTS OF AUSTIN E.,
A PERSON UNDER THE AGE OF 18:**

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SAMANTHA E.,

RESPONDENT-APPELLANT,

FRANCIS A.M.,

RESPONDENT-CO-APPELLANT.

APPEALS from orders of the circuit court for Brown County:
DONALD R. ZUIDMULDER, Judge. *Affirmed.*

MYSE, P.J. Francis A. M. appeals an order terminating his parental rights to Austin E. Samantha E. appeals orders terminating her parental rights to Sara B. and Austin E.¹ Francis's sole issue on appeal is that the trial court erred by permitting a joint trial terminating both his parental rights and the parental rights of Samantha E., Austin's mother. Francis contends that the information concerning Samantha's unsuitability as a parent unfairly prejudiced the jury's ability to objectively consider whether Francis's parental rights should be terminated. Because Francis did not move for severance or seek any relief during the trial of this matter and because he raises this issue for the first time on appeal, the issue is waived and the trial court's order terminating his parental rights is therefore affirmed.

Samantha E. and Francis A.M. were the parents of Austin E., a person under the age of eighteen. The Brown County Department of Human Services filed a petition to terminate the parental rights of both Samantha and

¹ Both Samantha E. and Francis A.M. filed notices of appeal which this court ordered consolidated. Only Francis, appeal No. 98-1661, filed a brief. Samantha's appellate counsel filed a no merit report in appeal No. 98-1660-NM. We discuss each appeal separately.

Francis because of a lack of substantial progress toward meeting the conditions for the return of Austin E. Among the conditions necessary to regain custody of Austin, Francis was required to successfully complete a sexual perpetrator's group therapy session and demonstrate that he was not a risk to re-offend. He was also required to participate in individual counseling, to address issues that interfere with his ability to care for his child, and to have supervised visitation following the completion of the sexual perpetrator's group therapy until he has adequately demonstrated that no supervised visitation is appropriate. Francis concedes that he has made little or no effort in meeting these conditions.

Francis contends that the following evidence that was admitted at trial regarding Samantha's suitability as a parent was so prejudicial that the jury could not objectively determine Francis's suitability to be Austin's parent: (1) Samantha is an unsuitable parent because she is an illegal drug user; (2) Samantha has resided in eighteen different residences between December 1995 and February 1998; (3) Samantha has threatened a social worker from the Department of Human Services after being informed of a change in the permanency plan; (4) Samantha attempted to solicit perjury from a witness called on her behalf at trial; and (5) Samantha's parental rights had previously been terminated as to four other children. Thus, Francis argues that the court's failure to order separate trials for the termination of parental rights of Samantha and Francis was prejudicial error.

While severance of trials between co-defendants is a matter normally addressed to the trial court's discretion, in this case because this court concludes this matter was waived by failure to make an objection at the trial, it is reviewed as a question of law. Issues raised in the appellate court for the first time are deemed

waived and will not be addressed on appellate review. *State v. Nelson*, 146 Wis.2d 442, 457, 432 N.W.2d 115, 122 (Ct. App. 1988).

Francis made no motion at any time to separate his trial from Samantha's based upon what he now alleges to be the inflammatory nature of the evidence introduced in regard to Samantha's suitability as a parent. A review of the record discloses that Francis did not object to a joint trial at any time during the trial court proceedings. Indeed, the only motion made was by Samantha seeking severance based upon the nature of the allegations that Francis had a history of sexual abuse. Francis cites no authority for his proposition that Samantha's motion preserves the severance issue as to him.

A defendant not only must specifically seek severance, but must do so on specific grounds or the claimed error is waived. *See id.* (defendant's failure to seek severance on particular ground waived any error). Because Francis may not, as of right, assert a claim that he did not make before the trial court, this court concludes that the issue has been waived by Francis and may not be raised for the first time on appeal. Accordingly, the judgment terminating Francis' parental rights is affirmed.

Next, Samantha appeals judgments terminating her parental rights to her two children, Sara and Austin. Appellate counsel has filed a no merit report pursuant to RULE 809.32, STATS., *Anders v. California*, 386 U.S. 738 (1967), and *In re Ashley A.T.*, 218 Wis.2d 160, 579 N.W.2d 293 (1998). Counsel identifies and discusses four potential issues: (1) Whether the trial court erroneously exercised its discretion by ordering a joint trial for both Samantha and the father of Austin, Francis; (2) whether the trial court erroneously failed to remove the guardian ad litem due to bias; (3) whether the evidence was clear and convincing

that grounds existed for the termination of parental rights; and (4) whether the trial court erroneously found that it was in the best interest of each child that Samantha's rights be terminated.

Samantha was provided a copy of the no merit report and advised of her rights to file a response. She has not responded. Based upon our independent review of the record, this court concludes that the no merit report correctly describes the record and discusses the identified issues. There is no need to repeat the analysis here; this court agrees with the report's conclusion that the issues identified are without arguable merit.

The record discloses one additional potential issue: whether the trial court erroneously exercised its discretion when it admitted evidence that Samantha's parental rights to her other children had been terminated. Based upon our independent review of the record, this court concludes that any potential error would have been without arguable merit because it would have been harmless in context of the evidence presented at the three-day trial supporting the jury's verdict.

The record discloses no other potential issues of arguable merit. This court therefore concludes that the orders terminating Samantha's parental rights are summarily affirmed. RULE 809.21, STATS. Attorney Len Kachinsky is discharged of his obligation to further represent Samantha in this appeal.²

² Pursuant to § 809.82(2)(a), STATS., we enlarge the time for issuing this opinion until September 22, 1998.

By the Court.—Orders affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

