COURT OF APPEALS
DECISION
DATED AND FILED

September 7, 2011

A. John Voelker
Acting 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 No. 2011AP1276
2011AP1277
2011AP1278
2011AP1279
2011AP1280

Cir. Ct. No. 2008TP422
2008TP423
2008TP424
2008TP425
2008TP426

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN RE THE TERMINATION OF PARENTAL RIGHTS TO NATHKESHA M., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LAKESHA M. P/K/A LAKESHA R.,

RESPONDENT-APPELLANT.

IN RE THE TERMINATION OF PARENTAL RIGHTS TO NATHAN M., JR., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LAKESHA M. P/K/A LAKESHA R.,

RESPONDENT-APPELLANT.

IN RE THE TERMINATION OF PARENTAL RIGHTS TO HASSAN M., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LAKESHA M. P/K/A LAKESHA R.,

RESPONDENT-APPELLANT.

IN RE THE TERMINATION OF PARENTAL RIGHTS TO HASSADA M., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LAKESHA M. P/K/A LAKESHA R.,

RESPONDENT-APPELLANT.

IN RE THE TERMINATION OF PARENTAL RIGHTS TO MATITUS M., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

LAKESHA M. P/K/A LAKESHA R.,

RESPONDENT-APPELLANT.

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

¶1 FINE, J. Lakesha R. appeals the orders terminating her parental rights to Nathkesha M., Nathan M., Hassan M., Hassada M., and Matitus M.[1] The only issue Lakesha R. raises on this appeal is whether the trial court complied with WIS. STAT. §§ 48.422(8) & 48.422(9)(a).[2] She contends that it did not and, accordingly, wants us to vacate the orders. We affirm.

¶2 Petitions to terminate Lakesha R.'s parental rights to the five children were filed in the name of the State of Wisconsin by the Milwaukee County District Attorney. As noted, Lakesha R.'s only complaint is premised on WIS. STAT. §§ 48.422(8) & 48.422(9)(a); she does not contend that the circuit

[1] The notices of appeal were initially designated as "no merit" appeals. *See* WIS. STAT. RULE 809.32. The appeals were changed to "merit" appeals by this court's order of July 12, 2011. The orders were entered by the Honorable Christopher R. Foley on global decision rendered by the Honorable Michael Malmstadt, reserve circuit court judge.

[2] Lakesha R.'s main brief on this appeal only argued that the circuit court did not comply with WIS. STAT. § 48.422(8). Her reply brief, filed after the State and the guardian *ad litem* filed their briefs in response to Lakesha R.'s main brief, raises for the first time the circuit court's alleged error in not implementing WIS. STAT. § 48.422(9)(a). Although we generally do not consider matters raised for the first time in a reply brief because that prevents the respondents from answering a new argument, *see* ***Richman v. Security Savings & Loan Ass'n***, 57 Wis. 2d 358, 361, 204 N.W.2d 511, 513 (1973), we will do so here. Further, although Lakesha R.'s reply brief cites § 48.422(9), she references only § 48.422(9)(a).

court's finding that there were ample grounds to terminate her parental rights to the children was error or that it erroneously exercised its discretion in concluding that termination would be in the children's best interests.

¶3 The statutes to which Lakesha R. refers, WIS. STAT. §§ 48.422(8) & 48.422(9)(a), provide:

Section 48.422(8):

> If the petition for termination of parental rights is filed by an agency enumerated in s. 48.069(1) or (2), the court shall order the agency to file a report with the court as provided in s. 48.425(1), except that, if the child is an Indian child, the court may order the agency or request the tribal child welfare department of the Indian child's tribe to file that report.[3]

[3] WISCONSIN STAT. § 48.425(1) reads:

> **(1)** If the court orders an agency enumerated under s. 48.069(1) or (2) to file a report under s. 48.422(8) or 48.424(4)(b) or requests the tribal child welfare department of an Indian child's tribe to file such a report, the agency or tribal child welfare department, if that department consents, shall file a report with the court which shall include:
>
> (a) The social history of the child.
>
> (am) A medical record of the child on a form provided by the department which shall include:
>
> 1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child's grandparents, aunts, uncles, brothers and sisters.
>
> 2. A report of any medical examination which either birth parent had within one year before the date of the petition.

(continued)

3. A report describing the child's prenatal care and medical condition at birth.

4. The medical and genetic history of the child and any other relevant medical and genetic information.

(b) A statement of the facts supporting the need for termination.

(c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the person or agency has taken to effect this return. If a permanency plan has previously been prepared for the child, the report shall also include specific information showing that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goal of the child's permanency plan, including, if appropriate, through an out-of-state placement.

(cm) If the petition is seeking the involuntary termination of parental rights to an Indian child, specific information showing that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028(4)(e)1. and, if the Indian child has previously been adjudged to be in need of protection or services, specific information showing that active efforts under s. 48.028(4)(e)2. have been made to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful.

(d) A statement of other appropriate services, if any, which might allow the child to return safely to the home of the parent.

(e) A statement applying the standards and factors enumerated in s. 48.426(2) and (3) to the case before the court.

(f) If the report recommends that the parental rights of both of the child's parents or the child's only living or known

(continued)

(Footnote added.)

Section 48.422(9)(a) (on which Lakesha R. relies in her reply brief):

> If a petition for termination of the rights of a birth parent, as defined under s. 48.432(1)(am), is filed by a person other than an agency enumerated under s. 48.069(1) or (2) or if the court waives the report required under s. 48.425, the court shall order any parent whose rights may be terminated to file with the court the information specified under s. 48.425(1)(am).

She does not contend that the State of Wisconsin is "an agency enumerated in s. 48.069(1) or (2)." Rather, she asserts that the petitions "were filed by the Milwaukee County District Attorney on behalf of the Bureau of Milwaukee Child Welfare," concededly an agency within the purview WIS. STAT. § 48.069. But the petition does not say that.

> parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427(3m)(a)1. to 4. or (am) and include a presentation of the factors that might prevent adoption, those that would facilitate adoption, and the agency that would be responsible for accomplishing the adoption.
>
> (g) If an agency designated under s. 48.427(3m)(a)1. to 4. or (am) determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation as to the agency to be named guardian of the child, a recommendation that the person appointed as the guardian of the child under s. 48.977(2) continue to be the guardian of the child, or a recommendation that a guardian be appointed for the child under s. 48.977(2).

¶4 The district attorney is authorized by WIS. STAT. § 48.09(5) to represent "the interests of the public," and, by WIS. STAT. § 48.417(1), to file, as he did here, a petition to terminate parental rights. Significantly, § 48.417(1) recognizes, as an alternative, that "an agency" may *also* file a petition to terminate parental rights; as material, it reads: "*an agency or the district attorney*, corporation counsel or other appropriate official designated under s. 48.09 shall file a petition under s. 48.42(1) to terminate the parental rights of a parent or the parents." (Emphasis added.)

¶5 The Bureau of Milwaukee Child Welfare did not file the petitions here. Thus, there was no need under WIS. STAT. § 48.422(8) for the circuit court to order the Bureau to file a WIS. STAT. § 48.425(1) report. Lakesha R. argues for the first time in her reply brief, however, that in that case, the circuit court had to, under WIS. STAT. § 48.422(9)(a), order *her* to file reports having "the information specified under s. 48.425(1)(am)." The problem with this contention, however, is that she: (1) never argued to the circuit court that § 48.422(9) applied (or, for that matter, argued that the circuit court should have directed the Bureau to file the reports encompassed by § 48.425(1)); and, equally significant, (2) does not tell us what those reports would have had that might have altered the circuit court's determination that termination of her parental rights was in the children's best interests.

¶6 Following the circuit court's finding that there were sufficient grounds to terminate Lakesha R.'s parental rights to the children, the circuit court considered, without objection by any party, whether termination would be in the

children's best interests. This is fully consistent with WIS. STAT. § 48.424(4), which provides:

> If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427(2). *The court shall then proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427*. Except as provided in s. 48.42(2g)(ag), the court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if any of the following apply:
>
> (a) All parties to the proceeding agree.
>
> (b) The court has not yet received a report to the court on the history of the child as provided in s. 48.425 and the court now orders an agency enumerated in s. 48.069(1) or (2) to file that report with the court, or, in the case of an Indian child, now orders that agency or requests the tribal child welfare department of the Indian child's tribe to file such a report, before the court makes the disposition on the petition.

(Emphasis added.)

¶7 As a general rule, we will not consider an issue that was not first presented to the circuit court. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577, 584 (1997). "The reason for this general rule is to give trial courts the opportunity to correct errors, thus avoiding appeals." ***Ibid.*** This is especially true here; the circuit court could have asked either the Bureau or Lakesha R. for a report, whether required to or not, if Lakesha R. had only asked for or sought a delay to file the reports she now says that the circuit court should have directed her to provide. She did neither. Moreover, as we have already indicated, she does not tell us how any reports she or the Bureau might have filed could have altered the

circuit court's determination that termination of her parental rights was in the children's best interests.

¶8 Based on the foregoing, we affirm.

By the Court.—Orders affirmed.

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