COURT OF APPEALS
DECISION
DATED AND FILED

April 10, 2014

Diane M. Fremgen
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. 2013AP2273 **Cir. Ct. No. 2012JC202**

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

IN THE INTEREST OF L. D., A PERSON UNDER THE AGE OF 17:

RENEE B. AND JAY B.,

APPELLANTS,

V.

DANE COUNTY DEPARTMENT OF HUMAN SERVICES, MICHELLE A., JESSE D. AND AIMEE D.,

RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: DAVID T. FLANAGAN III, Judge. *Affirmed.*

¶1 SHERMAN, J.[1] Renee B. and Jay B. appeal an order of the circuit court denying their motion to intervene in a CHIPS proceeding concerning L.D. Renee, who is the paternal grandmother of L.D., and Jay, who is L.D.'s paternal step-grandfather, argue that they should have been permitted to intervene in the CHIPS proceeding. For the reasons discussed below, I affirm.

BACKGROUND

¶2 In September 2012, a CHIPS petition was filed by the Dane County Department of Human Services alleging that L.D., who was born on August 22, 2012, was in need of protection pursuant to WIS. STAT. § 48.13(3). L.D. is the biological child of Michelle A. and Jesse D. A temporary order was entered placing L.D. with Aimee D. Aimee's father was formerly married to Renee. Amiee has no biological relationship to L.D. or Renee, but is the former step-sister to Jesse and the former step-daughter of Renee.

¶3 At the time L.D. was placed with Aimee, Jesse had neither admitted to nor been adjudicated as the father of L.D. However, in November 2012, a DNA test confirmed that Jesse was L.D.'s biological father and in January 2013, Jesse was adjudicated as such.

¶4 In November 2012, Michelle was charged with felony neglect of L.D. causing great bodily harm. In February 2013, Renee's and Jay's attorney sent a letter to L.D.'s guardian ad litem requesting "substantial visitation" with L.D. and to be considered as a permanent home for L.D.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶5 On April 8, 2013, a dispositional hearing was held concerning L.D. Renee and Jay were not provided formal notice of the hearing and did not participate in the hearing. On April 19, the circuit court entered a dispositional order which provided for out-of-home placement of L.D. in a "licensed Dane County foster home," and specified conditions of return for both Michelle and Jesse.[2] It is undisputed that L.D. remained placed with Amiee, who is a licensed foster parent.

¶6 On May 3, 2013, following entry of the dispositional order, Renee and Jay moved pursuant to WIS. STAT. § 803.09 to intervene in L.D.'s CHIPS proceeding. In their motion to intervene, Renee and Jay sought intervention "to allow them the opportunity to participate as potential caregivers and as a custody and placement option for [L.D.] in any future court proceedings…."

¶7 Following a hearing in August 2013, the circuit court denied Renee's and Jay's motion to intervene, concluding that Renee and Jay had "not demonstrated a protectable liberty interest in their relationship with … [L.D.]." The court stated, however, that Renee and Jay may be able to offer relevant evidence on the issue of L.D.'s best interest and thus ruled that to the extent that Renee and Jay sought an opportunity to offer evidence in any future court proceedings, they should be given notice of hearings pursuant to WIS. STAT. § 48.27(2) and the opportunity to present evidence. The court also ruled that to the extent that Renee and Jay sought relief from the April 2013 dispositional order, Renee's and Jay's motion was untimely and neither possessed a sufficient legal

[2] On April 15, 2013, following the dispositional hearing but prior to entry of the dispositional order, Michelle was convicted of child neglect of L.D. and was sentenced to two years' imprisonment.

interest to do so.[3] The circuit court subsequently entered an order providing that Renee and Jay be provided with notice of future court proceedings concerning L.D., and that they be provided a sufficient opportunity to offer relevant evidence as to the best interest of L.D. in any future court proceedings. Renee and Jay appeal.

DISCUSSION

¶8 Renee and Jay challenge the order of the circuit court denying their May 2013 motion to intervene. They argue that the circuit court effectively determined that they are necessary parties entitled to summons under the ch. 48 general summons statute, WIS. STAT. § 48.27(2), and that under the rationale of ***David S. v. Laura S.***, 179 Wis. 2d 114, 507 N.W.2d 94 (1993), with respect to intervention in a termination of parental rights (TPR) proceeding, they have a right to intervene in the present case.

¶9 Intervention is generally governed by WIS. STAT. § 803.09, which provides:

> [U]pon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.

[3] In July 2013, Renee and Jay also filed a motion for declaratory judgment seeking a declaration by the court that Aimee does not have the legal status as a relative under ch. 48. The court declined to consider this motion on the basis that Renee and Jay are not parties to the proceeding and because the motion was in effect an untimely challenge to the April 2013 dispositional order.

¶10 To claim a right of intervention under WIS. STAT. § 803.09(1), the movant must meet each of the following four criteria: (1) the motion must be timely; (2) the movant must claim an interest sufficiently related to the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the movant's ability to protect that interest; and (4) the existing parties do not adequately represent the movant's interest. ***Helgeland v. Wisconsin Municipalities***, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1.

¶11 Renee and Jay do not argue that denial of their motion to intervene under WIS. STAT. § 803.09 was improper. Relying on ***David S.***, Renee and Jay contend that their right of intervention in this case is not governed by WIS. STAT. § 803.09, but instead by WIS. STAT. § 48.27, the general summons statute for ch. 48, and that under that statute, they were entitled to summons and thus intervention.

¶12 In ***David S.***, grandparents of a child subject to a voluntary TPR petition sought to intervene pursuant to WIS. STAT. § 803.09 in the TPR proceeding. The supreme court determined that the grandparents were not entitled to intervene because § 803.09 does not apply in the context of a TPR proceeding. The court explained:

> Section 803.09 applies to chapter 48 proceedings except where a different procedure is prescribed by statute or rule. Chapter 48 does not prescribe a different procedure for intervention. Nevertheless it is clear from the statutes that the legislature intended sec. 48.42(2) prescribing who must be summoned in a termination of parental rights proceeding to be the exclusive statute on the subject. Bringing in additional parties in a ch. 48 proceeding through the intervenor statute is not consistent with the purposes and policies underlying the statutory proceedings set forth in ch. 48 which limit the persons who must be notified of the proceedings. Accordingly, we conclude that sec. 803.09 does not apply in this case.

David S., 179 Wis. 2d at 143-44.

¶13 Renee and Jay assert that the supreme court in ***David S.*** determined that the summons statute for TPR proceedings was intended by the legislature to be the "exclusive statute," on the issue of intervention in a TPR proceeding and that, therefore, "[i]t follows that … the summons statute for CHIPS cases, WIS. STAT. § 48.27, dictates who can intervene in a CHIPS case."

¶14 Renee and Jay misconstrue the supreme court's holding in ***David S.*** The court in ***David S.*** did not conclude that WIS. STAT. § 48.42(2) dictates who may intervene in TPR proceedings. Rather, the court narrowly determined that the general intervenor statute, WIS. STAT. § 803.09, does not apply to TPR proceedings. Thus, intervention in a TPR proceeding may not be achieved through that statute. Furthermore, even if Renee and Jay are correct that the supreme court effectively held in ***David S.*** that intervention in a TPR proceeding is controlled by the summons statute for TPR proceedings, Renee and Jay have not developed an argument as to *why* a supreme court holding specific to a TPR proceeding and a TPR specific statute is likewise applicable to a CHIPS proceeding. As a general matter, this court does not consider conclusory assertions and undeveloped arguments. *See* ***Associates Fin. Servs. Co. of Wis., Inc. v. Brown***, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56. Accordingly, I do not further address Renee's and Jay's claim that they were entitled to intervention in the present proceeding under WIS. STAT. § 48.27(2).

¶15 Renee and Jay argue that if the denial of their right of intervention is upheld, the August 2013 dispositional order should nevertheless be reversed and the matter should be remanded to the dispositional phase to allow them an opportunity to present evidence regarding L.D.'s placement. Renee and Jay also

argue that the circuit court erred in failing to address their "Motion for Declaratory Judgment" pertaining to Aimee's legal status as a relative under WIS. STAT. § 48.02. Renee and Jay are not parties to this action and have not explained why they are entitled to relief in light of their non-party status. Accordingly, I do not address these arguments.

CONCLUSION

¶16 For the reasons discussed above, I affirm.

By the Court.—Order affirmed.

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