COURT OF APPEALS
DECISION
DATED AND FILED

April 25, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2017AP32 **Cir. Ct. No. 2015TP314**

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

IN RE THE TERMINATION OF PARENTAL RIGHTS TO J. F. C., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

K. C.,

RESPONDENT-APPELLANT.

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

¶1 BRENNAN, J.[1] K.C. appeals from an order terminating her parental rights to J.F.C. She asks this court to vacate the order and remand the matter for a new fact-finding hearing. She argues that the trial court erroneously exercised its discretion when, as a sanction, it struck her contest posture and defaulted her at the grounds-phase of the trial. She further argues that WIS. STAT. § 48.235 (2015-16)[2], the statute governing the appointment of a guardian ad litem in a TPR proceeding, requires a trial court to obtain a competency evaluation prior to such an appointment, and no evaluation was ordered here. Finally, she claims her first adversary counsel asked the trial court to appoint a guardian ad litem for her without her consent, which deprived her of her right to adversary counsel.

¶2 This court concludes that the default sanction was not an erroneous exercise of discretion because a trial court may default a party for egregious conduct, and the record here supports the trial court's finding of egregiousness. We also conclude that WIS. STAT. § 48.235(1)(a) clearly authorizes the trial court to appoint a GAL "in any appropriate matter," which the trial court did here. Finally, this court concludes that K.C. made no showing that the first adversary counsel asked for the appointment of the GAL or that he failed to zealously, competently and independently represent K.C. here as her adversary counsel. For these reasons, the order is affirmed.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16). This decision was not released within thirty days of the date the reply brief was filed. *See* WIS. STAT. RULE 809.107(6)(e). Therefore, we extend the deadline for deciding the case until today's date. *See* ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995) (we may extend the time to issue a decision in a TPR case).

[2] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

BACKGROUND

¶3 Between the ages of five and seven (January 2012 through November 2013), J.F.C. was the subject of thirteen referrals to child protective services. The Bureau's files reflect concerns about K.C.'s use of drugs, contact with law enforcement, mental and physical health issues, as well as evidence of abuse and neglect of J.F.C.

¶4 In November 2013, at the age of seven, J.F.C. was detained after K.C. contacted a social worker and demanded that J.F.C. be removed from her home because he was "lying" when he told school staff that she had hit him. When the social worker arrived, K.C. had J.F.C.'s bags packed, refused a protection plan, and specifically asked that the child be placed in foster care, rather than with a relative, which she said would be a "reward." A CHIPS order was filed on February 11, 2014. J.F.C. remained in out-of-home placement between November 2013 and August 2014.

¶5 A trial reunification was attempted from August 29, 2014, through November 20, 2014. During the period of reunification, K.C. was arrested while driving with J.F.C. and charged with OWI with a minor in the vehicle, a charge that was later dismissed. A test of her blood following that arrest was positive for the presence of substances she denied taking. While J.F.C. was living with her in this period, records show, K.C. made multiple requests to have him removed from her care. K.C. admitted making these requests but claimed that her request was for J.F.C. to be removed only for a short time so that he would appreciate being at home more.

¶6 J.F.C. was detained again in November 2014 after a social worker attempted to put a safety plan in place and K.C. refused the plan. Over the next

year, the record reflects, K.C. showed a pattern of intractable behavior, refusing to do random UA screens to show sobriety, violating no contact orders, refusing a psychological re-evaluation which was a CHIPS condition, being uncooperative with those providing parenting services, cancelling scheduled visits, and failing to follow through with parenting classes.

The TPR proceedings.

¶7 A petition to terminate K.C.'s parental rights was filed November 11, 2015.[3] As grounds, the petition alleged continuing CHIPS and failure to assume parental responsibility.[4]

¶8 The initial hearing was December 10, 2015. The trial court appointed Attorney Laurence Moon as adversary counsel for K.C., and a scheduling order was filed, setting April 11, 2016, as the date for the jury trial. Attorney Moon appeared with K.C. at hearings on January 11, January 27, and March 7, 2016.

¶9 On March 10, 2016, the trial court sent a letter to the parties stating that it was appointing Catherine Flaherty as GAL for K.C. pursuant to WIS. STAT. § 48.235(1) due to "some concerns about conduct that I would characterize as borderline manic behavior at the last hearing …." The court continued: "I do, however, sincerely believe based upon the conduct noted above and other explicit and implicit references in the case files that those issues are impacting her ability

[3] The petition also sought termination of the father's parental rights, and the trial court found the father in default and granted the termination of the father's rights for failure to assume parental responsibility. This appeal is concerned solely with the termination of K.C.'s parental rights.

[4] The State later moved to dismiss the failure to assume ground.

to 'assist her counsel … in protecting [her] rights.'" [§]48.235(1)(g). It is my hope that [the GAL's] involvement will ameliorate those concerns."

¶10 On April 4, 2016, K.C. was deposed. She denied having any mental health problem, denied any current physical health issues, and refused to answer questions about the circumstances of her repeated police contacts, although she did acknowledge having two unresolved OWI cases against her. She admitted driving to one foster home where J.F.C. was placed and calling another one despite explicit instructions not to do so. Following the deposition, K.C. met with her legal team "for hours" and, the GAL later reported to the trial court, K.C. told them she was "done" with the TPR process.

¶11 On April 7, 2016, adversary counsel filed a motion to adjourn the trial. The next day, at the final pretrial conference, K.C. appeared with adversary counsel and her GAL. K.C.'s adversary counsel said K.C. had changed her mind and was willing to undergo a psychological and neurological evaluation, necessitating an adjournment. The trial court denied the motion to adjourn, and the jury trial remained on for April 11. The State raised the issue of K.C.'s unauthorized appearance the previous day at J.F.C.'s foster home, which K.C. denied, and the trial court reiterated the no contact rules.

¶12 On April 11, 2016, the day set for trial, K.C. was present with her adversary counsel and GAL. Adversary counsel renewed his request for adjournment for the purpose of a psychological and neurological evaluation. Then, at adversary counsel's request, the trial court had a discussion on the record in chambers with the State, K.C.'s adversary counsel, K.C.'s GAL, and J.F.C.'s GAL. The trial court noted on the record that K.C.'s legal team had made the decision not to include K.C. in the chambers discussion. The court and lawyers

then came back into the courtroom where K.C. was present, and the trial court granted a short continuance of the trial until the next day to give K.C.'s legal team the opportunity to "come up with a plan" for evaluation of K.C. to present to the court the following morning. The trial court warned counsel and K.C. that efforts to manipulate the trial date would result in a default sanction. The parties were directed to return at 8:45 a.m. April 12 and be prepared for trial. The trial court addressed K.C. directly telling her if she did not follow through with the evaluation, she would lose her right to contest the grounds-phase trial. K.C. then stated to the court that she would "follow through."

¶13 K.C. did not arrive the following morning. On April 12, 2016, at 8:45 a.m., all other parties and lawyers were present. Adversary counsel represented to the trial court that K.C. had communicated to him that she would be admitting herself to the hospital that morning and accordingly he requested an adjournment. The trial court granted the adjournment based on her comments to adversary counsel and her medical needs. The trial court set a May 16 status hearing and a July 18 trial date.

¶14 On May 16, 2016, the court held a hearing on the State's motion to strike K.C.'s contest posture as a sanction for failing to appear. At that hearing, the following evidence was presented about K.C.'s whereabouts on the morning of April 12:

> 1) Whitefish Bay police officer Patrick Murphy testified that he went to K.C.'s home to serve a subpoena in an unrelated matter and that she answered the doorbell looking as if she had been asleep.
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> 2) Whitefish Bay police officer Michael Kowalski testified that Officer Murphy's contact was at 11 a.m. He testified that later, Kowalski was dispatched at the request of K.C.'s attorneys, and at about 12:45 p.m. the three of

> them entered the home through an open side door, where they met K.C., who appeared to have just woken up.
>
> 3) P.W., a person who had been J.F.C.'s babysitter when he lived with K.C., testified that K.C. had contacted her on approximately April 11 with instructions to pick J.F.C. up from school "on the 12th" and meet K.C. for dinner. The babysitter testified that she went to the school but was told that J.F.C. was not there. She testified that "the same day" she got a phone call from Ms. Keegan.
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> 4) J.F.C.'s foster mother testified that on April 7, K.C. had come to her home and had called her later to deny that she had done so.
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> 5) K.C., called adversely at the May 16 hearing, denied sending a third party to pick up J.F.C. She conceded that she had appeared at the foster home on April 7 in violation of the no contact order.

¶15 The trial court granted the State's motion to strike K.C.'s contest posture, finding that K.C. had "engaged in … egregious and bad faith conduct intended to manipulate this Court's calendar and to prevent [the trial court] from conducting the grounds-phase jury trial on April 12." The trial court found that the fact that K.C. "lied to her lawyer, knowing that that false information would be repeated to the Court" was "sufficiently egregious … to warrant the ultimate sanction of default judgment."

¶16 The court was notified that a neuropsychological evaluation was scheduled for K.C. June 15,[5] and the court set the prove-up and contested dispositional hearing for July 29, 2016. On July 29, the trial court permitted Attorney Jeffrey Jensen to substitute as adversary counsel for K.C. and granted his motion to adjourn the dispositional hearing. The trial court also granted a motion

[5] At the dispositional hearing on September 22, 2016, the State noted that the scheduled neuropsychological evaluation had never taken place.

to discharge the GAL for K.C. On September 16, 2016, K.C. moved to vacate the trial court's order striking her contest posture.

¶17 At the beginning of the dispositional hearing on September 22, 2016, the trial court denied K.C.'s motion to vacate. The trial court then heard two days of testimony and ultimately found that the grounds of continuing CHIPS was established, that K.C. was unfit, and that termination of K.C.'s parental rights was in J.F.C.'s best interest. The order terminating K.C.'s parental rights was filed September 28, 2016. K.C. appealed from that order on January 4, 2017.

DISCUSSION

I. The trial court did not erroneously exercise its discretion when it granted the State's motion to strike K.C.'s contest posture as a sanction.

¶18 The decision whether to enter a default judgment is within the discretion of the circuit court. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768. The statutory source for the court's authority to impose sanctions is WIS. STAT. § 805.03, and under that section the court "may make such orders in regard to the failure [to obey a court order] as are just[.]" WIS. STAT. § 805.03. In discussing what this means, the court in ***Johnson*** explained that the severe sanction of dismissal of a case is not "just" unless the party sanctioned has engaged in egregious conduct without a justifiable excuse or has acted in bad faith. ***Johnson v. Allis Chalmers Corp.***, 162 Wis. 2d 261, 275, 470 N.W.2d 859 (1991) (overruled in part on other grounds by ***Indus. Roofing Svcs, Inc. v. Marquardt***, 2007 WI 19, ¶61, 299 Wis. 2d 81, 726 N.W.898. A circuit court may impose sanctions for a party's misconduct, including dismissal of the case, as long as the sanctioned party's conduct is "egregious." ***Schultz v. Sykes***, 2001 WI App 255, ¶¶ 9-10, 248 Wis. 2d 746, 638 N.W.2d 604. This court

looks for reasons to sustain the circuit court's discretionary decisions, ***Loomans v. Milwaukee Mut. Ins. Co.***, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968), and will uphold a discretionary decision if the circuit court considered the pertinent facts of record, applied the proper legal standards, and reached a reasonable decision, ***Loy v. Bunderson***, 107 Wis. 2d 400, 415, 320 N.W.2d 175 (1982).

¶19 K.C. argues that the trial court improperly exercised its discretion when it dismissed her contest posture as a sanction for lying and violating the no contact order. She argues that the record fails to support the trial court's conclusion that K.C. lied and did so in an attempt to manipulate an adjournment of the trial. K.C. argues that the record supports the fact that she was ill and that in any event, there is no reason that the court could not have gone ahead in her absence on April 12, finalized an evaluation plan, and adjourned the trial.

¶20 We conclude that the record supports the court's dismissal sanction decision. The court is the "ultimate arbiter" of credibility and can draw reasonable inferences from the facts. ***Plesko v. Figgie Int'l***, 190 Wis. 2d 764, 775-76, 528 N.W.2d 446 (Ct. App. 1994). We affirm the court's findings unless clearly erroneous. WIS. STAT. § 805.17(2). Here the record supports the court's factual and credibility findings: (1) that K.C. was lying to avoid trial; and (2) that she violated the no contact order on April 7.

¶21 On the designated trial date, April 11, 2016, adversary counsel requested an adjournment of the trial so that a comprehensive psychological and physical evaluation of K. C. could be done. K.C. had resisted the evaluation during the entire pendency of the CHIPS and TPR proceedings, but finally on the trial date, said she would cooperate. Adversary counsel asked for a short

adjournment to set up the evaluation so that he could provide the court with concrete details.

¶22 Very reluctantly, after a conference in chambers without K.C. present at adversary counsel's request, the court agreed to a one-day adjournment of the trial. But in open court the trial court addressed K.C. directly and warned her that if she did not cooperate, she would forfeit her contested jury trial. The court added that based on the fact she was agreeing to the evaluations now, after a year of resistance to the requests, it believed her day-of-trial agreement was manipulative behavior on her part to avoid a trial. The trial court carefully explained:

> [Court]: [I]f I adjourn this trial to allow those evaluations to occur and then you ditch them, you will not be having a trial.
>
> [Respondent mother]: I what?
>
> [Court]: If you don't follow through.
>
> [Respondent mother]: I will follow through.
>
> [Court]: If you do not follow through, you will not be having a trial in the grounds phase of this proceeding. Because at that point I will have reached a firm conclusion that what went on here today and over the last several days has been an effort on your part to have manipulated an adjournment of this trial.
>
> And having achieved that and then not following through, then that becomes what's referred to in the law as egregious and bad-faith conduct which would and will warrant me depriving you of the right to have a trial in the grounds phase of these proceedings.

¶23 The court then directed the parties to return at 8:45 the next morning, K.C. then stated: "Your honor, may I at least say this is no attempt at all to manipulate the Court. At all."

¶24 The following day, April 12, 2016, at 8:45, K.C. was not present and no comprehensive evaluation plan was presented to the court. Adversary counsel asked for an adjournment, saying: "My earlier conversation with her this morning was that she was going to admit herself into Sinai Medical Hospital this morning." The trial court noted that based on adversary counsel's representation from K.C. and the court's concern about K.C.'s health, it would adjourn the grounds-phase trial, saying: "I want to make this very clear. I'm adjourning this trial because of her medical needs. I'm adjourning this trial on the representation that she is checking herself into a hospital." But the court then repeated the statement from the day before that upon being shown evidence that K.C. failed to follow through with a comprehensive evaluation, it would strike her contest posture. The court stated:

> [Court]: Because that will confirm in my mind that this has all been in bad faith, this has all been conscious manipulation of the system, this has all been an effort, a successful effort at that point, to interfere with this Court's ability to fulfill its responsibilities to this child to timely litigate this matter. And I will strike her contest posture and I will grant default judgment and I will take prove-up testimony and I will find her unfit and we'll calendar it for a dispositional hearing.

The court then adjourned the matter for proof of compliance with the evaluation—a status hearing on May 16 and a trial on July 18.

¶25 On May 3, 2016, however, the State filed a motion to strike K.C.'s contest posture. The court held a hearing on the motion on May 16. All counsel and parties including K.C. were present in court. Two police officers testified that they had been to K.C.'s house on April 12 on two separate matters, at two different times, 11:00 a.m. and 12:45 p.m. Each testified that K.C. was at home,

appearing to have just awakened. The officers testified that K.C. did not request any assistance getting to the hospital from them.

¶26 At that same hearing, the foster mom for J.F.C. testified that on April 7, 2016, she observed K.C.'s car at her home. She saw K.C. pull up to the foster mom's house, exit her car and walk up the driveway, at which point J.F.C. said, "[T]here's my mom and that's her car." She testified that K.C. waited a few minutes at the door and then left.

¶27 Another witness at the May 16, 2016 hearing was a former babysitter for J.F.C. The babysitter testified K.C. called her and asked her to pick up J.F.C. at school "on the 12th" and bring him to K.C.'s home so that they could go out to dinner. She said she did so but when she went to the school, the teacher told her J.F.C. was not there. The babysitter testified that J.F.C.'s social worker, Kimberly Keegan, called her later that same day and that was when she learned there was a no contact order. J.F.C.'s social worker, Ms. Keegan, testified that she called the babysitter on April 12 when she learned that the sitter had gone to J.F.C.'s school to pick him up. Keegan testified that the babysitter told her that K.C. had called her the previous day, April 11, to ask her to pick up J.F.C. from school on April 12 for a visit. As to the time K.C. arrived at the hospital on April 12, the social worker testified that K.C.'s medical records at Sinai confirmed that K.C. was admitted to the emergency room at Sinai at 5:45 p.m.

¶28 K.C. herself testified at the May 12, 2016 hearing and admitted going to the foster placement home on April 7 in contravention of the no contact order, but blamed it on "a mother's love" overruling reason and wanting to enroll J.F.C. in Packer camp. As to the events of April 12, K.C. claimed to have been in "extreme pain" from various medical problems and stress, so she told her lawyer

and later called her sister in Green Bay and asked for a ride to the hospital. She admitted she did not call 911. She testified that she actually went to the hospital between 3:00 and 3:30 p.m. She denied asking the babysitter to pick up J.F.C. for a visit on April 12.

¶29 At the conclusion of the May 16, 2016 hearing, the trial court granted the State's motion to impose a default judgment against K.C. on the grounds-phase trial, giving these reasons for doing so:

> But there is no question that on April 11th and April 12th [K.C.] engaged in conduct, egregious and bad faith conduct, intended to manipulate this Court's calendar and to prevent me from conducting the grounds-phase jury trial on April 12th.
>
> She lied to her lawyer, knowing that that false information would be repeated to the Court and with the specific intention of thwarting my intention to proceed with the trial absent the presentation of a -- and the language is in the entry -- something about the neuropsychiatric evaluation. That in and of itself was sufficiently egregious to me to warrant the ultimate sanction of default judgment.
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> The conscious and willful violations and attempts to violate the non-contact order is just icing on the cake.

¶30 The court explained that: "I want to try this case. I wanted to try it on April 11th. This child, in particular, needed this case to be tried in April." "But I won't let her do what she did on that date, particularly with the ramifications it has for her son."

¶31 We conclude that the trial court's decision was reasonable. The record and reasonable inferences from K.C.'s words and conduct support the trial court's sanction of striking the default posture to the grounds-phase trial. K.C.'s behavior on April 11 and 12, 2016, was egregious. After persistent denials of the need for a comprehensive evaluation, on the day set for trial she finally agreed to

one. In granting a one-day adjournment of the trial, the trial court carefully warned her of the default consequence if she failed to follow through with the evaluation. She acknowledged the warning on the record and denied any intention of manipulating an adjournment. She clearly knew that she was having a trial the next day, unless she presented a concrete plan for a comprehensive evaluation. Then on April 12 K.C. failed to come to court, told her lawyer that she was checking herself into the hospital that morning and did not do so. In granting the State's motion to strike her contest posture as a sanction, the trial court concluded that her statement to her lawyer was a lie and was made to manipulate an adjournment. The court drew that reasonable inference from the facts. A lie to the circuit court can constitute egregious behavior. *See,* e.g., ***Jones v. Courtyard Apartments, LLP***, No. 2009AP1626, unpublished slip op. ¶9 (WI App May 11, 2010); ***State v. Yvette A.***, No. 2012AP548, unpublished slip op. ¶18 (WI App August 14, 2012) (affirming default sanction imposed for a party's pattern of checking herself into psychiatric hospitals to delay court proceedings).

¶32 The inference that her statement was a lie is supported by several things in the record. First, she did not go to the hospital that morning. Two police officers were at her home that morning at 11:00 a.m. and 12:45 p.m. and she was home and she never asked them for a ride to the hospital despite her claim of being in "extreme pain," nor did she call 911. Instead, she testified later, on May 16, that on the morning of April 12, she was in "extreme pain" but she was waiting for a ride from her sister who lived in Green Bay, which is an incredible claim for a person in "extreme pain." It was entirely reasonable for the court to conclude that she lied based on these facts. The trial court is the sole judge of the credibility of the witness. ***Plesko***, 190 Wis. 2d at 775.

¶33 Secondly, her excuse for not going to court on April 12, 2016, is further undercut by evidence that K.C. set up a dinner visit with J.F.C. for April 12—her trial date. She had been ordered to have no contact with him, but her former babysitter testified that K.C. called her the day before, to have the sitter pick up J.F.C. at school on April 12 so that they could all have dinner together on April 12. While K.C. denied it, the trial court is the sole judge of the credibility of the witnesses. And although the babysitter claimed uncertainty of which month K.C. told her to pick up J.F.C.—April 12 or May 12—she was quite certain that it was the same day Ms. Keegan called her. That date is undisputed in the record—it was April 12. Calling the sitter on April 11 to set up an unauthorized visit on April 12 is further evidence that K.C. had no intention of going to the trial on April 12. The trial court had it right. K.C. lied attempting to manipulate the system to avoid a trial.

¶34 Additionally, K.C. admitted the second basis for the trial court's sanction and egregiousness finding—the violation of the no contact order on April 7 when K.C. went to the foster mother's home. K.C. tried to minimize her blatant violation of the no contact order as "not intentional" in that she just missed her son and wanted to enroll him in Packer camp. But her excuse further demonstrates the depth of her attempts to manipulate the system by ignoring the rules.

¶35 For all of the foregoing reasons, we conclude that the circuit court did not erroneously exercise its discretion in finding K.C.'s conduct egregious and in imposing the sanction of dismissal of her contest posture.

II. The trial court's appointment of the GAL for K.C. did not violate WIS. STAT. § 48.235, which authorizes appointment of a GAL "in any appropriate matter."

¶36 Reviewing the trial court's appointment of the GAL requires the interpretation of WIS. STAT. § 48.235, which governs guardian ad litem appointments in proceedings under Chapter 48, the children's code. Interpretation of a statute is a question of law that this court reviews *de novo*. ***Harnischfeger Corp. v. Labor & Indus. Review Comm'n***, 196 Wis. 2d 650, 659, 539 N.W.2d 98 (1995). "It is our duty to construe statutes on the same subject matter in a manner that harmonizes them in order to give each full force and effect." ***State v. Jeremiah C.***, 2003 WI App 40, ¶17, 260 Wis. 2d 359, 659 N.W.2d 193.

¶37 K.C. argues that the trial court erred in appointing a GAL for K.C. because the only subsection applicable to appointing a GAL for a parent who is not a minor is WIS. STAT. § 48.235(1)(g), which requires the court to do a competency evaluation first. Because here the court did not have an evaluation first, K.C. argues that the appointment violates WIS. STAT. § 48.235. The State argues that the trial court properly appointed a GAL under WIS. STAT. § 48.235 (1)(a), and it argues that (1)(g) does not apply.

¶38 The current version of WIS. STAT. § 48.235, "Guardian ad litem," was created in 1989 but originally contained only the present (1) (a), (b), and (c). It was modified in 1993 and 1995 when additional subsections of (1) (e), (f), and (g) were added. Because this case involves only appointment of a GAL for a parent, we construe only (1)(a) and (1)(g) of the statute.

¶39 We agree with the State that the plain language of WIS. STAT. § 48.235(1)(a) is broad and discretionary, and was properly relied on by the trial court. Subsection (1)(a) states: "The court may appoint a guardian ad litem in

any appropriate matter under this chapter." (Emphasis added.) The language is broad enough to cover the appointment of a GAL for either a child or a parent and is permissive. The language "any appropriate matter" is also very broad.

¶40 Our interpretation of the statute's plain language is consistent with the legislative intent as expressed in the Judicial Council Note published with the 1990 statute, WIS. STAT. § 48.235 (1989-90), which stated the legislature's intent that courts have broad discretion to appoint a GAL under subsection (1): "Subsection (1) indicates when a guardian ad litem is to be appointed, leaving *broad discretion* to the court for such appointments." (Emphasis added.)

¶41 The Judicial Council Note clearly states that the purpose of the statute was to authorize *both* permissive and mandatory appointments: "This section is designed to clarify when a guardian ad litem *may* or *shall* be appointed under this chapter …." (Emphasis added.) We conclude it clearly supports the trial court's permissive appointment of a GAL for K.C. here.

¶42 Subsection (1)(g), on the other hand, *requires* the court to appoint a GAL for a parent who has been shown in an evaluation not to be competent. It is plainly designed for use where there is an incompetency finding and, in that situation, requires that a GAL be appointed. But here, there was no evaluation and the court explicitly said it did not question K.C.'s competence. Subsection (1)(g) would not apply.

¶43 To construe sub (1)(g) to mean that a trial court can appoint a GAL for a parent *only* where there's an evaluation would conflict with sub (1)(a). In fact, it would nullify (1)(a) by making it superfluous. "Basic rules of statutory interpretation forbid" an interpretation of a statute that "would effectively nullify"

a statute by rendering it superfluous. ***Fred Rueping Leather Co. v. Fond Du Lac***, 99 Wis. 2d 1, 6, 298 N.W.2d 227 (Ct. App. 1980).

¶44 K.C. does not challenge the court's exercise of its discretion to appoint a GAL under (1)(a)—only whether it erred under (1)(g) because it failed to do an evaluation of her. Here our *de novo* review of the statute shows that the plain language and legislative intent permitted the court to appoint under (1)(a) and it did so, properly exercising its discretion.

¶45 The trial court's letter order appointing the GAL is dated March 10, 2016, and states the appointment is under WIS. STAT. § 48.235(1). The court states it had "some concerns about conduct that I would characterize as borderline manic behavior at the last hearing." It acknowledges that no evaluation was done under (1)(g) but notes: "I do, however, sincerely believe based upon the conduct noted above and other explicit and implicit references in the case files that those issues are impacting her ability to 'assist her counsel…in protecting [her] rights.'" We note that the trial court was well aware at that point, having presided over three contentious hearings over a period of two months, of the extent of K.C.'s deteriorating ability to assist in her case. In appointing a GAL for K.C. here, the trial court properly exercised its discretion under WIS. STAT. § 48.235(1)(a) and ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (we uphold a discretionary decision where the trial court examined relevant facts, applied a proper legal standard, and reached a reasonable conclusion).

III. Adversary counsel did not fail to act as adversary counsel.

¶46 "In a proceeding involving a contested adoption or an involuntary termination of parental rights, any parent who appears before the court shall be represented by counsel …." WIS. STAT. § 48.23(2)(b). "[A]n appointed adversary

counsel 'has the same function, duties and responsibilities as he would have if he [or she] were retained by the person involved as his or her own attorney.'" ***In the Interest of T.L.***, 151 Wis. 2d 725, 736, 445 N.W.2d 729 (Ct. App. 1989). "[T]he involvement of a GAL in these situations does not diminish the adversary counsel's duty to provide his client with zealous, competent and independent representation." ***Id.*** at 737. "Adversary counsel … must be[] allowed to zealously advocate the expressed wishes of a CHIPS parent." ***Id.*** at 738.

¶47 In a largely undeveloped argument, K.C. argues that her first adversary counsel requested a GAL for her, ex parte, and without her consent. K.C. fails to support this factual premise with any cites to the record. We have searched the record and see no evidence that adversary counsel requested the appointment of the GAL. We do see the court's order appointing a GAL dated March 10, 2016, but it does not say that adversary counsel requested the appointment. We could end our analysis there, but in the interest of completeness address the other problems with K.C.'s argument.

¶48 Although K.C. explicitly states in her brief that she is not claiming that adversary counsel divulged client confidences to the judge, she contends that the only way a judge can appoint a GAL for a parent in a TPR is if an evaluation reveals that the parent is incompetent. We have rejected that argument in the preceding section. But K.C. implies that by requesting a GAL, adversary counsel was implicitly telling the court that K.C. had psychological issues.

¶49 First, we repeat that nothing in the record shows that adversary counsel asked for the GAL. Second, this TPR record, as well as the underlying CHIPS record is replete with references to K.C.'s psychological and medical issues. The trial court here was well aware of them, having observed her for

months. Indeed the trial court's March 10, 2016 letter order appointing the GAL states its observations of her led to its concerns about her "borderline manic behavior at the last hearing." And the court further stated that those concerns about her psychological and medical issues were the basis for its reasoning on the GAL appointment: "I do, however, sincerely believe based upon the conduct noted above and other explicit and implicit references in the case files that those issues are impacting her ability to 'assist her counsel…in protecting [her] rights.' [WIS. STAT. §] 48.235(1)(g)."

¶50 K.C. fails to show that when the court appointed a GAL, it did so at adversary counsel's request. Even if adversary counsel had requested a GAL, K.C. has failed to show that counsel revealed any client representation confidences and in fact admitted he did not. The record is replete with documentation of K.C.'s psychological and medical issues. K.C. has provided no support for her claim that the first adversary counsel failed in his: "duty to provide his client with zealous, competent and independent representation." ***In the Interest of T.L.***, 151 Wis. 2d at 737.

¶51 For all of the foregoing reasons, this court affirms the order.

By the Court.—Order affirmed.

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