COURT OF APPEALS
DECISION
DATED AND FILED

December 14, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP243 **Cir. Ct. No. 1992PA11A**

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

IN RE THE PATERNITY OF K.J.P.:

JEROME E. PARRISH,

PETITIONER-RESPONDENT,

V.

DIANA RONNFELDT-MENDOZA,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Richland County: EDWARD E. LEINEWEBER, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Diana Ronnfeldt-Mendoza appeals an order denying her motion to modify placement of her child K.J.P. The court also denied

Ronnfeldt-Mendoza's motion for court appointed counsel. The issues on appeal are whether indigent individuals have a right under the Wisconsin Constitution to appointed counsel in civil cases; whether the court erred by finding her in default; and whether the orders entered on her default were erroneous exercises of discretion. We affirm.

¶2 K.J.P. was born in 1990. In 2000, her father, Jerome Parrish, received primary physical placement of K.J.P. by stipulation. In August 2004, Ronnfeldt-Mendoza moved to change primary physical placement. In April 2005, Ronnfeldt-Mendoza failed to appear at a hearing in the matter, and the trial court ordered her motion dismissed for failure to prosecute unless Ronnfeldt-Mendoza showed cause for reinstatement within twenty days.

¶3 Ronnfeldt-Mendoza subsequently declared her indigency to the court and moved for appointed counsel. At a hearing in July 2005, the court deferred a decision on counsel, and again ordered Ronnfeldt-Mendoza's motion to change primary placement dismissed unless, within fifteen days, she showed cause.

¶4 In December 2005, the court convened another hearing. Ronnfeldt-Mendoza did not appear at the hearing, having informed the court by phone that her car broke down on her way to the hearing. The court ruled that Ronnfeldt-Mendoza had no constitutional right to appointed counsel, and had defaulted on her motion for counsel in any event. The court also dismissed her placement motion by default, and by her failure to prosecute the motion or to respond to the two prior orders requiring her to show cause. Because primary physical placement continued with Parrish, the court also ordered Ronnfeldt-Mendoza to pay child support. The order resulting from those determinations is the subject of this appeal.

¶5 The absence of representation for indigent persons in civil cases is a significant problem in our legal system, not limited to placement issues. For example, counsel is also unavailable as of right for indigent tenants facing eviction, indigent persons defending or prosecuting tort and contract actions, and indigent parents whose children are the subject of CHIPS proceedings. The answer to the problem does not lie within our constitution, however. The right Ronnfeldt-Mendoza asserts simply does not exist there.

¶6 Ronnfeldt-Mendoza argues that article I, section 21(2) of the Wisconsin Constitution grants indigent persons the right to counsel. WISCONSIN CONST. art. I, § 21(2) provides: "In any court of this state, any suitor may prosecute or defend his suit either in his own proper person or by an attorney of the suitor's choice." By its plain language, this section grants the right to appear in court with or without counsel; in other words it plainly grants the right of access to the courts without requirement of counsel (person may appear "[E]ither in his own proper person or by an attorney"). No other interpretation is reasonably available from the plain language, and nothing in the history of the section supports an alternative interpretation. Article I, section 21(2) addresses the right of access, not the right of representation. The latter would have some bearing only if the section required counsel.

¶7 Ronnfeldt-Mendoza also argues that the equal protection guarantees of the Wisconsin Constitution establish a right to counsel for indigent individuals in civil cases. The argument rests on the premise that either the right to counsel in civil cases is a fundamental right or that indigent individuals form a suspect class, which, in either case, would subject the trial court's ruling to strict scrutiny. *See* ***Ferdon v. Wisconsin Patients Comp. Fund***, 2005 WI 125, ¶61, 284 Wis. 2d 573, 701 N.W.2d 440. Ronnfeldt-Mendoza provides no authority for either

proposition, and we are not aware of any. As we hold in this opinion, article I, section 21(2) does not create a fundamental right to counsel in civil cases, nor does any other provision of the Wisconsin Constitution. Additionally, no case law has defined the right to counsel as a fundamental right in either the broad range of civil cases for which Ronnfeldt-Mendoza seeks the right, or in child placement cases in particular. As for the proposition that Ronnfeldt-Mendoza belongs to a suspect class, triggering strict scrutiny, the United States Supreme Court has "held repeatedly that poverty, standing alone, is not a suspect classification" under the United States Constitution. ***Harris v. McRae***, 448 U.S. 297, 323 (1980). No case holds otherwise for an equal protection claim under the Wisconsin Constitution.

¶8 The trial court properly exercised its discretion by dismissing Ronnfeldt-Mendoza's motion for changed placement. She contends that the trial court unreasonably ordered dismissal because her absence in December 2005 was not her fault, and she provided notice that she could not appear. However, her absence played little if any part in the dismissal. The trial court primarily considered her prior neglect of the matter, including her failure to pursue her motion that resulted in dismissal in April 2005, and her inaction after the court gave her a second chance in July 2005.[1] A trial court has discretion to sanction parties for non-compliance with court orders and for failure to prosecute an action. *See* ***Johnson v. Allis Chalmers Corp.***, 162 Wis. 2d 261, 273-74, 470 N.W.2d 859 (1991). The court's decision here was a reasonable exercise of that discretion.

[1] The trial court stated in its ruling, "[Ronnfeldt-Mendoza], as counsel point out, failed to take repeated opportunities to pursue her motion in this court, including her failure to make any response to the order entered July 20th after the July 15th hearing. So her motion to address custody and placement … is once again dismissed …."

¶9 Finally, Ronnfeldt-Mendoza contends that the court erroneously exercised its discretion when it "made no reasoned finding that it is in the best interests of K.J.P. to be primarily placed with Mr. Parrish rather than Ms. Mendoza …." In so arguing, Ronnfeldt-Mendoza confuses the issue. The court did not order K.J.P. placed with Parrish. K.J.P. was already primarily placed with Parrish under the parties' stipulation. The court merely dismissed Ronnfeldt-Mendoza's motion. No finding of K.J.P.'s interests was necessary.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).