COURT OF APPEALS
DECISION
DATED AND FILED

September 7, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2011AP667 **Cir. Ct. No. 2010TP52**

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

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

KENOSHA COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

TIMOTHY M.,

RESPONDENT,

AMBER D.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County: CHAD G. KERKMAN, Judge. *Dimissed*.

¶1 BROWN, C.J.[1] Amber D. appeals from an order terminating her parental rights. At the time that she wrote her brief, the father's appeal was pending. Amber claimed that *if* the father's appeal is successful and his case is remanded for further proceedings, her appeal should be likewise successful because her issue mirror's the father's argument. But the father's appeal was ultimately unsuccessful. So, there is no justiciable issue for this court to decide. Her appeal is moot.

¶2 Both Amber D. and Timothy M. had their parental rights terminated due to continuing denial of periods of placement or visitation in an order dated December 29, 2010. *See* WIS. STAT. § 48.415(4). In their separate appeals, Timothy and Amber both argued that Timothy was entitled to a new trial because his telephone participation in the first trial was inadequate under ***State v. Lavelle W.***, 2005 WI App 266, 288 Wis. 2d 504, 708 N.W.2d 698. In other words, they argued that he was denied meaningful participation in the proceedings.

¶3 We very recently affirmed the trial court's termination of Timothy's parental rights in ***Kenosha County Department of Human Services v. Amber D.***, No. 2011AP562, unpublished slip op. ¶13 (WI App Aug. 10, 2011), stating that "[a]t no point in the TPR proceedings was Timothy denied his right to meaningfully participate." That decision became the law of the case. *See* ***State v. Stuart***, 2003 WI 73, ¶23, 262 Wis. 2d 620, 664 N.W.2d 82 ("The law of the case doctrine is a 'longstanding rule that a decision on a legal issue by an appellate

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal.'").

¶4 Based on the decision from the father's case, the County argues that Amber's only claim—that she should be afforded the same relief that the father would obtain—is moot. *See* ***Appel v. Halverson***, 50 Wis. 2d 230, 233, 184 N.W.2d 99 (1971) (An appeal is moot when a decision "is no longer needed or makes no difference as to the resolution of the controversy.") We agree. We also note that Amber chose not to file a reply brief, thereby tacitly conceding the County's argument. *See* ***Mervosh v. LIRC***, 2010 WI App 36, ¶10, 324 Wis. 2d 134, 781 N.W.2d 236 (arguments not refuted are deemed admitted).

By the Court.—Appeal dismissed.

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