

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 16, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 93-3207

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

IN THE INTEREST OF MEGHAN O.,
A Child Under the Age of 18:

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GEORGE C.,

Respondent-Appellant-Cross-Respondent,

MEGHAN O.,

Cross-Appellant.

APPEAL and CROSS-APPEAL from orders of the circuit court for Dane County: SARAH B. O'BRIEN, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Vergeront, J.

PER CURIAM. George C. appeals from an order finding his daughter, Meghan O., to be a child in need of protection and services and from an order denying his motion for postdispositional relief. Meghan cross-appeals. The issues on appeal are whether the trial court lacked jurisdiction to hear the matter and whether George received effective assistance from his trial counsel. We conclude that he has waived the first issue and that he was not entitled to pursue his ineffective assistance of counsel claim. Our conclusions make it unnecessary to address the cross-appeal. We therefore affirm.

Meghan was born to George and Donna K. in California in 1988. In April 1992, Donna brought Meghan to Wisconsin. In June 1992, the State filed a CHIPS petition alleging that George had sexually assaulted Meghan in California.

George moved to dismiss, arguing that Wisconsin lacked jurisdiction. The trial court held otherwise, concluding that § 822.03(1)(b), STATS., conferred jurisdiction. That section of the Uniform Child Custody Jurisdiction Act, as adopted in Wisconsin, provides that a Wisconsin court may take jurisdiction of a child custody matter if it is in the best interest of the child because the child and at least one contestant have a significant connection with Wisconsin, and "there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships[.]"

George had counsel and subsequently pled no contest to the petition. The dispositional issues were then litigated and a dispositional order entered. The child was placed with Donna, subject to supervision, services and restrictions on George's access to Meghan. George moved for postdispositional relief, alleging ineffective assistance of counsel. The trial court denied relief and this appeal ensued.

George waived his jurisdictional challenge by pleading no contest to the petition. Section 822.03(1), STATS., establishes the grounds for personal as opposed to subject matter jurisdiction. *In the Interest of A.E.H.*, 161 Wis.2d 277, 298, 468 N.W.2d 190, 198-99 (1991). Only the latter issue survives a no contest plea. All others are waived. See *County of Racine v. Smith*, 122 Wis.2d 431, 434,

362 N.W.2d 439, 441 (Ct. App. 1984).¹ The trial court had subject matter jurisdiction by virtue of the Wisconsin Constitution. *A.E.H.*, 161 Wis.2d at 298, 468 N.W.2d at 198.²

George did not have the right to pursue an ineffective assistance of counsel claim. There must first be a constitutional or statutory right to counsel before there is a right to effective counsel. *In the Interest of M.D.(S)*, 168 Wis.2d 995, 1004-05, 485 N.W.2d 52, 55 (1992). George does not claim a constitutional right to counsel. He claims the right to counsel under § 48.23(2)(b), STATS. In CHIPS proceedings a nonpetitioning parent has the right to counsel only if the court places the child outside the home. Section 48.23(2)(b). That did not occur here.³ The right to counsel, and therefore to effective counsel, never attached. We therefore need not address whether George waived the issue when he stipulated to an extension of the original disposition order.

By the Court. – Orders affirmed. No costs to either party.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ Although *Smith* states without distinction that a plea waives all nonjurisdictional issues, earlier cases establish that only subject matter jurisdictional issues survive a plea. See *Godard v. State*, 55 Wis.2d 189, 190, 197 N.W.2d 811, 812-13 (1972).

² A trial court having jurisdiction under the uniform act may decline to exercise it. *A.E.H.*, 161 Wis.2d at 307, 468 N.W.2d at 202. Whether the trial court erroneously exercised its discretion is not raised.

³ A California paternity judgment finding that George is the child's father assigned primary physical custody to Donna K. Her home is therefore the child's home.