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DISTRICT III

March 26, 2024

To:

Hon. Beau G. Liegeois
Circuit Court Judge
Electronic Notice

Samantha Shaw Mabry Wagner
Electronic Notice

Whitney J. Davister
Juvenile Clerk
Brown County Courthouse
Electronic Notice

R. S.
Shawano County Jail
405 N. Main St.
Shawano, WI 54166

Gregory Bates
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP2373-NM	Brown County v. R. S.
2023AP2374-NM	(L. C. Nos. 2021JC201, 2021JC203)

Before Stark, P.J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

R.S. appeals from dispositional orders entered after two of his children were found to be in need of protection or services (CHIPS) pursuant to WIS. STAT. § 48.13(10). R.S.'s appellate counsel, Gregory Bates, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. R.S. filed a response to the no-merit report, and

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Attorney Bates filed a supplemental no-merit report. Pursuant to this court’s order, Attorney Bates subsequently filed a second supplemental no-merit report.

Attorney Bates contends that these appeals are moot because the CHIPS dispositional orders expired on February 17, 2024. “An issue is moot when its resolution will have no practical effect on the underlying controversy.” *Marathon County v. D.K.*, 2020 WI 8, ¶19, 390 Wis. 2d 50, 937 N.W.2d 901 (citation omitted). “Because moot issues do not affect a live controversy, [appellate courts] generally decline[] to reach them.” *Id.*

We agree with Attorney Bates that because the CHIPS dispositional orders have expired, the only relief available on appeal—namely, reversal of the orders—would have no practical effect on the underlying controversy. We further agree with Attorney Bates that there are no collateral consequences of the dispositional orders that persist, rendering these appeals not moot even though the dispositional orders have expired. *See id.*, ¶23 (acknowledging that “collateral consequences can render an otherwise moot issue not moot”).

Notably, in *State v. E.R.W.*, Nos. 2020AP1778, 2020AP1779, 2020AP1780, unpublished slip op. ¶8 (WI App June 9, 2021),² we concluded that a CHIPS dispositional order that placed a child outside of the home had a lasting collateral consequence because WIS. STAT. § 48.415(2)(am)1. states that grounds exist to terminate parental rights when “on 3 or more occasions the child has been adjudicated to be in need of protection or services ... and, in connection with each of those adjudications, has been placed outside his or her home.”

² An opinion authored by a single judge and issued on or after July 1, 2009, may be cited for its persuasive value. WIS. STAT. RULE 809.23(3)(b).

Conversely, we concluded in *E.R.W.* that this collateral consequence did not exist when a CHIPS dispositional order did not place a child outside of the home. *E.R.W.*, Nos. 2020AP1778, 2020AP1779, 2020AP1780, ¶9. The dispositional orders at issue in these no-merit appeals did not place the children outside of the home. As such, the potential collateral consequence that we identified in *E.R.W.* is not applicable here.

In *E.R.W.*, we also rejected the appellant’s argument that she was subject to a collateral consequence of expired CHIPS orders because of “lasting reputational damage” resulting from those orders. *Id.* We noted that the appellant did not “articulate why or how she might incur reputational damage, given that, as she concedes, CHIPS orders are confidential.” *Id.* Similarly, in these cases, because the CHIPS orders are confidential, we see no basis to conclude that the orders are not moot due to any reputational damage to R.S.

Attorney Bates asserts that he cannot discern any other collateral consequences of the expired dispositional orders that would render these appeals not moot. Like Attorney Bates, this court has not identified any other collateral consequences of the dispositional orders. Attorney Bates also notes that R.S. “has not complained of any particularized collateral consequences flowing from the disposition[al] order[s].” Under these circumstances, we agree with Attorney Bates that these appeals are moot.

We also agree with Attorney Bates that none of the recognized exceptions to the mootness doctrine are applicable here. A court

may overlook mootness if the issue falls within one of five exceptions: (1) the issue is of great public importance; (2) the issue involves the constitutionality of a statute; (3) the issue arises often and a decision from this court is essential; (4) the issue is

likely to recur and must be resolved to avoid uncertainty; or (5) the issue is likely of repetition and evades review.

D.K., 390 Wis. 2d 50, ¶19. The potential issues discussed in the no-merit report and R.S.’s response to the no-merit report are specific to the facts of the underlying CHIPS cases involving R.S.’s children. None of these potential issues are of great public importance or involve the constitutionality of a statute. Furthermore, there is nothing in the records to suggest that these fact-specific issues arise so often that a decision by this court is essential; that the issues must be resolved to avoid uncertainty; or that the same issues are likely to arise again, but evade review, in a future case involving R.S. See *Portage County v. J.W.K.*, 2019 WI 54, ¶30, 386 Wis. 2d 672, 927 N.W.2d 509 (explaining that the “capable of repetition, yet evading review” exception to the mootness doctrine “is limited to situations involving ‘a reasonable expectation that the *same* complaining party would be subjected to the *same action* again’” (citation omitted)). Accordingly, we agree with Attorney Bates that these appeals should be dismissed as moot.

Therefore,

IT IS ORDERED that these appeals are dismissed as moot.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of R.S. in these matters. See WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals