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**DISTRICT IV**

May 13, 2015

To:

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

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2014AP2768	In the matter of the adoption of J.D.S.: Christine B. v. Angela S. (L.C. # 2012AD31)
2014AP2769	In re the termination of parental rights to J.D.S., a person under the age of 18: Christine B. v. Angela S. (L.C. # 2012TP33)

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

Christine B. appeals an order denying relief from judgments terminating parental rights (TPR) and granting adoption. Based upon our review of the briefs and record, we conclude at conference that these appeals are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We summarily affirm. Additionally, we grant a motion by Angela S. to find

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

these appeals frivolous, and we remand to the circuit court to determine Angela's reasonable attorney fees.

In July 2012, Christine petitioned to terminate the parental rights of Christine and Markus B. to Christine and Markus's biological child, J.D.S., to facilitate the joint adoption of J.D.S. by Christine and her then partner, Angela. At the same time, Christine and Angela each petitioned to adopt J.D.S. On August 20, 2012, the court entered an order terminating Christine's parental rights. On September 7, 2012, the court entered an order terminating Markus's parental rights, nunc pro tunc to August 20, 2012. Also on August 20, 2012, the court entered orders granting the adoption of J.D.S. by Christine and Angela.

On August 27, 2014, Christine moved for relief from the TPR and adoption orders under WIS. STAT. § 806.07. Christine argued that the order terminating Markus's parental rights was void because the circuit court lacked personal jurisdiction over Markus due to insufficient service of process. Christine argued that the adoptions were defective because Markus's parental rights were not validly terminated.<sup>2</sup> Christine also asserted that a conflict of interest was demonstrated by the fact that the attorney who represented Christine and Angela during the adoption proceedings had an ownership interest in the adoption agency that served as J.D.S.'s guardian, and contended that J.D.S. was therefore denied due process during the adoption proceedings. Christine sought relief from the order terminating Markus's parental rights and granting adoptions under § 806.07(1)(d), which allows a court to grant relief from void

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<sup>2</sup> In a supporting brief, Christine argued that her parental rights were restored following the void adoption.

judgments. She also sought relief from the adoption orders under § 806.07(1)(h), in the interests of justice, and under § 806.07(2), for fraud on the court.

The circuit court denied Christine's motion for relief under WIS. STAT. § 806.07. The court explained that § 806.07(3) prohibited Christine from seeking relief from the order for adoption, and that WIS. STAT. § 48.46(2) required that any motion for relief from the TPR orders be filed within thirty days, and that Christine's motion was not timely filed.

Christine concedes that WIS. STAT. § 806.07(3) prohibits an adoptive parent from using § 806.07 to seek relief from an order granting adoption and that WIS. STAT. § 48.46(2) requires a parent who consented to termination of her parental rights to seek relief from the TPR order within thirty days. Christine contends, however, that these statutes do not apply here because Christine is seeking relief on behalf of J.D.S., rather than on her own behalf as an adoptive parent or a parent whose rights were terminated. Christine argues that the statutes apply only to parents, not to children asserting their own rights. Christine argues that all of the claims in this appeal belong to J.D.S., and that the statutes do not bar J.D.S. from seeking relief.

Christine's arguments fail at the outset. The record plainly establishes that Christine retained counsel to represent her own interests and that Christine sought relief under WIS. STAT. § 806.07 in her own capacity. As Christine herself points out, Christine has interests in these cases that are distinct from J.D.S.'s interests. Christine could have moved the circuit court to reappoint a guardian ad litem (GAL) to seek relief from the orders on J.D.S.'s behalf, but did not

do so.<sup>3</sup> Christine does not cite to any authority that would allow Christine to assert J.D.S.'s claims of constitutional violations on J.D.S.'s behalf. Accordingly, we conclude that Christine's motion was barred by statute and we do not reach the merits of her arguments.

Finally, Angela has moved for costs and attorney fees for frivolous appeals under WIS. STAT. RULE 809.25(3). We agree that these appeals are frivolous.<sup>4</sup> Christine's motion for relief under WIS. STAT. § 806.07 was clearly contrary to statute, and Christine has not presented any argument founded in the law or a good faith extension of the law to avoid those statutes. *See* RULE 809.25(3)(c)2.

The clerk of this court may make the standard assessment of Angela's claimed costs and fees on appeal. However, because we are not in a position to make factual findings, we must remand to the circuit court for a determination as to the amount and reasonableness of Angela's attorney fees on appeal and issue an additional judgment in Angela's favor.

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<sup>3</sup> Christine argues that she must assert J.D.S.'s constitutional rights for him because, under WIS. STAT. § 48.235(1)(c) and (7), the appointment of J.D.S.'s GAL for TPR and adoption proceedings terminated upon the court's final TPR and adoption orders. However, under § 48.235(7), any party may move the court to reappoint a GAL at any time, including after entry of the final order. Christine does not explain why she did not do so here.

<sup>4</sup> Christine opposes the motion to find the appeals frivolous on grounds that an appeal from an order terminating parental rights under WIS. STAT. RULE 809.107 is not subject to a motion to find an appeal frivolous under WIS. STAT. RULE 809.25(3)(a). She also argues that Angela has not shown that the entire appeals are frivolous, and contends that these appeals present the non-frivolous issue of how a child may assert constitutional violations in TPR and adoption proceedings. We reject these contentions. First, the TPR appeal is not an appeal from an order terminating parental rights under RULE 809.107; it is an appeal from an order denying relief from judgment under WIS. STAT. § 806.07. Additionally, we discern no issue of first impression as to how children's interests are represented in TPR and adoption proceedings, as the legislature has established a procedure for children's interests to be represented by a GAL as to such issues. *See* WIS. STAT. § 48.235.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the motion to find these appeals frivolous is granted and the cases are remanded to the circuit court to determine Angela's reasonable attorney fees.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*