



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

December 6, 2018

To:

Hon. Steven G. Bauer
Circuit Court Judge
210 W. Center St.
Juneau, WI 53039

Lynn M. Hron
Clerk of Circuit Court
Dodge County Justice Facility
210 W. Center St.
Juneau, WI 53039

Angela Ramirez
6721 Century Ave.
Middleton, WI 53562

Jason R. Royal
927 Prospect Ave.
Beaver Dam, WI 53916

Maryann S. Schacht
Schacht & Schacht
222 S. Spring St.
Beaver Dam, WI 53916-2342

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

2017AP2057

In re the Petition for Third Party Visitation Rights in State v. Jason
Royal: Angela Ramirez v. Jason R. Royal (L.C. # 2016FA133)

Before Lundsten, P.J., Sherman and Fitzpatrick, JJ.

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).

Angela Ramirez, pro se appellant, appeals a circuit court order dismissing her petition for third party visitation of a minor child, D.R. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We summarily reverse and remand for further proceedings.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

The respondent, Jason Royal, is the father of D.R. and has primary physical placement of D.R. Ramirez, who is the aunt of D.R.'s mother, filed a petition on July 25, 2017, requesting third party visitation of D.R. In a decision entered on July 27, 2017, the circuit court dismissed the petition without a hearing on the basis that Ramirez had failed to establish that she had a parent-like relationship with D.R. Ramirez filed a second petition for third party visitation of D.R. on September 26, 2017, along with a supporting memorandum. The circuit court entered an order on October 2, 2017, dismissing Ramirez's second petition without a hearing. Ramirez now appeals the October 2, 2017 order.

We begin our analysis by noting that the respondent has failed to file a brief, and that this failure alone could be a basis for reversal of the circuit court's decision. The "[f]ailure to file a respondent's brief tacitly concedes that the trial court erred," *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993), and allows this court to assume that the respondent concedes the issues raised by the appellant, *see Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). Summary reversal is therefore a potential consequence of a respondent's failure to file a brief. *See Blackdeer*, 176 Wis. 2d at 259-60. However, in this case, we conclude that alternate grounds exist for reversal.

WISCONSIN STAT. § 767.43(1) states that, upon petition by a "person who has maintained a relationship similar to a parent-child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child." Ramirez argues that the circuit court erred by failing to grant a hearing on her petition.

We conclude that Ramirez’s second petition, filed on September 26, 2017, when considered along with its supporting memorandum, contains sufficient allegations to entitle Ramirez to a hearing under WIS. STAT. § 767.43(1). The memorandum alleges that Ramirez “helped raise” D.R. and was one of the only people involved with D.R. on a “daily basis.” Ramirez states in the memorandum that she provided food, shelter, and clothing for D.R. when the child was in her care. Ramirez further alleges in the memorandum that she went to doctor’s appointments with D.R., transported D.R. for visitation with Royal, coordinated D.R.’s care, had D.R. for overnights on multiple nights, and provided formula, food, diapers, and bathing products to Royal for the care of D.R. on numerous occasions. We do not determine the truth of the facts alleged in the petition. See *Lange v. LIRC*, 215 Wis. 2d 561, 572, 573 N.W.2d 856 (Ct. App. 1997) (court of appeals is an error-correcting court and does not engage in fact-finding). Neither do we reach a decision on the merits of Ramirez’s visitation petition. We do conclude, however, that the allegations in Ramirez’s second petition are sufficient to entitle her to a hearing under § 767.43(1).

IT IS ORDERED that the order is summarily reversed and the matter is remanded to the circuit court for further proceedings. See WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals