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**DISTRICT III**

April 9, 2019

To:

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

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2018AP299	Brown County v. C. B. (L. C. Nos. 2017JC22, 2017JC23,
2018AP300	2017JC24, 2017JC25 )
2018AP301	
2018AP302	

Before Stark, P.J.<sup>1</sup>

**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).**

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<sup>1</sup> These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

C.B. appeals from dispositional orders entered in CHIPS<sup>2</sup> proceedings involving her four children, P.B., K.B., E.B., and C.B. Based upon our review of the briefs and records, we conclude these appeals are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. For the reasons explained below, we dismiss the appeals as moot.

On February 9, 2017, Brown County filed CHIPS petitions regarding each of C.B.’s children, alleging they were in need of protection or services under WIS. STAT. § 48.13(10).<sup>3</sup> The petitions also alleged that the children were subject to the provisions of the Indian Child Welfare Act. Following a hearing on February 10, 2017, a court commissioner entered orders temporarily placing C.B.’s children outside her home, with a relative. C.B. subsequently entered denials to the CHIPS petitions and requested a jury trial. The petitions were consolidated for purposes of trial and appeal.

A two-day jury trial took place on May 11 and 12, 2017. Because the children were subject to the Indian Child Welfare Act, the County was required to prove, among other things, that “active efforts” had been made “to provide remedial services and rehabilitation programs designed to prevent the breakup of [the children’s] family and that those efforts [had] proved unsuccessful.” *See* WIS. STAT. § 48.028(4)(d)2. On the second day of trial, the circuit court granted a directed verdict in favor of the County. As relevant to these appeals, the court determined the only reasonable conclusion that could be drawn from the “uncontradicted”

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<sup>2</sup> “CHIPS is the commonly used acronym to denote the phrase ‘child in need of protection or services’ as used in the Wisconsin Children’s Code.” *Marinette Cty. v. Tammy C.*, 219 Wis. 2d 206, 208 n.1, 579 N.W.2d 635 (1998).

<sup>3</sup> WISCONSIN STAT. § 48.13(10) applies to a child “[w]hose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.”

evidence was that the County had satisfied the “active efforts” requirement in § 48.028(4)(d)2. The court therefore entered dispositional orders finding the children in need of protection or services, pursuant to WIS. STAT. § 48.13(10). The orders continued the children’s placement with a relative and set forth various conditions for their return to C.B.’s home.

On appeal, C.B. argues the circuit court erred by granting a directed verdict in favor of the County. She contends the record demonstrates there was “sufficient evidence to sustain a defense on the issue of ‘active efforts,’” and the court therefore should have submitted the case to the jury.<sup>4</sup>

In response, the County argues we should dismiss these appeals as moot. The County notes that on December 13, 2017, the circuit court entered orders returning all four children to C.B.’s home. The County further notes that the “active efforts” finding required by WIS. STAT. § 48.028(4)(d)2. is only required in a case in which an Indian child is placed outside of his or her home. As a result, the County argues a decision in these appeals would serve no purpose because even if we granted C.B.’s request for a new trial, “there would be no issue for the circuit court to decide as the finding of whether active efforts were made by the County is no longer necessary with the children’s current in home placement.”

We agree with the County’s analysis. An issue is moot when its resolution will have no practical effect on the underlying controversy. *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. Here, in light of the children’s return to C.B.’s home, our

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<sup>4</sup> C.B. does not contend that the circuit court erred by granting a directed verdict with respect to any of the other elements the County was required to prove. She argues only that the court erred by granting a directed verdict as to the “active efforts” requirement set forth in WIS. STAT. § 48.028(4)(d)2.

resolution of the issue raised by these appeals would have no practical effect on the underlying proceedings. The appeals are therefore moot, as the issue they raise “is one which circumstances have rendered purely academic.” *See id.*

C.B. argues these appeals are not moot because the circuit court’s December 13, 2017 orders returning the children to her home provided that all provisions of the dispositional orders that were not affected by the December 13, 2017 orders would remain “in full force and effect.” However, as noted above, the “active efforts” finding was required only because the County sought to place the children outside C.B.’s home. C.B. does not develop any argument that proof of “active efforts” would have been required for any other provisions of the dispositional orders. In addition, C.B. does not challenge the County’s assertion that the December 13, 2017 orders changed the expiration date of the dispositional orders to December 13, 2018. That date has now passed. Although C.B. notes a dispositional order “can be extended pursuant to WIS. STAT. § 48.365,” she has not attempted to supplement the records in these appeals with any documents indicating that the dispositional orders were, in fact, extended beyond December 13, 2018.

C.B. also argues that, even if these appeals are moot, we should nevertheless address their merits under two exceptions to the mootness rule. First, C.B. argues these appeals present an issue of great public importance—namely, “the standards that counties must meet before removing children from their homes.” *See Olson*, 233 Wis. 2d 685, ¶3. We disagree. The legal standard in this case is undisputed. The County concedes that in a case in which the Indian Child Welfare Act applies, in order to place a child outside of his or her home the County is required to prove, by clear and convincing evidence, that active efforts were made to provide remedial serves and rehabilitation programs to prevent the breakup of the child’s family, but those efforts proved unsuccessful. *See* WIS. STAT. § 48.028(4)(d)2. The issue presented by these appeals is

whether the evidence presented at trial was sufficient for the circuit court to direct a verdict in favor of the County on the “active efforts” requirement. A ruling on that issue would be specific to the evidence presented in the underlying CHIPS proceedings, and its applicability to other CHIPS cases would be limited.

Second, C.B. argues we should address the merits of these appeals because they present an issue that is likely to arise again but may evade review. *See Olson*, 233 Wis. 2d 685, ¶3. C.B. notes it is “not infrequent that a parent in a CHIPS case will raise the defense that the County has not made sufficient efforts to prevent the breakup of their family,” but “if the County can return the children to their parent after a period of months, an appeal will often not be complete.” Be that as it may, as noted above, the claimed error in this case is specific to the sufficiency of the evidence presented at C.B.’s trial. Because of the fact-specific nature of the issue, a decision on the merits would be of little assistance in future cases.

In summary, we conclude the issue raised in these appeals is moot and does not fall within either of C.B.’s claimed exceptions to the mootness rule. We therefore agree with the County that these appeals should be dismissed.

Upon the foregoing,

IT IS ORDERED that these appeals are dismissed.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*