

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 5, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2007AP526

Cir. Ct. No. 2006TP114

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO ANNA M.K.,
A PERSON UNDER THE AGE OF 18:**

RICHARD D.K.,

PETITIONER-APPELLANT,

v.

NANCY N.A.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Waupaca County:
JOHN P. HOFFMANN, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.¹ Richard D.K. appeals *pro se* from the circuit court's order dismissing his petition to voluntarily terminate his parental rights to Anna M.K. Richard argues that the circuit court erred in dismissing his petition. We agree with the circuit court that it lacked jurisdiction to proceed on Richard's petition and, therefore, properly dismissed it. We affirm the circuit court's order.

Background

¶2 On November 28, 2006, Richard petitioned to voluntarily terminate his parental rights to his ten-year-old daughter, Anna. The court held a series of non-evidentiary hearings on Richard's petition that culminated with dismissal of the petition.

¶3 The additional facts that follow are derived from Richard's allegations in his petition and from his factual assertions to the circuit court during one or more of the hearings. We will assume for purposes of this appeal that all of Richard's factual allegations and assertions are true.

¶4 Anna and her mother currently reside in Pennsylvania. They have always resided in Pennsylvania, except for approximately two and one-half years when they lived in California. Neither Anna nor her mother has ever been to Wisconsin.

¶5 Richard is not married to Anna's mother, but his paternity of Anna was established in Pennsylvania. Richard lived his entire life in Pennsylvania until he moved to Wisconsin in May 2006. He is under a court-ordered child

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

support obligation to Anna. For reasons that are disputed, he has had limited contact with Anna, and he has never initiated a court proceeding seeking visitation rights or physical placement rights.

¶6 The circuit court dismissed Richard's petition, concluding that it lacked jurisdiction. The court also determined that his petition should be dismissed based on public policy grounds.

Discussion

¶7 Richard's petition to voluntarily terminate his parental rights is subject to WIS. STAT. ch. 822, Wisconsin's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *See, e.g., P.C. v. C.C. (In Interest of A.E.H.)*, 161 Wis. 2d 277, 300-02, 468 N.W.2d 190 (1991) (termination of parental rights proceedings are child custody proceedings under the Uniform Child Custody Jurisdiction Act (UCCJA)); *see also* WIS. STAT. § 822.02(3) and (4).² The determination of jurisdiction under the UCCJEA presents a question of law that we review independent of the circuit court. *N.J.W. v. State (In Interest of J.T.)*, 168 Wis. 2d 646, 652, 485 N.W.2d 70 (Ct. App. 1992).

¶8 For the reasons explained below, we conclude that the circuit court lacked jurisdiction to proceed on Richard's petition. Because this conclusion is sufficient to require dismissal of Richard's petition and affirm the circuit court, we

² Until recently, Wisconsin followed the previous version of the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Child Custody Jurisdiction Act. Richard's petition falls under the UCCJEA, but the differences between the UCCJA and the UCCJEA are not important for our purposes here.

do not reach the issue of whether his petition should also be barred on public policy grounds.

¶19 The pertinent UCCJEA provisions are WIS. STAT. §§ 822.21 and 822.23, which set forth minimum requirements for jurisdiction. Richard seems to concede that the UCCJEA applies, but he does not address the requirements set forth in § 822.21 or § 822.23 (or the counterpart requirements in the UCCJA).³

³ We can readily conclude that the facts of Richard's case, as alleged and asserted by Richard, do not satisfy the jurisdictional requirements. WISCONSIN STAT. § 822.21 provides as follows:

Initial child custody jurisdiction. (1) Except as provided in s. 822.24, a court of this state has jurisdiction to make an initial determination only if any of the following applies:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(b) A court of another state does not have jurisdiction under par. (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under s. 822.27 or 822.28, and all of the following apply:

1. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

2. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(c) All courts having jurisdiction under par. (a) or (b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under s. 822.27 or 822.28.

(d) No court of any other state would have jurisdiction under the criteria specified in par. (a), (b), or (c).

(continued)

Instead, his argument appears to be that his case falls under the “status exception” to the “minimum contacts” requirement as set forth in *Tammie J.C. v. Robert T.R. (In re Termination of Parental Rights to Thomas J.R.)*, 2003 WI 61, 262 Wis. 2d 217, 663 N.W.2d 734.

¶10 Nothing about *Tammie J.C.*, however, removes the minimum requirements in WIS. STAT. §§ 822.21 and 822.23. The court in *Tammie J.C.* was concerned with whether, consistent with due process, Wisconsin courts could obtain personal jurisdiction over an *out-of-state* parent to involuntarily terminate his parental rights in a Wisconsin proceeding. See *Tammie J.C.*, 262 Wis. 2d 217, ¶¶1-2, 7, 13, 58, 64, 67. Put in more basic terms, the court in *Tammie J.C.* was concerned only with whether it was fair to subject an unwilling out-of-state parent to a Wisconsin lawsuit to terminate that parent’s parental rights. Richard is a Wisconsin resident who has willingly brought a lawsuit in Wisconsin, seeking to invoke the power of Wisconsin courts to voluntarily terminate his parental rights. There is no dispute that Wisconsin courts have the power to subject Richard to his own lawsuit in his own state, and *Tammie J.C.* is simply not relevant to the issue presented here. The issue here is whether the facts of this case satisfy UCCJEA’s

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

We are uncertain whether the termination of Richard’s parental rights would be an initial child custody determination under § 822.21 or a modified child custody determination under WIS. STAT. § 822.23. For our purposes, that is unimportant because modifying a child custody determination under § 822.23 generally requires compliance with § 822.21(1)(a) or (b), neither of which is satisfied here. There is an exception to §§ 822.21 and 822.23 for temporary emergency jurisdiction under WIS. STAT. § 822.24, but that exception also does not apply.

minimum jurisdictional requirements, not whether Wisconsin courts lack personal jurisdiction over Richard.⁴

¶11 Richard makes other arguments raising a variety of issues separate from the question of jurisdiction under the UCCJEA. He argues that (1) he met the criteria for termination of his parental rights under WIS. STAT. § 48.415, (2) the circuit court should not have allowed Anna's mother to participate in the proceedings and contest his petition, and (3) Anna's guardian *ad litem* misstated the legislative purpose underlying certain statutes. Although none of these arguments appears on its face to be a winning argument, our conclusion that the circuit court lacked jurisdiction under the UCCJEA makes it unnecessary to address the arguments further.

¶12 Richard also argues that the circuit court violated his due process rights by failing to follow proper procedures under WIS. STAT. ch. 48. He fails to specify, however, any particular procedures the circuit court failed to follow or how any such failure violated his due process rights. Thus, we need not address his due process argument. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court may decline to address issues on appeal that are inadequately briefed). In any event, we see no due process violation. Richard had ample opportunity to allege or assert the facts relevant to jurisdiction under the UCCJEA. Even assuming that all of the facts he alleges or otherwise asserts are true, jurisdiction in Wisconsin is simply not proper.

⁴ We can understand Richard's apparent reliance on *Tammie J.C. v. Robert T.R. (In re Termination of Parental Rights to Thomas J.R.)*, 2003 WI 61, 262 Wis. 2d 217, 663 N.W.2d 734, insofar as the circuit court directed the parties to review that case. Still, for the reasons we have explained, *Tammie J.C.* is not relevant.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

