



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 I/II

September 26, 2018

To:

Hon. M. Joseph Donald
Circuit Court Judge
Felony Division
821 W. State St., Rm. 506
Milwaukee, WI 53233

Josh Steib
Juvenile Clerk
Children's Court Center
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226

Leonard D. Kachinsky
Kachinsky Law Offices
832 Neff Ct.
Neenah, WI 54956-0310

Jenni Spies-Karas
Assistant District Attorney
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226-3532

Anne M. Abell
Legal Aid Society of Milw, Inc.
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226-3532

Division of Milwaukee Child Protective
Services
Dr. Robin Joseph
635 North 26th Street
Milwaukee, WI 53233-1803

D.G.

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

2018AP1529-NM

In re the termination of parental rights to L.H., a person under the
age of 18: State of Wisconsin v. D.G. (L.C. #2016TP130)

Before Gundrum, 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).**

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

D.G. appeals from a circuit court order terminating her parental rights to L.H. D.G.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m). D.G. received a copy of the report, but she has not filed a response to it. Upon consideration of the report and an independent review of the record, we summarily affirm the order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The State of Wisconsin petitioned to terminate D.G.'s parental rights on the grounds that L.H. was in continuing need of protection or services and D.G. had failed to assume parental responsibility for L.H. WIS. STAT. § 48.415(2), (6). D.G. pled no contest to the failure to assume parental responsibility ground. After a dispositional hearing, the circuit court terminated D.G.'s parental rights.

The no-merit report addresses: (1) whether there were any procedural defects in the proceeding and whether statutory time limits were observed, (2) whether the requirements of WIS. STAT. § 48.422(7) were met when D.G. pled no contest to the failure to assume parental responsibility ground, and (3) whether the circuit court properly exercised its discretion in determining that it was in the child's best interest to terminate D.G.'s parental rights. The no-merit report contains a correct statement of the law governing these issues and properly applies the law to the facts. We agree with appellate counsel that these issues would not have arguable merit for appeal.

We have considered whether there would be any arguable merit to a claim that there were procedural defects in the proceeding or that the circuit court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Continuances are permitted "upon a showing of

good cause in open court ... and only for so long as is necessary[.]” WIS. STAT. § 48.315(2). The circuit court found good cause to toll the ch. 48 time limits on several occasions, and D.G. did not object. We see no procedural defects in the proceeding.

Before taking a parent’s no contest plea to the ground for terminating parental rights, the circuit court must conduct a colloquy with the parent in accordance with WIS. STAT. § 48.422(7). *Oneida Cty. DSS v. Therese S.*, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The court must determine that the parent’s admission is made voluntarily and that the parent understands “the nature of the acts alleged in the petition and the potential dispositions,” along with the constitutional rights waived by the parent’s decision not to contest the grounds for termination. *Id.* (citations omitted). The court must also “[e]stablish whether any promises or threats were made” and that the admission has a factual basis. *Id.* (citation omitted). The parent must understand that the stipulation to grounds “will result in a finding of parental unfitness.” *Id.*, ¶10. The court must inform the parent that at the second stage of the termination proceeding, the court will hear evidence that will result in either the termination of the parent’s rights or dismissal of the termination petition. *Id.*, ¶16. “[T]he court must inform the parent that ‘[t]he best interests of the child shall be the prevailing factor considered by the court in determining the disposition....’” *Id.* (citation omitted).

The record establishes that the circuit court conducted a proper colloquy with D.G. before accepting her no contest plea to the ground for termination. The circuit court advised D.G. of her rights in the proceeding, the rights waived by her plea to the ground for terminating her parental rights, and the possible dispositions. The court also confirmed that no threats or promises had been made and that D.G. understood the proceedings. There was a factual basis for D.G.’s no

contest plea. We conclude that D.G.'s no contest plea was knowing and voluntary. We agree with counsel that an appeal on this basis would lack arguable merit.

The decision to terminate parental rights is within the circuit court's discretion. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. The circuit court must consider the statutory factors to determine if termination is in the child's best interests. WIS. STAT. § 48.426(3). The record in this case indicates that the court applied the best interests standard and considered the appropriate factors: the likelihood of the child's adoption after termination, the child's age and health, the child's substantial family relationships and whether it would be harmful to sever those relationships, the duration of the parent-child separation, and future stability for the child as a result of the termination. The court's findings in support of termination were not clearly erroneous. WIS. STAT. § 805.17(2). The circuit court properly exercised its discretion when it determined that the best interests of the child required terminating D.G.'s parental rights. We agree with counsel that an appeal on this basis would lack arguable merit.

Our independent review of the record did not disclose any issues with arguable merit for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we affirm the order terminating D.G.'s parental rights and relieve Attorney Leonard Kachinsky of further representation of D.G. in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Leonard Kachinsky is relieved of further representation of D.G. in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals