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DISTRICT II

August 21, 2013

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

2013AP1516-NM In re the termination of parental rights to Alexandria J. G.; a person under the age of 18: Amy W. v. David G. (L.C. #2011TP52)

Before Brown, C.J.[1]

David G. appeals from an order involuntarily terminating his parental rights to his non-marital daughter, Alexandria J. G. On appeal, David's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32 and ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). David received a copy of the report and was advised of his right to file a response but has not done so. Upon

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

consideration of the no-merit report and an independent review of the record, we conclude there are no issues that would have arguable merit for appeal. We summarily affirm the order terminating David's parental rights and relieve Attorney Susan E. Alesia of further representation of David in this matter.

Alexandria was born in June 2003 to Amy W. and David during the course of their on-again, off-again nine-year relationship. David admits he has had no contact with or provided any type of support for Alexandria since 2006. Amy petitioned to terminate David's parental rights (TPR petition) in October 2011 on grounds of abandonment and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(1), (6). David waived his right to a jury trial and admitted the abandonment ground. The circuit court immediately proceeded to the dispositional phase, found a TPR to be in Alexandria's best interests, and terminated David's parental rights.

David timely filed a notice of intent to appeal from the termination order. Appointed counsel did not act on it and David's deadline for pursuing an appeal lapsed. *See* WIS. STAT. RULE 809.107(5)(a). New counsel was appointed. When this court denied David's Motion for Leave to Appoint Successor Counsel and for Extension of Deadline, counsel filed a petition for a writ of habeas corpus. This court granted the petition, reinstating the deadlines for pursuing an appeal. *See* ***Amy W. v. David G.***, 2013 WI App 83, ¶15, ___ Wis. 2d ___, ___ N.W.2d ___. This no-merit appeal followed.

The no-merit report first addresses whether the requirements of WIS. STAT. § 48.422(7) were met when David entered a no-contest plea to the abandonment ground after a colloquy with the circuit court. David did not contest the fact-finding hearing in the TPR proceeding. Accordingly, the circuit court had to take testimony in support of the allegations in the petition,

see § 48.422(3), and conduct a colloquy with David in accordance with § 48.422(7) before it could accept his admission to the termination petition, *see* ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. Section 48.422(7) directs the court to determine that the parent's plea is made voluntarily and understandingly, that the parent understands both the nature of the acts alleged in the petition and the potential dispositions, and whether any threats or promises were made. *See also* ***Therese S.***, 314 Wis. 2d 493, ¶5. It also requires the court to establish that the admission had a factual basis. Sec. 48.422(7); *see also* ***Therese S.***, 314 Wis. 2d 493, ¶5. For a plea to be voluntarily and understandingly entered, the parent "must understand that acceptance of [his or her] plea will result in a finding of parental unfitness." ***Id.***, ¶10. Further, the court must inform the parent that the second stage of the process would entail hearing evidence that will result either in the termination of parental rights or a dismissal of the termination petition and that the prevailing factor in determining the disposition would be the child's best interests. *See* ***id.***, ¶16.

The record establishes that the circuit court conducted a proper colloquy with David before accepting his no-contest plea to the abandonment ground and that there was a factual basis for the plea. Having filed no response, David has not made a prima facie showing that the circuit court violated its mandatory duties nor does he allege that he did not know or understand the information that he believes should have been provided at the WIS. STAT. § 48.422 hearing. *See* ***Waukesha County v. Steven H.***, 2000 WI 28, ¶42, 233 Wis. 2d 344, 607 N.W.2d 607. We conclude that David's plea was knowing and voluntary, and we agree with counsel's conclusion that an appeal on this basis would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion in determining that it was in Alexandria's best interests to terminate David's parental

rights. Again we agree that the no-merit report contains a correct statement of the law, properly applies the law to the facts, and that this issue would not have arguable merit for appeal.

The decision to terminate parental rights is within the circuit court's discretion. ***B.L.J. v. Polk Cnty. DSS***, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991). The circuit court is required to consider the statutory factors to determine if termination is in the child's best interests. WIS. STAT. § 48.426(3). The record here indicates that the circuit court considered the appropriate factors. It observed that Amy's husband was eager to adopt Alexandria; that Alexandria is a "healthy, vibrant nine-year-old"; that she has had no contact with David for six or seven years and has no memory of him or his family, such that severing those relationships would not be harmful to her; and that a TPR would be beneficial for Alexandria's future stability. The court's findings in support of termination were not clearly erroneous, WIS. STAT. § 805.17(2), and the factors all weighed in favor of a determination that it was in Alexandria's best interests to terminate David's parental rights. We agree that an appellate challenge to the court's exercise of discretion in terminating David's parental rights would lack arguable merit.

We also have considered whether there would be any arguable merit to a claim that the court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. *See* ***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 record shows that all mandatory time limits either were complied with or properly extended for good cause and without objection. *See* § 48.315(1)(b), (2), (3). No issue of arguable merit could arise from this point. There would be no arguable merit to a challenge to the circuit court's competency to proceed based on a failure to comply with statutory time limits.

Our independent review of the record does not disclose any other 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 David's parental rights and relieve Attorney Susan E. Alesia of further representation of David 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 Susan E. Alesia is relieved of further representation of David G. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals