



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

September 12, 2013

To:

Hon. John J. DiMotto
Circuit Court Judge
Children's Court Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226

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

Kaitlin A. Lamb
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202

Dennis Schertz
Schertz Law Office
P.O. Box 133
Hudson, WI 54016

Sarah A. Sweeney
Vel R. Phillips Childrens Court Center
Milwaukee County DA's Office
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226-3532

Arlene Happach
Bureau of Milwaukee Child Welfare
1555 N. River Center Dr., #220
Milwaukee, WI 53212

Carol C. Petersen
Legal Aid Society
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226

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

2013AP1271-NM

In re the termination of parental rights to Dreshaun B., a person under the age of 18: State of Wisconsin v. Shannon T., Undray B. (L.C. #2011TP145)

Before Brennan, J.¹

Shannon T. appeals the order terminating her parental rights to her son, Dreshaun B.

Shannon T.'s appellate lawyer, Kaitlin A. Lamb, filed a no-merit report pursuant to *Anders v.*

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.

California, 386 U.S. 738 (1967), *Brown Cnty. v. Edward C.T.*, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (per curiam), and WIS. STAT. RULES 809.107(5m) and 809.32. Shannon T. was informed of her right to respond, but she did not respond. After considering the no-merit report and conducting an independent review of the record, we conclude that there would be no arguable merit to further appellate proceedings. We summarily affirm the order terminating Shannon T.'s parental rights.

Dreshaun B. was born June 28, 2007. He was found to be in need of protection or services on July 1, 2009, and placed outside Shannon T.'s home.² Dreshaun B. has remained in foster care since that time, except for the period between February 1, 2010, and July 13, 2010, when he lived with Shannon T. at Meta House, a treatment and half-way house. Dreshaun B. has also remained in need of protection or services since he was initially placed outside of his mother's home.

On May 3, 2011, the State filed a petition to terminate Shannon T.'s parental rights, alleging that Dreshaun B. continued to be in need of protection or services. *See* WIS. STAT. § 48.415(2). Shannon T. stipulated that there were grounds for termination, but contested disposition. Three different evidentiary hearings were held over a period of fourteen months. After considering all of the evidence, the circuit court decided that terminating Shannon T.'s parental rights was in Dreshaun B.'s best interest.

² Dreshaun B.'s father, Undray B., was not living with Dreshaun B. and Shannon T. at the time. His parental rights were also terminated. He filed a separate appeal, and we affirmed the order terminating his parental rights on September 9, 2013.

The no-merit report first addresses whether the State adhered to all of the mandatory time limits required by Chapter 48. After a termination of parental rights petition is filed, the circuit court has thirty days to conduct an initial hearing and determine whether any party wishes to contest the petition. WIS. STAT. § 48.422(1). If a party contests the petition, the circuit court must set a date for a fact-finding hearing, which must begin within forty-five days of the initial hearing. § 48.422(2). If grounds for termination are established, the circuit court may delay the dispositional hearing until “no later than 45 days after the fact-finding hearing.” WIS. STAT. § 48.424(4). When the time limits cannot be met, continuances may be granted “only upon a showing of good cause in open court ... and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.” WIS. STAT. § 48.315(2). Failure to object to a continuance, however, “waives any challenge to the court’s competency to act during the period of delay or continuance.” *See* § 48.315(3). The record establishes that all of the mandatory time limits were either complied with or properly extended in this case. There would be no arguable merit to a claim that the State failed to adhere to the time limits required by Chapter 48.

The no-merit next addresses whether the termination petition contained everything it was supposed to contain under WIS. STAT. § 48.42(1). That statute requires that a termination petition contain the name, birthdate, and address of the child, the names and addresses of the child’s parents, guardian, and legal custodian, a statement of the grounds for involuntary termination and a statement of whether the child might be subject to the federal Indian Child Welfare Act. Our review of the petition satisfies us that the petition met the requirements of the statute. There would be no arguable merit to a claim that the termination petition failed to meet the criteria of § 48.42(1).

The no-merit report next addresses whether Shannon T. knowingly, intelligently, and voluntarily entered a no-contest plea that grounds existed to terminate her parental rights because Dreshaun B. continued to be in need of protection and services. Before accepting a no-contest plea to support a termination petition, the circuit court must explain things to the parent under WIS. STAT. § 48.422(7); see *Oneida Cnty. DSS v. Therese S.*, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The circuit court must: (1) address the parent and determine that the admission is made voluntarily, with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) establish whether any promises or threats were made to secure the plea; (3) establish whether a proposed adoptive resource for the children has been identified; (4) establish whether any person has coerced a parent to refrain from exercising his or her parental rights; and (5) determine whether there is a factual basis for the admission of facts alleged in the petition. See § 48.422(7). The parent must also be aware of the constitutional rights being surrendered by entering the no-contest plea. See *Therese S.*, 314 Wis. 2d 498, ¶5.

Our review of the record satisfies us that the circuit court properly followed WIS. STAT. § 48.422(7), and that Shannon T. knowingly, intelligently, and voluntarily entered the no-contest plea. See *Waukesha Cnty. v. Steven H.*, 2000 WI 28, ¶¶42, 51, 233 Wis. 2d 344, 607 N.W.2d 607. The circuit court explained to Shannon T. what facts the State would have to prove to show that Dreshaun B. continued to be in need of protection or services. The circuit court inquired whether Shannon T. was taking any medication or had mental health issues that might impede her ability to understand the proceedings. It inquired about Shannon T.'s level of education and asked whether she had enough time to review the matter with counsel. The circuit court confirmed that no promises or threats had been made to secure Shannon T.'s no-contest plea, and that no one had attempted to coerce Shannon T. into giving up her parental rights. The circuit

court confirmed that Shannon T. understood she was not agreeing to a termination disposition by entering the no-contest plea. The circuit court also confirmed that Shannon T. understood she would be found unfit as a result of entering the plea.

At a subsequent hearing, the circuit court heard evidence in support of the factual basis for the stipulation that Dreshaun B. continued to be in need of protection or services. *See* WIS. STAT. § 48.422(7)(c). When a termination petition alleges as grounds for termination that a child is in continuing need of protection and services, the State must prove the following:

First, the child must have been placed out of the home for a cumulative total of more than six months pursuant to court orders containing the termination of parental rights notice. Second, the [applicable agency] must have made a reasonable effort to provide services ordered by the court. Third, the parent must fail to meet the conditions established in the order for the safe return of the child to the parent's home. Fourth, there must be a substantial likelihood that the parent will not meet the conditions of safe return of the child within the [nine]-month period following the conclusion of the termination hearing.

Walworth Cnty. DHHS v. Andrea L.O., 2008 WI 46, ¶6, 309 Wis. 2d 161, 749 N.W.2d 168; *see also* WIS. STAT. § 48.415(2)(a) (footnote omitted). The State has the burden to show that grounds for termination exist by clear and convincing evidence. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768.

Dreshaun B.'s case manager, Laura Howitz, testified regarding these factors. Our review of her testimony satisfies us that the State offered sufficient evidence to show that Dreshaun B. continued to be in need of protection or services. Based on the circuit court's colloquy with Shannon T. and the testimony of Dreshaun B.'s case manager establishing that Dreshaun B. continued to be in need of protection and services, there is no arguable merit to a challenge to the circuit court's acceptance of Shannon T.'s no-contest plea during the fact-finding phase.

Finally, the no-merit report addresses whether there is any arguable merit to a claim that the circuit court erroneously exercised its discretion in terminating Shannon T.'s parental rights. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Bearing in mind that the child's best interests are the primary concern, *see* WIS. STAT. § 48.426(2), the circuit court must also consider factors including, but not limited to:

- (a) The likelihood of the child's adoption after termination.
- (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
- (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
- (d) The wishes of the child.
- (e) The duration of the separation of the parent from the child.
- (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

WIS. STAT. § 48.426(3).

In its extensive oral decision, the circuit court made findings of fact based on the testimony it heard during the dispositional phase, addressing all of the factors set forth in WIS. STAT. § 48.426(3). The circuit court found that it was highly likely that Dreshaun B. would be adopted by his foster parents and that he was thriving in their home despite his special needs; as an autistic child, he required close supervision twenty-four hours a day. The circuit court found that Dreshaun B. had become very bonded with his foster family and that he was making great developmental strides under their care, including learning some basic sign language and being trained to use the toilet despite the fact that there had been concern that this might never be

possible. The circuit court also found that his foster family had placed Dreshaun B.'s needs first, and his foster mother had quit her job in order to take care of him because she and her husband could not find a suitable daycare for Dreshaun B. The circuit court found that termination would allow Dreshaun B. to enter a more stable and permanent relationship with his foster family.

Turning to Shannon T.'s relationship with Dreshaun B., the circuit court made extensive findings about the treatment Shannon T. had received for her mental health and substance abuse issues over the years, her relapses, and the history of her relationship with her son. The circuit court found that Shannon T. loved her son, but she had never addressed Dreshaun B.'s special needs and she lacked an understanding of them. The circuit court also found that Shannon T. had not been a regular part of her son's daily life due to her substance abuse issues, mental illness, and incarceration. The circuit court found that Dreshaun B. no longer had a substantial relationship with Shannon T. due to the duration of his separation from her, his young age, and his developmental limitations. Based on these factors, the circuit court reasonably concluded termination was in Dreshaun B.'s best interest. There is no arguable merit to a challenge to the circuit court's exercise of discretion in terminating Shannon T.'s parental rights.

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Kaitlin A. Lamb is relieved of further representation of Shannon T. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals