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

December 3, 2013

To:

Hon. Pedro Colon
Circuit Court Judge
821 W State St
Milwaukee, WI 53233

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

Carl W. Chesshir
Chesshir Law Office
S101 W34417 Hwy. LO, Ste. B
Eagle, WI 53119

Ann Romero-Lopez
Milwaukee County District Attorneys Office
Safety Building
821 W State St
Milwaukee, WI 53233-1427

Mary A.

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

Arlene Happach
Bureau of Milwaukee Child Welfare
635 N. 26th St
Milwaukee, WI 53233-1803

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

2013AP2162-NM In re the termination of parental rights to Latoya A., a person under the age of 18: State of Wisconsin v. Mary A. (L.C. #2011TP132)

Before Fine, J.

Mary A. appeals an order terminating her parental rights to LaToya A. Carl W. Chesshir, Esq., filed a no-merit report on Mary A.'s behalf. *See* ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998); *see also* WIS. STAT. RULES 809.107(5m) and 809.32(1). Mary A. did not file a response. We have considered the no-merit report and independently reviewed the Record. We agree that an appeal would lack arguable merit. Therefore, we summarily affirm the order terminating Mary A.'s parental rights to LaToya A.

Latoya A., born on August 9, 2009, is the non-marital child of Mary A. and Allen K. Soon after LaToya A.'s birth, medical personal determined that LaToya A. had neuroblastoma, a type of cancer. On November 13, 2009, the Bureau of Milwaukee Child Welfare detained Latoya A. on the ground that Mary A. was not providing essential care for the child. On January 21, 2010, the circuit court found that Mary A. was a cognitively disabled teenager, that she had failed to ensure necessary medical care for Latoya A., and that Latoya A. was a child in need of protection or services. On April 21, 2011, the State filed a petition to terminate Mary A.'s parental rights, alleging that Latoya A. was in continuing need of protection or services.[1] *See* WIS. STAT. § 48.415(2).

Statutory Time Limits

We first consider an issue that is not addressed in the no-merit report, namely, whether Mary A. could mount an arguably meritorious claim that the circuit court failed to meet statutory time limits and thereby lost competency to proceed. *See* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 668, 607 N.W.2d 927, 928. 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. *See* 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. *See* WIS. STAT. § 48.422(2). If grounds for termination are

[1] The petition also sought to terminate the parental rights of Allen K. We consider here only the order terminating the parental rights of Mary A.

established, the court may delay the dispositional hearing until "no later than 45 days after the fact-finding hearing." *See* WIS. STAT. § 48.424(4).

When the statutory 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." *See* WIS. STAT. § 48.315(2). If the circuit court does not comply with the time limits, it may lose competency to proceed. ***April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d at 668, 607 N.W.2d at 928. 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* WIS. STAT. § 48.315(3).

Here, the circuit court extended the statutory deadlines on numerous occasions during the proceedings. The circuit court concluded, however, that good cause existed for the extensions, and Mary A. did not object to them. Accordingly, none of the delays in this case provide an arguably meritorious basis for challenging the circuit court's competency to proceed.

Stipulation to grounds for termination of parental rights

Mary A. requested a trial, and the matter was set for a jury trial on October 15, 2012. To prove at trial that a child is in continuing need of protection or services as defined in WIS. STAT. § 48.415(2)(a), the State must present clear and convincing evidence that: (1) the child was adjudged to be in need of protection or services and placed outside the home for six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law; (2) the agency responsible for the care of the child and his or her family made a reasonable effort to provide the services ordered by the court; (3) the child's parent has not met

the conditions established for the child's safe return to the parent's home; and (4) a substantial likelihood exists that the child's parent will not meet those conditions within nine months after the hearing. *See* ***ibid.***; *see also* WIS. STAT. § 48.31(1) (stating the burden of proof). On the morning of trial, Mary A. told the circuit court that she wanted to stipulate that grounds existed under § 48.415(2)(a) to terminate her parental rights to Latoya A.

Before accepting an admission of facts alleged in a termination-of-parental-rights-petition, the circuit court must comply with the requirements of WIS. STAT. § 48.422(7). Thus, the circuit court must: (1) address the parent and determine that the admission is made voluntarily and understandingly; (2) establish whether any promises or threats were made to elicit an admission; (3) establish whether a proposed adoptive parent for the child has been identified; (4) establish whether any person has coerced a parent to refrain from exercising parental rights; and (5) determine that there is a factual basis for the admission of facts alleged in the petition. *See* WIS. STAT. § 48.422(7).

The circuit court must also tell the parent that, during the dispositional stage of the proceedings, "the court will hear evidence ... and then will either terminate the parent's rights or dismiss the petition if the evidence does not warrant termination." ***Oneida County Department of Social Services v. Therese S.***, 2008 WI App 159, ¶16, 314 Wis. 2d 493, 502, 762 N.W.2d 122, 127. Additionally, "the 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.'" ***Ibid.*** (citation omitted). Finally, "parents must understand that acceptance of their plea will result in a finding of parental unfitness." ***Id.***, 2008 WI App 159, ¶10, 314 Wis. 2d at 499, 762 N.W.2d at 125.

The Record establishes compliance with the requirements of WIS. STAT. § 48.422(7) and ***Therese S.*** The circuit court placed Mary A. under oath, and the circuit court and the parties questioned her about her decision to stipulate to the existence of grounds for termination of her parental rights. Mary A. testified that she and her lawyer reviewed together the petition to terminate her parental rights. Mary A. said that she understood the allegations in the petition and that she agreed with them.

The circuit court explained the two-part procedure in a termination of parental rights case. The circuit court explained that in the first phase of the proceedings, the State is required to prove by clear and convincing evidence that grounds exist to terminate parental rights and that the factfinder in the first phase would be either a judge or a jury. Mary A. said that she understood. The circuit court explained that Mary A. had the right to present testimony and witnesses on her own behalf and to cross-examine the State's witnesses. Mary A. said that she understood. The circuit court told Mary A. that she was giving up her right to a trial on the question of whether Latoya A. was a child in continuing need of protection or services, but that she would have the opportunity to present testimony and witnesses on the question of whether termination of parental rights was in Latoya A.'s best interest. Mary A. said that she understood. She confirmed that she had not been promised anything to induce her stipulation and that she had not been threatened.

The guardian *ad litem* questioned Mary A. about the elements that the State must prove to establish that Latoya A. is a child in continuing need of protection and services, and Mary A. testified that she understood the elements. In response to questions from both the circuit court and the guardian *ad litem*, Mary A. confirmed her understanding that, if the circuit court accepted her stipulation, the circuit court would find that she is an unfit parent.

The State then presented testimony and evidence that Latoya A. was a child in continuing need of protection or services. *See* ***Waukesha County v. Steven H.***, 2000 WI 28, ¶¶53, 56, 233 Wis. 2d 344, 368, 369, 607 N.W.2d 607, 619 (when petition to terminate parental rights is not contested, circuit court must nonetheless hear testimony in support of the allegations in the petition). Sheena Slade-Walker testified that she works as a family case manager for Children's Hospital Wisconsin Community Services and she was assigned to assist Mary A. in meeting the conditions and goals of family reunification. Slade-Walker testified that Latoya A. was placed outside of Mary A.'s home pursuant to an order containing termination-of-parental-rights warnings, and the circuit court received in evidence a certified copy of that order. Slade-Walker went on to testify that Mary A. had failed to satisfy the conditions required before Latoya A. could return to Mary A.'s care, and that Latoya A. had therefore remained placed outside of Mary A.'s home since entry of the order on January 21, 2010. Slade-Walker then described the conditions that Mary A. was required to satisfy and the ways in which she fell short of completing those conditions.

Slade-Walker testified, for example, that Mary A. failed to maintain a safe and suitable home for Latoya A., failed to have regular, successful visits with the child, and failed to provide a sanitary environment during the visits that Mary A. did attend. Slade-Walker further testified that she assisted Mary A. in obtaining various services to enable her to meet the conditions necessary before Latoya A. could return to Mary A.'s home. Slade-Walker explained that, despite her assistance, Mary A. had not successfully participated in or completed a course of individual therapy, failed to complete parenting classes, and failed to successfully participate in a program offering specialized parenting support. Slade-Walker also told the circuit court that Mary A. was inconsistent in attending Latoya A.'s medical appointments and did not appear to

grasp either the seriousness of Latoya A.'s condition or how to plan for the child's long-term care. Slade-Walker testified that, based on Mary A.'s history, Slade-Walker believed that Mary A. was substantially unlikely to satisfy the conditions for return of Latoya A. within nine months following the hearing. Finally, Slade-Walker testified that the State had identified a proposed adoptive parent for Latoya A.

The Record establishes that Mary A. voluntarily and with the necessary understanding stipulated that Latoya A. was a child in continuing need of protection and services. The State supported the allegations contained in the petition. The circuit court properly concluded that Mary A. was an unfit parent. We are satisfied that further appellate proceedings regarding this issue would lack arguable merit.

Discretionary Decision to Terminate Parental Rights

We next consider whether Mary A. could mount a meritorious challenge to the order terminating her parental rights. The decision to terminate parental rights lies within the circuit court's discretion. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855, 857 (Ct. App. 1996). The prevailing factor is the child's best interests. WIS. STAT. § 48.426(2). In considering the best interests of the child, a circuit court must consider: (1) the likelihood of adoption after termination; (2) the age and health of the child; (3) "whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever those relationships"; (4) "[t]he wishes of the child"; (5) "[t]he duration of the separation of the parent from the child"; and (6) "[w]hether 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).

Among those testifying for the State at the dispositional hearing were Slade-Walker, Dr. Susanne J. Lisowski, the psychologist who evaluated Mary A., and Theresa T., the foster parent and adoptive resource for Latoya A. Mary A. testified on her own behalf and she presented testimony from her mother and from Betty R. and Alonzo R., Mary A.'s cousins who share their home with Mary A. and her younger child.[2] At the conclusion of the testimony, the circuit court considered each of the statutory factors in light of the evidence presented.

The circuit court first found that Theresa T. was committed to adopting Latoya A. if the circuit court terminated Mary A.'s parental rights, and the circuit court found that Theresa T. had made great sacrifices to care for the child "in the best condition and in the best environment possible." The circuit court also noted that the child's health is exceptionally fragile, and the circuit court credited Lisowksi's conclusions that Mary A.'s I.Q. of 57 and accompanying diagnosis of mild intellectual disability prevented Mary A. from capably responding to all of Latoya A.'s serious medical needs.

The circuit court found that Latoya A. did not have a substantial relationship with her biological family. The circuit court pointed out that Allen K. had voluntarily terminated his parental rights and found that "that speaks volumes." Further, the circuit count noted that Latoya A. had lived with Theresa T. since Latoya A. was three months old, and the circuit court found

[2] Mary A.'s second child was not a subject of the termination of parental rights litigation.

that Latoya A.'s medical condition had impeded development of meaningful relationships with her extended biological family.

The circuit court acknowledged that Betty R. and Alonzo R. wanted to help Mary A. and had provided her with some assistance. Betty R. testified, however, that as recently as a month before the dispositional hearing, she and Alonzo R. had not decided whether they wanted to include Latoya A. in their household, and the circuit court found that "the trauma of having a child with this kind of significant medical need was not in the calculus." Additionally, the circuit court credited testimony from Theresa T. that she would both permit contact between Mary A. and Latoya A. and nurture a sibling relationship between Latoya A. and Mary A.'s younger child.

Finally, the circuit court found that Latoya A. would be able to enter into a more stable and permanent family relationship if Mary A.'s parental rights were terminated. The circuit court found that Theresa T. had "made [Latoya A. a] top priority," and the circuit court emphasized again that Theresa T. had made financial and emotional sacrifices for the sake of Latoya A. The circuit court concluded that, in light of the statutory factors, the best interests of Latoya A. required terminating Mary A.'s parental rights.

The Record shows that the circuit court properly exercised its discretion. The circuit court examined the relevant facts, applied the proper standard of law, and used a rational process to reach a reasonable conclusion. *See* ***Gerald O.***, 203 Wis. 2d at 152, 551 N.W.2d at 857. An appellate challenge to the circuit court's determination would lack arguable merit.

Absence of a guardian ad litem for Mary A.

We last consider whether Mary A. could pursue a meritorious challenge to the order terminating her parental rights on the ground that the circuit court did not appoint a guardian *ad litem* for her. We are satisfied that such a challenge would lack arguable merit. Although the Record reflects that Lisowski diagnosed Mary A. with mild intellectual disability, Lisowski did not opine that Mary A. was incompetent. *See* WIS. STAT. § 48.235(1)(g) (requiring appointment of a guardian *ad litem* for a parent who is subject to termination of parental rights if any assessment or examination reveals that the parent is not competent to participate in the proceeding or to assist his or lawyer or the court in protecting the parent's rights). Lisowski testified that individuals with cognitive limitations such as those exhibited by Mary A. typically live in the community and can hold jobs in well-supervised settings. Lisowski added that individuals with mild intellectual disability can reach "a very functioning [sic] level" in the community. Further proceedings based on absence of a guardian *ad litem* for Mary A. would be frivolous within the meaning of ***Anders***.

Based on an independent review of the Record, we conclude that no additional potential issues warrant discussion. There is no basis to reverse the order terminating Mary A.'s parental rights to Latoya A., and any further proceedings would lack arguable merit.

IT IS ORDERED that the order terminating Mary A.'s parental rights to Latoya A. is summarily affirmed.

IT IS FURTHER ORDERED that Carl W. Chesshir, Esq., is relieved of any further representation of Mary A. on appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals