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DISTRICT II

January 29, 2014

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

2013AP1082-NM

In the interest of Kyler N. S., a child in need of protective services:
Winnebago County DHS v. Melissa A. S. (L.C. # 2012JC22)

Before Brown, C.J.¹

Melissa A.S. appeals from a circuit court order revising a prior dispositional order involving her child, Kyler N.S., a child in need of protection and services. Appointed appellate counsel for Melissa A.S. filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders*

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

v. California, 386 U.S. 738 (1967).² Melissa A.S. received a copy of the report and was advised of her right to file a response. She has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders*, we conclude that the appeal may be disposed of summarily. RULE 809.21.

Before we address counsel's no-merit report, we must address the scope of this appeal. This appeal is taken from the circuit court's December 27, 2012 order revising the July 9, 2012 dispositional order. Counsel's no-merit report addresses circuit court proceedings preceding the entry of the July 9, 2012 dispositional order. However, Melissa A.S. did not commence a WIS. STAT. RULE 809.30 appeal from the July 9 order, and we have not reinstated Melissa A.S.'s appeal rights relating to the July 9 order. Therefore, neither the July 9 order nor any proceedings prior to its entry are properly before this court on appeal. Our review is confined to the proceedings that began with Winnebago County Department of Human Services' December 6, 2012 request to revise the July 9 dispositional order.³

The no-merit report addresses whether the circuit court properly exercised its discretion when it revised the July 9 dispositional order. We agree with appellate counsel that this issue does not have arguable merit for appeal. The circuit court revised the dispositional order after a WIS. STAT. § 48.363 hearing. As they relate to Melissa A.S., the revisions to the dispositional order added a concurrent goal of adoption and revised her conditions for return to include a

² Appointed appellate counsel filed the WIS. STAT. RULE 809.32 no-merit report pursuant to *State v. Brown*, 2009 WI App 169, ¶10, 322 Wis. 2d 183, 776 N.W.2d 269 (court appointed counsel may file a no-merit report).

³ The no-merit report also addresses matters relating to the child's stepfather, Monti S. (visitation, Monti S.'s conditions of return, and DNA testing). Monti S. has not appealed and is not before this court. We do not address these issues.

requirement that she obtain employment in recognition that her period of incarceration would be ending. The circuit court found that neither the mother nor the stepfather offered the child stability. Melissa A.S. was incarcerated in Missouri, and Monti S., the child's stepfather, was headed to a Wisconsin prison on a recent conviction. The court stressed that the child needed stability, the child had been placed out of the home for eleven months, and Monti S. was not cooperating with the department or fulfilling his conditions of return. The circuit court had a basis for its December 27 revision order. We conclude that no issue with arguable merit could arise from this order.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the circuit court's order and relieve Attorney Leonard Kachinsky of further representation of Melissa A.S. 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 Melissa A.S. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals