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DISTRICT III

February 19, 2014

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

2013AP2666-NM	Brown County Department of Human Services v. Mary P.
2013AP2667-NM	(L. C. ##2012TP11, 2012TP12, 2012TP13)
2013AP2668-NM	

Before Hoover, P.J.¹

Counsel for Mary P. has filed a no-merit report concluding there is no arguable basis for Mary to challenge orders terminating her rights to three children. Mary was advised of her right to respond to the report and has not responded. Upon this court's independent review of the record, no issue of arguable merit appears

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.

The no-merit report addresses: (1) whether there were procedural defects in the proceedings; (2) whether the court properly accepted Mary's no contest plea to grounds for the termination; (3) whether the court properly accepted Mary's agreement to revoke the hold-open agreement; and (4) whether the court properly exercised its discretion in terminating Mary's parental rights. Counsel's analysis of each of these issues is correct.

In April 2009 and January 2011, Mary's children were found to be in need of protection and services (CHIPS) by orders that warned Mary her parental rights could be terminated if she failed to meet conditions for the return of the children to her home. The conditions included cooperation with the Brown County Department of Human Services and social workers, participation in a family training program, refraining from using physical methods of discipline, AODA assessment, maintaining sobriety, submitting to random urinalysis, cooperation with the visitation schedule, continued mental health treatment, maintaining suitable housing, demonstrating an ability to provide financially for the children, and ensuring the oldest child attended school.

In March 2012, the Department filed petitions to terminate Mary's parental rights based on her failure to meet most of the conditions set out in the CHIPS order. In October 2012, the parties reached an agreement that Mary would plead no contest to the grounds for termination, but the matter would be held open for six months to allow Mary additional opportunity to meet the conditions set out in the CHIPS order. Under the terms of the hold-open agreement, the court would withhold making a finding of unfitness unless Mary violated the terms of the agreement. The agreement required Mary to meet eight conditions of the CHIPS order that she previously

violated. In March 2013, the Department filed a motion to revoke the hold-open agreement based on Mary's failure to meet six of the conditions.

The hearing on the motion to revoke the hold-open agreement took place on three dates. On the first date Mary appeared in person. The Department presented details of her failure to follow through with the recommendations contained in her inpatient discharge plan for AODA treatment; false information she provided to the Department; numerous failures to visit the children; failure to take urinalysis tests and when tested, testing positive for cocaine, methadone, benzodiazepines and opiates; non-compliance with the requirement to seek mental health treatment and failure to find adequate and safe housing. The witnesses also detailed the Department's efforts to assist Mary in meeting the requirements. The hearing ended with Mary on the witness stand and was scheduled to resume in two weeks. Mary failed to appear for the continued hearing. A social worker testified she reminded Mary of the hearing four days earlier. She also testified that Mary missed two visits with the children in the two weeks since the previous hearing, and failed to call in advance to say she could not attend the arranged visitation. When Mary appeared for the next hearing two weeks later, she informed the court she missed the previous hearing because she was sleeping. She stipulated to revocation of the hold-open agreement.

After the court revoked the hold-open agreement, it conducted a disposition hearing at which Mary failed to appear. The court considered testimony from the social worker and the foster mother who indicated she and her husband would like to adopt the three children. The court terminated Mary's parental rights.

Although there was substantial delay in these proceedings, much of the delay was caused by Mary's absence, and the continuances were granted at her attorney's request. At each stage, as required by WIS. STAT. § 48.315(2), the court found good cause for extensions of the deadlines. In addition, failure to meet the deadlines does not deprive the court of subject matter or personal jurisdiction or competency to exercise jurisdiction. *See* WIS. STAT. § 48.315(3). Because Mary did not object to any of the continuances, she cannot raise any issue on appeal regarding the timing of the hearing. *See id.*

The court properly accepted Mary's no contest pleas. The pleas were supported by substantial testimony regarding Mary's failure to meet the conditions for the children's return. The court explained the procedures employed at a fact-finding hearing and how a finding of unfitness would be withheld unless the hold-open agreement was revoked. The court further explained if the agreement was revoked, the matter would proceed to disposition at which the court would consider the best interest of the children and could either terminate her parental rights or dismiss the petition. Mary indicated she was entering the plea and hold-open agreement voluntarily and was not influenced by the medications she was taking. The hold-open agreements further informed Mary of her rights and the nature of the proceedings and it helped establish a factual basis for the no-contest admission.

The record also discloses no arguable basis for challenging the decision to revoke the hold-open agreement. In addition to Mary's consent to revoking the agreement, the court heard substantial evidence regarding Mary's violations of the agreement.

The record also discloses no arguable basis for challenging the court's discretionary decision to terminate Mary's parental rights. Mary failed to appear for the disposition hearing

despite being sent five letters since the previous hearing advising her when and where to appear. The court heard evidence that the children would likely be adopted, and they had no substantial relationship with their biological family except for a grandmother who the foster mother indicated would remain a factor in their lives. The children had been in foster care for four years, except for the youngest child who had been in foster care for two and one-half years, her entire life. The court found the children would be able to enter a more stable and permanent family relationship if Mary's rights were terminated. The court appropriately considered all of the factors set out in WIS. STAT. § 48.426(3), and any challenge to the discretionary decision to terminate Mary's parental rights would lack arguable merit.

This court's independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Leonard Kachinsky is relieved of his obligation to further represent Mary in these matters. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals