



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/III

February 25, 2014

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 Watertown Plank Rd.
Milwaukee, WI 53226

Claire Starling
Assistant District Attorney
Milwaukee County District
Attorney's Office
10201 Watertown Plank Road
Wauwatosa, WI 53226

John S. Swimmer
P.O. Box 11099
Milwaukee, WI 53211

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

Danuta Kurczewski
Legal Aid Society of Milwaukee
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226-3532

Veronica L.
2528 N 1st Street
Milwaukee, WI 53212-2805

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

2013AP2855-NM State v. Veronica L. (L. C. No. 2013TP8)

Before Hoover, P.J.¹

Counsel for Veronica L. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable merit to any issue that could be raised on appeal from an order concerning termination of parental rights. Veronica has responded. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), no

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.

issues of arguable merit appear. Therefore, the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

On January 15, 2013, the State filed a petition for termination of parental rights. After a finding of default, two grounds were found: child in continuing need of protection and services, and failure to assume parental responsibility. The court subsequently determined that termination was in the child's best interest.²

Any challenge to the proceedings based on a failure to comply with statutory time limits would lack arguable merit. All of the mandatory time limits were either complied with, properly extended for good cause, or otherwise necessitated by Veronica's failure to appear for proceedings or other actions. The failure to object to a delay waives any challenge to the court's competency on these grounds. *See* WIS. STAT. § 48.315(3). Moreover, scheduling difficulties constitute good cause for tolling time limits. *See State v. Quinsanna D.*, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

Any challenge to the default finding entered against Veronica would also lack arguable merit. In a termination of parental rights case, it is within the trial court's discretion to find a party in default as a sanction for failing to comply with a court order. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768.

Here, the petition was filed on January 15, 2013. At the initial appearance on February 6, 2013, the court informed Veronica that failure to appear at scheduled court dates, maintain

² The father's rights were also terminated. Termination of the father's parental rights is not the subject of this appeal.

contact with her attorney, or comply with discovery may result in a default judgment. The matter was set over for February 20, and Veronica failed to appear. A motion for default judgment was taken under advisement. The matter was rescheduled for March 11, and Veronica failed to appear. The court found Veronica had proper notice and entered a default judgment. However, Veronica appeared before the court had finished the proceeding. The court withdrew the default and Veronica was referred to the public defender's office. The court again informed Veronica that the failure to appear at the next scheduled date and all subsequent dates, maintain contact with her attorney, or comply with discovery may result in a default finding.

The matter was continued to April 22, and Veronica again failed to appear. Attempts to reach her by telephone were unsuccessful. The court granted a motion for default judgment subject to the receipt of additional evidence. The matter was set for an evidentiary hearing and disposition on May 15, at which time Veronica appeared. The court once again withdrew the default judgment. The court set a date for the final pretrial conference and jury trial, again informing Veronica of the consequences of failing to appear, maintaining contact with her lawyer or complying with discovery.

The matter was also scheduled for a permanency plan review hearing on June 10, at which time Veronica appeared. The court once again admonished Veronica concerning the potential penalties for failing to follow the court's orders and confirmed with her the date for the jury trial.

Veronica failed to appear on the date scheduled for the jury trial. Moreover, the court was advised that Veronica had missed two deposition dates. The court found proper notice and egregious conduct. As the court stated: "If this isn't egregious, if this isn't extraordinary in

some bad way, if this isn't glaring, if this isn't flagrant, if this isn't extreme, if this isn't substantial, and it is also persistent, if it isn't all these things, no default judgment could ever be granted."

In response to the no-merit report, Veronica contends she did not receive notice, stating that she "lives in a house with her sister and others and sometimes does not get the mail Somebody else may have picked up the mail"

Veronica's contentions are belied by the record. Significantly, Veronica had actual notice, as emphasized by the court's statements at the conclusion of the June 10 hearing:

Motion for visitation for all these reasons is denied. We'll see you on September 9th at 9:00, final pretrial and jury trial. Please stay in touch with and cooperate with your lawyer, cooperate with any discovery, make all court appearances, follow all court orders, because if you don't I may be asked again to grant a default judgment. I don't want to do that. I want to give you every opportunity to fight this, to litigate this; but with rights come obligations and responsibilities, and that is to follow all of these orders.

Accordingly, any claim that the circuit court erroneously exercised its discretion by finding Veronica in default lacks arguable merit.

There is also no arguable basis to challenge the court's findings regarding CHIPS or failure to assume parental responsibility. The testimony of Antoinette Davis established that the child had been placed outside the home for a period exceeding six months, reasonable efforts were made to provide court-ordered services, Veronica failed to meet the conditions for the child's safe return, and it was substantially unlikely that Veronica would meet those conditions within the nine-month period following the conclusion of the hearing. *See* WIS. STAT. § 48.415(2). The testimony also established that Veronica had not had a substantial parental

relationship with the child. *See* WIS. STAT. § 48.415(6)(a). Any challenges to the court's findings would lack arguable merit.

Finally, there is no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated Veronica's parental rights. The court correctly applied the best interests of the child standard and considered the proper statutory factors set out in WIS. STAT. § 48.426(3). The court emphasized the child's adoptability, along with the absence of any substantial relationship with Veronica. The court noted the child had been out of the parental home for over three years, nearly half of the child's life, after being abandoned by her mother, father and grandmother. The court stated, "It will not be harmful to sever what relationships there may be; as fractured as they are, it will not be harmful to sever them." The court also noted the child's desire to remain with the foster parent, who was committed to the child. The court's discretionary decision to terminate Veronica's parental rights demonstrates a rational process that is justified by the record. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

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

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

IT IS FURTHER ORDERED that attorney John Swimmer is relieved of further representing Veronica L. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals