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February 26, 2014

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

2013AP2720-NM State of Wisconsin v. Kimberly P. (L.C. #2012TP65)

Before Reilly, J.[1]

Kimberly P. appeals from an order involuntarily terminating her parental rights to her non-marital daughter, D.P. On appeal, Kimberly's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32 and ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). Kimberly received a copy of

[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.

the report and was advised of her right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967) and RULE 809.32, we conclude there are no issues that would have arguable merit for appeal. We summarily affirm the order terminating Kimberly's parental rights and relieve Attorney John S. Swimmer of further representation of Kimberly in this matter.

D.P. lived with Kimberly, who is cognitively delayed, Kimberly's parents, and Kimberly's brother, a registered sex offender, until she was nearly four. The Bureau of Milwaukee Child Welfare acted on a referral alleging physical abuse and neglect. There were no allegations of sexual impropriety with the uncle. The bureau found the home in a "hoarder"-like state and smelling of garbage, rotting food, and cat waste. D.P. appeared not to have been bathed in some time, had active lice and limited verbal skills, still wore diapers, and drank from a bottle. D.P. was removed from the home pursuant to a dispositional order finding her to be a child in need of protection or services (CHIPS) and was placed in foster care. Now placed with a couple that intends to adopt her, by all accounts, D.P. is thriving.

Over the next two years, the bureau provided Kimberly with numerous programs and services. Although compliant, Kimberly made scant progress in meeting the specified conditions, never progressing to unsupervised or overnight visits. Indeed, after a time the court ordered only "therapeutic visits" as it was deemed necessary for a therapist to be able to intervene as needed.

A petition for involuntary termination of parental rights (TPR) was filed alleging CHIPS and that Kimberly failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6). A

jury unanimously found that: the bureau made reasonable efforts to provide the court-ordered services, Kimberly failed to meet the conditions for D.P.'s safe return, there was a substantial likelihood that Kimberly would not meet those conditions within nine months, and Kimberly failed to assume parental responsibility. The court found Kimberly unfit and concluded that terminating her parental rights was in D.P.'s best interest. This no-merit appeal followed.

Although not addressed in the no-merit report, we first consider whether the petitioner adhered to all mandatory time limits set forth in WIS. STAT. ch. 48, subch. VIII and whether the petition's content satisfied the requirements set forth in WIS. STAT. § 48.42(1). A review of the record satisfies this court that any time limits not met were extended for good cause and without objection. *See* WIS. STAT. § 48.315(1)(b), (2). Our review also establishes that the petition was in proper form. No issue of arguable merit could arise from either point.

The no-merit report addresses two potential issues: (1) whether the termination of supervised visits violated the requirement that the bureau make a reasonable effort to provide the court-ordered services and (2) whether "the Court and Jury proved" that, despite cooperating with bureau programming and substantially following the court's requirements, Kimberly does not have a substantial parental relationship with D.P.[2]

We construe these issues to be parts of the broader issue of whether the evidence was sufficient to support the grounds for a finding of unfitness. "Grounds for termination must be prove[d] by clear and convincing evidence." ***Ann M. M. v. Rob S.***, 176 Wis. 2d 673, 682, 500

[2] The court and jury need not prove anything. We thus presume this simply an inartful way of asking whether, despite her best efforts, Kimberly's relationship with D.P. still could be severed.

N.W.2d 649 (1993); *see also* WIS. STAT. § 48.31(1). Our review is narrow. We affirm the fact finder's decision if there is any credible evidence that under any reasonable view supports it. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. We search the record for evidence that supports the decision and accept any reasonable inferences the fact finder could reach. *See* ***id.***

"Reasonable effort" means an earnest and conscientious effort to take good-faith steps to provide court-ordered services, taking into consideration the characteristics of the parent or child, the parent's level of cooperation, and other relevant circumstances. WIS. STAT. § 48.415(2)(a)2.a. "Substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. Sec. 48.415(6)(b).

The record is replete with references to Kimberly's diminished cognitive skills and the negative impact her emotional lability has on D.P. The jury heard the testimony of those who provided programming and services to Kimberly: the bureau's initial assessment social worker, the Milwaukee Center for Independence (MCFI) community living program supervisor, Kimberly's MCFI and Integrated Family Services caseworkers, and two Easter Seals family service specialists. It heard about therapies to support Kimberly's cognitive delays and to address her difficulty in governing her emotions and in setting appropriate boundaries with D.P., and about instruction she received in parenting, home management, meal planning, appliance use, and bus travel. A psychologist testified that, after meeting with Kimberly for about four hours and administering a variety of tests, he concluded that she is cognitively disabled and mildly mentally retarded, has limited capacity for independence, lacks insight into a child's needs, and has difficulty reasoning through problems, new information, and safety issues. A

psychotherapist testified that the supervised visits were "not going well" because of "difficulty with safe emotional boundaries" and "some inappropriate actions," leading the court to order that visits occur in a therapy setting.

The jury also heard an abundance of evidence that Kimberly's cognitive deficits thwarted even the possibility of much progress. It heard that Kimberly did not grasp that her parents' home was filthy and unsafe, that having D.P. reside with a convicted sex offender was at all questionable and that, at nearly four, D.P.'s lack of verbal skills and potty-training was unusual. It also heard that Kimberly told her caseworker she did not believe she could care for D.P. by herself for more than an hour and that D.P. viewed her foster parents as her parents and Kimberly as someone she played with now and then, often reluctantly.

It is undisputed that D.P. was adjudged CHIPS and placed outside the home for six months or longer pursuant to a court order containing the TPR notice required by law and that Kimberly failed to meet the conditions established for D.P.'s return. The jury was entitled to believe testimony to the effect that it was not likely that Kimberly would satisfy the court-ordered conditions within nine months. Consequently, an argument that there was no credible evidence to support the verdict and the finding of unfitness would lack arguable merit.

We also must consider the court's decision to order the TPR. When deciding whether to terminate parental rights, the circuit court must consider the best-interests-of-the-child standard and the factors set forth in WIS. STAT. § 48.426. ***Sheboygan Cnty. DHHS v. Julie A.B.***, 2002 WI 95, ¶¶29-30, 255 Wis. 2d 170, 648 N.W.2d 402. The decision ultimately is a matter of circuit court discretion. ***Id.***, ¶43.

The court found that D.P. (1) had a "high" likelihood of being adopted by her foster parents; (2) now six years old, is doing better "physically, healthwise, [in her] cleanliness, [in her] education" than when she was detained; (3) had a "peer-like," relationship with Kimberly and "to some degree" had a relationship with Kimberly's parents, none of which, measured against the other factors, would be harmful to sever; (4) had "conflicting loyalties" to the various people in her life but is "thriving" in her current placement, where she lives "peacefully … without feeling like [she is] going in two different directions"; (5) has been out of Kimberly's home for nearly three years; and, implicitly, (6) will have a more stable and permanent family relationship in her current placement. *See* WIS. STAT. § 48.426(3)(a)-(f). The court concluded that a TPR would promote D.P.'s best interests. Any challenge in this regard would lack arguable merit.

This court's independent review of the record has identified no arguable appellate issues arising from the three-day trial, including voir dire, objections made, and the court's rulings. We conclude there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm the order terminating Kimberly's parental rights. Therefore,

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 John S. Swimmer is relieved of further representation of Kimberly P. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals