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April 30, 2014

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

2014AP20-NM In re the termination of parental rights to Diamond J., a person under the age of 18: State of Wisconsin v. Ashanti N. (L.C. #2012TP266)

Before Brennan, J.[1]

Ashanti N. appeals from an order terminating her parental rights to daughter Diamond J. Appellate counsel, Gina Frances Bosben, has filed a no-merit report. *See* ***Brown Cnty. v.***

[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.

Edward C.T., 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam); *see also* WIS. STAT. RULES 809.107(5m) & 809.32. Ashanti N. has not personally responded to the no-merit report and her guardian *ad litem*, Attorney Duke Lehto, has determined it is not necessary for him to file a response. *See* WIS. STAT. § 48.235(7). Based upon an independent review of the record and the no-merit report, this court concludes that an appeal would lack arguable merit. Therefore, the order terminating Ashanti N.'s parental rights to Diamond is summarily affirmed.

Diamond was born on October 30, 2010, and removed from Ashanti N.'s care on September 7, 2011. Diamond was deemed a child in need of protection or services (CHIPS) on October 26, 2011. The State filed the termination petition on October 17, 2012, alleging continuing CHIPS and failure to assume parental responsibility as grounds. *See* WIS. STAT. § 48.415(2) & (6). Ashanti N. agreed to stipulate to the failure-to-assume ground, and the continuing-CHIPS ground would be dismissed. Following a dispositional hearing, the circuit court terminated Ashanti N.'s parental rights to Diamond.

Appellate counsel raises three issues, but we first consider whether there is any arguable merit to a claim the circuit court failed to comply with mandatory time limits, thereby losing competency to proceed. *See* WIS. STAT. §§ 48.422(1)-(2) & 48.424(4)(a); *see also* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. The statutory time limits for holding initial, fact-finding, and dispositional hearings cannot be waived. *See* ***April O.***, 233 Wis. 2d 663, ¶5. Continuances, however, are permitted "upon a showing of good cause in open court … and only for so long as is necessary[.]" WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the circuit court's competency to act during the continuance. *See* WIS. STAT. § 48.315(3). Our review of the record satisfies us that the time limits were either followed or adjourned for sufficient cause. Accordingly, there is no arguable

merit to a claim that the circuit court lost competency to proceed for noncompliance with the statutory time frames.

The next issue we address, and the first issue that counsel raises, is whether Ashanti N. "knowingly, intelligently, and voluntarily stipulated to grounds" for termination of her parental rights. (Capitalization omitted.) This actually presents a two-part question, the first part of which is whether Ashanti N. sufficiently stipulated or pled no contest to the grounds portion of the case.

Before accepting a no-contest plea to a termination petition, the circuit court must engage the parent in a colloquy under WIS. STAT. § 48.422(7). *See* ***Oneida Cnty. Dept. of Soc. Servs. v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. Thus, the circuit court must: (1) address the parent and determine that the admission is made voluntarily, with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) establish whether any promises or threats were made to secure the plea; (3) establish whether a proposed adoptive resource for the children has been identified; (4) establish whether any person has coerced a parent to refrain from exercising his or her parental rights; and (5) determine whether 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 ensure that the parent understands the constitutional rights she is giving up with the plea, *see* ***Therese S.***, 314 Wis. 2d 493, ¶5, and that the plea will result in a finding of parental unfitness, *see* ***id.***, ¶10. Our review of the record satisfies us that the circuit court complied with WIS. STAT. § 48.422(7) in accepting Ashanti N.'s stipulation; there is no arguable merit to claiming otherwise.

The circuit court then went to the second step when there is a stipulation to grounds: determining whether there is a sufficient factual basis for the termination petition. Failure to assume parental responsibility "shall be established by proving that the parent … [has] not had a substantial parental relationship with the child." WIS. STAT. § 48.415(6)(a). A substantial parental relationship "means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child." WIS. STAT. § 48.415(6)(b). When the fact-finder evaluates whether a person has had such a relationship with the child, the fact-finder may consider such factors including but not limited to "whether the person has expressed concern for or interest in the support, care or well-being of the child, [and] whether the person has neglected or refused to provide care or support for the child[.]" ***Id.***

To establish the factual basis for the petition, the State called ongoing case manager Jessica Larsen to testify. She testified that Diamond had not lived with Ashanti N. since her September 2011 detention, and Ashanti N. was not involved in medical or educational decisions for Diamond. Larsen noted that the person responsible for Diamond has always been someone other than Ashanti N.: from Diamond's birth until her detention, Ashanti N.'s family would not let her care for Diamond alone because Ashanti N.'s cognitive delays left the family with concerns about her ability to adequately care for Diamond. Larsen also told the circuit court that Ashanti herself has stated she does not know how to take care of Diamond or make good decisions to assure Diamond's safety. The circuit court relied on Larsen's testimony, plus the CHIPS petition, CHIPS order, and a psychological evaluation of Ashanti N. to conclude that a sufficient factual basis supported the petition. Our review of the record satisfies us that Ashanti N. had not "accept[ed] and exercise[d] … significant responsibility for the daily

supervision, education, protection and care" of Diamond. There is no arguable merit to a challenge to the sufficiency of the evidence to support the factual basis for the petition.

Counsel next addresses whether there is any arguable basis for claiming ineffective assistance of trial counsel. An ineffective-assistance-of-counsel claim requires a showing that counsel performed deficiently and prejudice from that performance. *See* ***State v. Thiel***, 2003 WI 111, ¶18, 264 Wis. 2d 571, 665 N.W.2d 305. Based upon our review of the record, we agree with appellate counsel's conclusion that there is no arguable merit to raising a claim of ineffective assistance of trial counsel.

Finally, appellate counsel discusses whether there is any arguable merit to a claim that the circuit court erroneously exercised its discretion in terminating Ashanti N.'s parental rights. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Bearing in mind that the children's best interests are the primary concern, *see* WIS. STAT. § 48.426(2), the court must also consider factors including, but not limited to:

> (a) The likelihood of the child's adoption after termination.
>
> (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
>
> (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
>
> (d) The wishes of the child.
>
> (e) The duration of the separation of the parent from the child.
>
> (f) Whether 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). The circuit court found as follows.

The likelihood of Diamond's adoption was "very, very great." Great strides had been made with regard to Diamond's behavioral issues. Diamond could not fully articulate her wishes due to her young age, but she had effectively expressed a desire to become a permanent member of her foster family. Further, Diamond had been out of her mother's home for, at the time of the hearing, two-thirds of her life.

With respect to substantial relationships, the circuit court noted that while Diamond had a relationship with both her mother and her maternal grandmother, it was not a substantial relationship and terminating the relationships would not be harmful to Diamond.[2] In particular, Ashanti N.'s cognitive delays, impulsivity, aggression, and frustration issues created real concerns for Diamond's safety. Moreover, while Ashanti N.'s mother, Latisha S., was willing to be Diamond's guardian, she did not appear to fully appreciate the danger Ashanti N. posed to Diamond. Latisha S., who was living with a friend, indicated that she was looking for a place where she, Ashanti N., and Diamond could live, even though her work schedule meant that Ashanti N. would be left alone to care for Diamond for significant periods of time.

Finally, the circuit court concluded that Diamond would, in fact, enter into a more stable family relationship as the result of termination. Specifically, the circuit court noted that the prospective adoptive home was safe, comfortable, protective, and the only stability Diamond had known.

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[2] The circuit court did note that the likely adoptive family had developed a rapport with Ashanti N. and was willing to facilitate an ongoing relationship between Diamond, her mother, and her grandmother, so long as it was safe for Diamond.

We discern no erroneous exercise of discretion in these findings and conclusions. There is no arguable merit to a challenge to the circuit court's termination decision.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Gina Frances Bosben is relieved of further representation of Ashanti N. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals