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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

May 7, 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 W. Watertown Plank Rd.
Milwaukee, WI 53226

Claire Starling
Assistant District Attorney
Milwaukee County District Attorneys Office
10201 W. Watertown Plank Road
Wauwatosa, WI 53226

Steven Zaleski
The Zaleski Law Firm
10 E. Doty St., Ste. 800
Madison, WI 53703

Gregory Bates
Bates Law Offices
P.O. Box 70
Kenosha, WI 53141-0070

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

Carlisa H.

Deanna M. Weiss
Legal Aid Society of Milwaukee
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226

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

2014AP611-NM

In re the termination of parental rights to Quintasiaona H., a person under the age of 18: State of Wisconsin v. Carlisa H.
(L.C. #2013TP49)

Before Kessler, J.¹

Carlisa H. appeals the order terminating her parental rights to Quintasiaona H. Carlisa H.'s appellate lawyer, Steven W. Zaleski, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), *Brown County v. Edward C.T.*, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (per curiam), and WIS. STAT. RULES 809.107(5m) and 809.32. Carlisa H. was informed of her right to respond, but she did not respond. After considering the no-merit report and conducting an independent review of the record, we conclude that further proceedings would lack arguable merit. Therefore, we affirm the order terminating Carlisa H.'s parental rights.²

Quintasiaona H. was born August 21, 2011. Since her birth, she has not lived with her biological parents, who are not married, but have been in a long-term stable relationship for over sixteen years and have five older children. Quintasiaona H. has lived with the same foster mother since her discharge from the hospital, where she stayed for several weeks after her premature birth. Quintasiaona H. went into foster care, rather than home with her biological parents, because they contacted the Bureau of Milwaukee Child Welfare and asked for assistance, explaining that they were not financially or emotionally prepared to care for her because they were under the impression that she would be stillborn. On January 4, 2012, Quintasiaona H. was found to be in need of protection or services. On January 31, 2013, the

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.

² The parental rights of Dennis M., the father of Quintasiaona H., were also terminated. He has filed a separate appeal, 2014AP597-NM, which shares a record with this appeal. We decide the two appeals in separate orders because the legal issues in the two cases vary and counsel for each parent has raised different issues in the no-merit reports they have submitted.

State filed a petition to terminate Carlisa H.'s parental rights, alleging that she had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(6). On April 22, 2013, Carlisa H. entered a plea of no contest to the allegation. After holding a dispositional hearing that spanned several days, the circuit court determined that termination of Carlisa M.'s parental rights was in Quintasiaona H.'s best interest.

The no-merit report addresses whether Carlisa H. knowingly, intelligently, and voluntarily entered a no-contest plea to the allegation that she had failed to assume parental responsibility for Quintasiaona H., thus stipulating that there were grounds to terminate her parental rights. Before accepting a stipulation that grounds exist to support a termination petition, the circuit court must explain things to the parent as required by WIS. STAT. § 48.422(7); *see Oneida County DSS v. Therese S.*, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. 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 parent must also be aware of the constitutional rights being surrendered with the admission. *See Therese S.*, 2008 WI App 159, ¶5.

Our review of the record satisfies us that the circuit court properly followed WIS. STAT. § 48.422(7), and that Carlisa H. knowingly, intelligently, and voluntarily pled no contest. *See Waukesha County v. Steven H.*, 2000 WI 28, ¶¶42, 51, 233 Wis. 2d 344, 607 N.W.2d 607.

Carlisa H. appeared in person with her lawyer. The circuit court explained to her what facts the State would have to prove to show that she had failed to assume parental responsibility for Quintasiaona H. and the rights she was giving up by entering the plea. The circuit court inquired about Carlisa H.'s level of education and asked whether Carlisa H. had enough time to review the matter with counsel. The circuit court confirmed that no promises or threats had been made to secure the plea, and that no one had attempted to coerce Carlisa H. to refrain from exercising her parental rights. The circuit court confirmed that Carlisa H. understood she was not agreeing to a termination disposition because Carlisa H. intended to contest whether termination would be in Quintasiaona H.'s best interest. The circuit court also asked Carlisa H.'s attorney whether she had discussed any potential mitigating circumstances or potential defenses with Carlisa H. and asked counsel whether she had discussed matters pertaining to the plea thoroughly with her client. The circuit court also confirmed that Carlisa H. understood she would be found unfit as a result of her stipulation.

After accepting the plea, the circuit court heard evidence in support of the factual basis for the plea. *See* WIS. STAT. § 48.422(7)(c). The State has the burden to show that grounds for termination exist by clear and convincing evidence. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768. Quintasiaona H.'s case manager, Crystal Smith, testified that Quintasiaona H. had never lived with Carlisa H., and Carlisa H. had never participated in providing for her basic needs, such as daily supervision, education and protection. Smith also testified that Carlisa H. had not participated in Quintasiaona H.'s medical care and had never been a primary care giver. Our review of Smith's testimony satisfies us that the State offered sufficient evidence to show that Carlisa H. failed to assume parental responsibility. There would be no arguable merit to a challenge to the circuit court's acceptance of Carlisa H.'s plea.

The no-merit report next addresses whether Carlisa H.'s trial lawyer's performance was constitutionally deficient. In order to prevail on a claim of ineffective assistance of counsel, Carlisa H. would be required to show that her lawyer's performance was deficient and that the deficient performance prejudiced her. *See A.S. v. State*, 168 Wis. 2d 995, 1005, 485 N.W.2d 52 (1992). After reading through the transcripts of all the proceedings and reviewing the record, we agree with the no-merit report that the lawyer who represented Carlisa H. did everything she could have done to assist her. There would be no arguable merit to a claim that Carlisa H.'s trial lawyer's performance was constitutionally deficient.

Finally, the no-merit report addresses whether there is any arguable merit to a claim that the circuit court erroneously exercised its discretion in terminating Carlisa H.'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 child's best interests are the primary concern, *see* WIS. STAT. § 48.426(2), the circuit 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).

In its extensive oral decision, the circuit court made findings of fact based on the testimony it heard during the dispositional phase, addressing the factors set forth in WIS. STAT. § 48.426(3). The circuit court explained that Quintasiaona H. went home from the hospital with her foster mother because her biological parents recognized that they could not care for her at that point due to the circumstances of her birth, not because they had done anything wrong. To the contrary, the circuit court noted that Dennis M. and Carlisa H. have five older children that they have raised well. The circuit court found that the Bureau reasonably inferred at the outset that Quintasiaona H.'s placement with her foster mother would be short-term because Carlisa H. and Dennis M. would be able to pull things together to bring the child home. The circuit court found that this did not happen, in part due to health problems of each parent and their other responsibilities. They did not participate in Quintasiaona H.'s daily life, consistently visit with her or attend her medical appointments.

The circuit court found that Quintasiaona H.'s foster mother was devoted to her well-being and had done an exemplary job caring for her, especially given her special needs due to her premature birth. Quintasiaona H. was bonded to her foster mother and was happy in her home. The circuit court found that it was highly likely that Quintasiaona H. would be adopted by her foster mother, who was the only mother she had ever known because she had never lived with her parents. The circuit court found that the only relationships Quintasiaona H. had with her biological mother and father's families were with her five older siblings, who she had visited on occasion over the course of her life. The circuit court found that the foster mother had expressed a willingness to continue those relationships, though the court noted that the decision would ultimately be the foster mother's to make. Based on these factors, the circuit court reasonably concluded termination was in Quintasiaona H.'s best interest. There would be no arguable merit

to a challenge to the circuit court's exercise of discretion in terminating Carlisa H.'s parental rights.

Our independent review of the record reveals no other potential issues of arguable merit. Therefore, we affirm the order terminating Carlisa H.'s parental rights and relieve Attorney Steven W. Zaleski of further representation of Carlisa H. in this matter.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Steven W. Zaleski is relieved of further representation of Carlisa H. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals