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/II

June 18, 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

Carl W. Chesshir
Chesshir Law Office
S101 W34417 Hwy. LO, Ste. B
Eagle, WI 53119

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

Anne M. Abell
Legal Aid Society of Milw, Inc.
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226-3532

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

Octavia W.
5821 N. 75th St.
Milwaukee, WI 53218

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

2014AP882-NM	In re the termination of parental rights to Octavius O., a person under the age of 18: State of Wisconsin v. Octavia W. (L.C. #2012TP126)
2014AP883-NM	In re the termination of parental rights to Antiana W., a person under the age of 18: State of Wisconsin v. Octavia W. (L.C. #2012TP127)

Before Gundrum, J.[1]

In these consolidated cases, Octavia W. appeals from orders terminating her parental rights to two children. Octavia's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and ***Anders v. California***, 386 U.S. 738 (1967). Octavia received a copy of the report, was advised of her right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent review of the record, we conclude that the orders may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Octavius, born in 2004, and Antiana, born in 2007, were first removed from Octavia's custody in 2010, after she barricaded herself and the two children in a bedroom with a knife and threatened to kill all three of them. Octavia admitted that she heard voices telling her to harm her children. On August 31, 2010, the trial court entered a dispositional order finding the children in need of protection or services (CHIPS) and placing them outside the home. In December 2010, the children were placed with their current adoptive resource, the Curtiss family.

With the help of various resources, Octavia's mental health stabilized and the children were returned to her custody in June 2011. After reunification, Octavia regressed. She failed to continue with her alcohol and drug treatment and became less involved with her and her children's mental health providers. She admitted consuming alcohol, tested positive for THC,

[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.

and was placed on a probation hold in August 2011 based on allegations that she threatened a woman. Three months after reunification, in September 2011, the children were removed from Octavia's home and placed back with the Curtiss family after Octavia threatened to kill a neighbor and chopped at his door with an axe. The children were present during this incident. Octavia was charged criminally and her probation was revoked. She remained incarcerated until March 2012.

In May 2012, the State filed petitions to terminate Octavia's parental rights on the grounds of continuing CHIPS and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2) and (6). The initial appearance was adjourned to enable Octavia to obtain representation and exercise her right to judicial substitution. On August 20, 2012, Octavia entered denials to the petitions and reserved her right to a jury trial. The matter was adjourned and rescheduled several times.[2] At each hearing, the trial court found that there was good cause to grant a continuance. *See* WIS. STAT. § 48.315(2).

The parties appeared on the scheduled jury trial date and addressed a number of pretrial issues on the record. Jury selection was set to begin in the afternoon. When proceedings resumed, Octavia informed the court that she wished to waive her right to a trial and instead enter no-contest pleas. The court determined that there was not a sufficient factual basis for an

[2] The first adjournment was at Octavia's request, based largely on trial counsel's need to review the voluminous discovery. At the next hearing, the trial court considered the parties' motions in limine and agreed that the upcoming trial date of March 4, 2013, would instead serve as a hearing on Octavia's motion to modify the visitation order. On March 4, 2013, the trial court approved the parties' stipulation to modify the visitation schedule and rescheduled the trial date to May 13, 2013.

unfitness finding under WIS. STAT. § 48.415(2) (continuing CHIPS),[3] and Octavia agreed that she would enter pleas to the ground of failure to assume parental responsibility under § 48.415(6).[4] The trial court accepted Octavia's pleas, found her unfit, and ordered a bonding assessment. After a two-day dispositional hearing, the court determined that termination was in the children's best interests and entered orders terminating Octavia's parental rights.

We agree with appointed counsel's analysis and conclusion that no arguably meritorious issue arises from the plea-taking procedures in the unfitness phase. The trial court engaged Octavia in an extensive plea colloquy in accordance with WIS. STAT. § 48.422(7)[5] and determined that her pleas were knowing and voluntary and entered in the absence of any threats or promises. The court ascertained Octavia's understanding that "the State could not pursue the continuing CHIPS allegation based on a legal technicality," and confirmed that her medications did not interfere with her ability to understand the proceedings. The court ensured that Octavia understood the jury trial rights waived by the entry of her pleas and that the court's acceptance of

[3] The trial court determined that the State could not establish unfitness under WIS. STAT. § 48.415(2) because the final CHIPS extension order failed to contain the written TPR warnings required by WIS. STAT. §§ 48.415(2) and 48.356(2). *See* ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, ¶¶23, 26, 35-37, 233 Wis. 2d 344, 607 N.W.2d 607 (though the written TPR warnings were not included in each and every CHIPS order placing the children outside the home, Steven was provided sufficient notice where the last order contained the requisite warnings).

[4] WISCONSIN STAT. § 48.415(6) requires that the parent has failed to accept and exercise "significant responsibility for the daily supervision, education, protection and care" of the subject child.

[5] Before accepting a no-contest plea to a termination petition, the trial court must engage the parent in a personal colloquy in accordance with WIS. STAT. § 48.422(7). *See* ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. Thus, the court must: (1) determine that the no-contest plea is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions, (2) establish whether any threats or promises were made to secure the plea, (3) determine whether there is a factual basis for the plea, and (4) ensure that the parent has knowledge of the constitutional rights he or she is giving up by pleading and the direct consequences of his or her plea. *See* § 48.422(7); ***Therese S.***, 314 Wis. 2d 493, ¶¶5, 10-11, 16.

her pleas would result in a finding of parental unfitness. *See* ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶10, 314 Wis. 2d 493, 762 N.W.2d 122. Further, the court informed Octavia that the children's best interests would be the prevailing standard at disposition, and that at the dispositional stage, the court would hear evidence and then either terminate her rights or dismiss the petition if the evidence did not warrant termination. *See* ***id.***, ¶¶15-16. Based on the testimony of Octavia and her case manager, the court found that a factual basis existed for the unfitness ground of failure to assume parental responsibility. The court satisfied its plea-taking duties at the unfitness stage.

We further conclude that there is no arguable merit to a claim that the trial court erroneously exercised its discretion in terminating Octavia's parental rights at disposition. After hearing the testimony of six witnesses, including Octavia, the court correctly applied the best interests of the child standard and considered the factors set forth in WIS. STAT. § 48.426(3), including the great likelihood of adoption and the children's wishes. The court acknowledged that, given the facts of this case, including the children's attachment to Octavia, it was presented with "a very difficult decision." The court's discretionary decision to terminate Octavia'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).

In addition to the potential issues discussed by appellate counsel, the record establishes that all of the statutory deadlines were met or properly extended for good cause, and that required notices were given. We have discovered no other arguably meritorious grounds for an appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Upon the foregoing reasons,

IT IS ORDERED that the orders terminating parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved from further representing Octavia W. in these matters.

Diane M. Fremgen
Clerk of Court of Appeals