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July 17, 2014

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

2014AP1204-NM In re the termination of parental rights to Kameron B., a person under the age of 18: State of Wisconsin v. John T. (L.C. #2013TP68)

Before Kloppenburg, J.[1]

John T. appeals an order terminating his parental rights to Kameron B. Attorney Gregory Bates has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All further references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

809.32; ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). John was sent a copy of the no-merit report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

The county initiated this action by filing a petition for termination of John's parental rights to Kameron. It appears from the record that all of the statutory deadlines were met or properly extended for good cause, and that required notices were given. John was advised of his rights in the proceedings, including the right to counsel, the right to contest the petition, the right to substitute judges, and the right to a fact-finding hearing by jury or to the court.

John elected not to contest the sufficiency of the grounds for termination of his parental rights on the basis of the child's continuing need for protection or services (CHIPS). An admission of the alleged grounds in a termination of parental rights (TPR) case must be made "with understanding." WIS. STAT. § 48.422(7). Courts may apply the same standard and analysis set forth in ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), for pleas in criminal cases to evaluate the validity of an admission to grounds in a TPR proceeding. ***Waukesha County v. Steven H.***, 2000 WI 28, ¶42, 233 Wis. 2d 344, 607 N.W.2d 607. In this case, the record contains a colloquy in which the circuit court ascertained that John understood the process and the rights he was waiving by admitting grounds. We are satisfied that there would be no merit to challenging the waiver on appeal.

In addition, the county presented evidence sufficient to establish the termination ground of continuing CHIPS. In order to establish continuing CHIPS, the county needed to show that:

(1) the child had been adjudged in need of protection and services and placed outside the home for six months or more pursuant to a court order containing statutory notice of TPR proceedings; (2) the county department of health and human services had made reasonable efforts to provide the services ordered by the court; (3) the parent failed to meet the conditions established for the safe return of the child; and (4) there was a substantial likelihood that the parent would not meet the conditions within the nine-month period following the hearing. *See* WIS. STAT. § 48.415(2); WIS. JI—CHILDREN 324.

The county introduced the prior court order needed to prove the first element as an exhibit. To prove the second element, the county presented the testimony of Rosemary Brunner, Kameron's case manager. Brunner testified that many attempts had been made to provide services to John consistent with his prior CHIPS order, including parenting programming, anger management, a psychological evaluation, individual therapy, and a family interactions program. With regard to John's progress toward meeting the conditions of return and likelihood of future progress, Brunner testified that John had made some progress toward completing some of the programs, but had been discharged for lack of progress in the family interactions program and had repeatedly cancelled visits with Kameron. Brunner further testified that John continued to lack the ability to provide for his son's daily needs and special medical needs, despite a referral for specialized training. It was Brunner's opinion that John would not likely complete the conditions of return within the nine-month period following the hearing. This evidence was sufficient for the court to find that all of the required elements for continuing CHIPS had been established, such that there would be no merit to challenging that finding on appeal.

At the dispositional hearing, the court was required to consider such factors as the likelihood of the child's adoption, the age and health of the child, the nature of the child's

relationship with the parents or other family members, the wishes of the child, and the duration of the child's separation from the parent, with the prevailing factor being the best interests of the child. WIS. STAT. § 48.426(2) and (3). The court considered all of these factors on the record.

The court heard testimony from several witnesses during the dispositional phase of the proceedings. Kameron's foster mother testified regarding her and her husband's desire to adopt Kameron. She explained the medical care that she and her husband have managed on Kameron's behalf, including treatment for asthma, ear tubes, and an umbilical hernia. She further testified that they are open to Kameron continuing a relationship with John.

Case manager Rosemary Brunner again testified during the dispositional phase of the proceedings. She testified that Kameron had been out of his father's care for over two years. Brunner testified that, although John had visited with Kameron and expressed a desire to have Kameron returned to his care, he lacked the skills needed to parent his child, including having appropriate food available for Kameron to eat during visits and identifying developmental milestones.

Psychologist Kenneth Sherry also testified regarding the psychological examination he performed of John at the request of the court. He testified that John had cognitive limitations, borderline intellectual functioning, and narcissistic patterns that made it difficult for him to set aside his own wants for the needs of others. Sherry expressed concern about Kameron's safety due to John's history of abuse, low IQ, and personality patterns.

John also testified on his own behalf. He stated that he did not believe his parental rights to Kameron should be terminated. He expressed love for his son and a desire to be in his son's life and to learn to improve.

After hearing all of the testimony, the court considered the factors set forth in WIS. STAT. § 48.426(3) on the record and found that it was in the child's best interest to terminate John's parental rights. The record shows that the circuit court reasonably applied the proper legal standard to the facts of record when reaching its disposition. We have discovered no other arguably meritorious grounds for an appeal, and we conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the order terminating John T.'s parental rights to Kameron B. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of John T. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals