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DISTRICT II/III

January 5, 2015

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

2014AP2455-NM In re the termination of parental rights to Anna M., a person under the age of 18: James M. v. Bonnie C. (L. C. No. 2013TP52)

Before Hruz, J.[1]

Counsel for Bonnie C. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable merit to any issue that could be raised on appeal from an order terminating Bonnie's parental rights to her daughter, Anna M.[2] Bonnie was informed of her right to file a response to the report and has not responded. Upon this court's independent

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

[2] The order also terminated the parental rights of Anna's unknown father. Termination of the father's parental rights is not the subject of this appeal.

review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the order terminating Bonnie's parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Anna was born April 25, 2000. Bonnie was arrested on an outstanding warrant shortly thereafter and spent approximately four months in jail. Anna has resided with Bonnie's mother and stepfather, Teresa M. and James M., since she left the hospital at five days old. The couple obtained guardianship of Anna in August 2000 and, in September 2013, they petitioned for termination of Bonnie's parental rights, indicating Bonnie consented to the termination. After Bonnie subsequently contested the termination, Teresa and James amended the petition to allege a failure to assume parental responsibility and abandonment as grounds for termination. When Bonnie later failed to appear for two scheduled hearings, the court found her in default. Following a hearing on grounds and disposition, the court found Bonnie unfit and concluded it was in Anna's best interest for Bonnie's parental rights to be terminated.

Any challenge to the default finding entered against Bonnie would lack arguable merit. In a termination of parental rights case, it is within the circuit court's discretion to find a party in default as a sanction for failing to comply with a court order. ***Evelyn C. R. v. Tykila S.***, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768. At the initial hearing, the court ordered Bonnie to make all court appearances and warned her that failure to do so could "result in a default." The initial hearing was continued, first to permit Bonnie to obtain counsel and again after Bonnie requested substitution of judge. After Bonnie failed to appear in person at the continued initial hearing, the guardian ad litem moved for default. The court did not immediately grant the motion but, rather, scheduled a default hearing and warned Bonnie's counsel that if she did not appear at that hearing, the court would find her in default as to the grounds for termination. The

court also sent notice of the hearing to Bonnie, with the warning that failure to appear would result in default. When Bonnie failed to appear, the court found her in default.

Although a trial court may find a party in default for failing to comply with its order, the court may not enter a judgment as to grounds without holding an evidentiary hearing and finding the alleged grounds for termination by clear and convincing evidence. ***Id.***, ¶24. Here, the court did not hear testimony on grounds before making its default finding. There is, however, no arguable merit to challenge the default because evidence at the dispositional hearing established grounds for termination before the court found Bonnie unfit and terminated her parental rights. *See* ***id.***, ¶¶3, 33 (failure to take testimony before default finding as to grounds remedied at dispositional hearing when court heard testimony sufficient to support finding that grounds existed).

As noted above, the petition alleged a failure to assume parental responsibility and abandonment. Failure to assume parental responsibility is established by proving that Bonnie has not had a substantial parental relationship with the child. WIS. STAT. § 48.415(6)(a). "[S]ubstantial 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). Failure to assume parental responsibility is determined by consideration of the totality of the circumstances. ***Tammy W.-G. v. Jacob T.***, 2011 WI 30, ¶¶3, 27-35, 333 Wis. 2d 273, 797 N.W.2d 854.

Louise Gagliano, a social worker with the Kenosha County Division of Children and Family Services, prepared and submitted a "Termination of Parental Rights Report," opining there would not be any substantial harm to Anna resulting from the termination of Bonnie's

parental rights. Gagliano testified that Anna has lived in her grandparents' home since birth; she considers Teresa and James to be her parents, and she clearly expressed the desire to be adopted by her grandparents.

Teresa testified that Bonnie lived with them for "some time" during the first two years of Anna's life. Teresa added, however, that Bonnie has generally been uninvolved with Anna, at times failing to contact her for more than six months. Teresa indicated that throughout Anna's life, she and James have taken care of her needs on a daily basis, while Bonnie has neither accepted nor exercised significant responsibility for Anna's daily supervision, education, protection or care. According to Teresa, Bonnie never provided child support for Anna and had not attempted to see Anna since the termination proceedings started.

Turning to the alternate ground for termination, abandonment is established by proving Bonnie left Anna with any person; Bonnie knew or could discover Anna's whereabouts; and Bonnie failed to visit or communicate with Anna for a period of six months or longer. *See* WIS. STAT. § 48.415(1)(a)3. As noted above, Teresa testified that throughout Anna's life, there were several times—the most recent being the previous year—when Bonnie went at least six months without communicating with Anna. Teresa further testified there were periods when Bonnie was "just kind of gone and didn't communicate with any of us." Based on the testimony presented, the court found the State had established by clear and convincing evidence both that Anna had been abandoned and that Bonnie had failed to assume parental responsibility. Any challenge to these findings would lack arguable merit.

Finally, there is no arguable merit to a claim that the trial court erroneously exercised its discretion when it terminated Bonnie's parental rights. The court correctly applied the best

interests of the child standard and considered the factors set out in WIS. STAT. § 48.426(3). The court considered Anna's adoptability and age, along with the absence of any substantial relationship with Bonnie. The court noted that Teresa and James had already begun the paperwork to adopt then fourteen-year-old Anna, and Anna had expressed her wish to be adopted by her grandparents. The court also emphasized Anna's need for a stable and permanent family relationship. In consideration of the potential harm of severing ties by termination, the court indicated its belief that termination would not sever this family's ties but, rather, reconfigure them. The court's discretionary decision to terminate Bonnie'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).

This court's independent review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Faun M. Moses is relieved of further representing Bonnie C. in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals