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March 11, 2015

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

2014AP2454-NM

In re the termination of parental rights to Tristian J., a person under the age of 18: State of Wisconsin v. Marqurs J. (L.C. #2013TP365)

Before Reilly, J.¹

Marqurs J. appeals a circuit court order terminating his parental rights to Tristian J. Marqurs' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. Marqurs received a copy of the report, was advised of his right to file a response,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version.

and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the order.

RULE 809.21.

The State of Wisconsin petitioned to terminate Marqurs' parental rights on multiple grounds including (1) that Marqurs had abandoned Tristian pursuant to WIS. STAT. § 48.415(1)(a)2; and (2) that Tristian remained a child in continuing need of protection or services (continuing CHIPS) pursuant to § 48.415(2). At both the initial appearance and adjourned initial appearance, the circuit court advised Marqurs of his rights and ordered him to stay in contact with his attorney, attend all court dates, and cooperate with any discovery including depositions. After another adjournment, the matter was scheduled for a jury trial. The court reiterated its earlier order and warned Marqurs that the possible sanction for violating it could include losing the right to a jury or court trial, default at the grounds phase, and the case proceeding immediately to disposition.

On the date of the scheduled jury trial, Marqurs was not in court. His attorney, who was in court, provided the following explanation:

I have lost contact with my client for the past few weeks. I've been trying to track him down at various phone numbers to get in contact with him. I've been working with [the case manager] trying to locate him. We sent out notices of deposition about two weeks ago to two different addresses for the deposition scheduled this past Friday. He never appeared. I don't know if he received those notices, but they never came back to the office, so I've had no contact with Mr. [J.] for-- probably since the last court date.

The circuit court found Marqurs in default for violating all three portions of its order—stay in contact with his attorney, attend all court dates, and cooperate with any discovery including depositions.

The State subsequently put in evidence supporting its petition. The circuit court found that the State met its burden of proving that grounds existed for termination. Following a dispositional hearing, the court terminated Marqurs' parental rights.

After filing a timely notice of appeal, Marqurs filed a motion for postjudgment relief pursuant to WIS. STAT. § 806.07(1)(a), asserting that his failure to attend the date of the scheduled jury trial was due to excusable neglect. The circuit court held a hearing on the matter and ultimately denied the motion. Appointed counsel then filed an amended notice of appeal, converting the matter to a no-merit appeal.

The no-merit report first addresses whether the circuit court properly exercised its discretion in finding Marqurs in default.² A circuit court may find a party in default for failing to comply with a court order. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768. Here, the court determined that Marqurs had violated three portions of its order—stay in contact with his attorney, attend all court dates, and cooperate with any discovery including depositions. We are satisfied that the record supports the court's decision and that no arguable merit could arise from this issue.

The no-merit report next addresses whether the evidence was sufficient to support the grounds in the petition. When considering the sufficiency of the evidence, this court applies a highly deferential standard of review. *Jacobson v. American Tool Cos., Inc.*, 222 Wis. 2d 384, 389, 588 N.W.2d 67 (Ct. App. 1998). Our review of the record persuades us that the State

² At times in the no-merit report, counsel uses the phrase “abuse of discretion.” We have not used the phrase “abuse of discretion” since 1992, when our supreme court replaced the phrase with “erroneous exercise of discretion.” See, e.g., *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

produced ample evidence to prove both the abandonment and continuing CHIPS grounds. Accordingly, we conclude that no arguable merit could arise from this issue.

The no-merit report next addresses whether the circuit court properly exercised its discretion at disposition by terminating Marqurs' parental rights. Under WIS. STAT. § 48.426(2), the "best interests of the child" is the prevailing standard at disposition, and the court is required to consider the factors delineated in § 48.426(3) in making this determination. *State v. Margaret H.*, 2000 WI 42, ¶¶34-35, 234 Wis. 2d 606, 610 N.W.2d 475. Here, the court's remarks reflect that it considered the appropriate factors. Those factors weighed in favor of a determination that it was in the best interests of Tristian to terminate Marqurs' parental rights. Again, we agree with counsel that no arguable merit could arise from this issue.

Finally, the no-merit report addresses whether the circuit court properly denied Marqurs' postjudgment motion for relief from the default. The decision to grant relief under WIS. STAT. § 806.07(1) is committed to the circuit court's sound discretion. *Lenticular Europe, LLC, ex rel. Van Leeuwen v. Cunnally*, 2005 WI App 33, ¶9, 279 Wis. 2d 385, 693 N.W.2d 302. Here, Marqurs argued that his failure to attend the date of the scheduled jury trial was due to excusable neglect. The problem with this argument, as noted by the circuit court, is that the default was not based solely on a missed court date. Rather, it was also based on Marqurs' failure to stay in contact with his attorney and cooperate with any discovery including depositions. Because those violations remained unchallenged, the court properly denied Marqurs' motion and no arguable merit could arise from this issue.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.³ Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Christine M. Quinn of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order terminating Marqurs J.'s parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christine M. Quinn is relieved of any further representation of Marqurs J. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

³ It appears from the record that all mandatory time limits were met or properly extended for good cause and without objection.