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March 18, 2015

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

2015AP215-NM In re the termination of parental rights to A. T., a person under the age of 18: State of Wisconsin v. Aaron T. (L.C. # 2014TP17)

Before Neubauer, P.J.[1]

Aaron T. appeals from an order terminating his parental rights to A. T., his minor daughter. Aaron'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). Aaron received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the

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

no-merit report and an independent review of the record, we conclude that the order 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.

A. T. was first found to be a child in need of protection or services (CHIPS) in 2010 and was placed with Aaron. She was subsequently detained and removed from Aaron's care and has remained in an out-of-home placement since January 2011. In 2014, the State filed a petition to terminate Aaron's parental rights alleging grounds of abandonment, continuing need of protection or services, and failure to assume parental responsibility. *See* WIS. STAT. §§ 48.415(1)(a)2., (2), and (6).[2] Aaron was informed of and exercised his right to appointed counsel, and at the adjourned initial appearance, the trial court informed Aaron of his rights to a jury trial and judicial substitution. The matter was adjourned and rescheduled several times.[3] At each hearing, the trial court found that there was good cause to toll the time limits under WIS. STAT. § 48.315(2).

At a scheduled pretrial conference, Aaron's attorney confirmed that Aaron had missed two depositions and "would like to do a stipulation today to grounds and then have the best interests case." Based on Aaron's sworn answers to the trial court's questions, the court determined that Aaron freely, knowingly, and voluntarily admitted to the unfitness ground of

[2] The petition also sought the termination of the mother's parental rights.

[3] The matter was adjourned for various reasons, such as to ensure service on the mother, secure her appearance, and due to Aaron's nonappearance.

abandonment.[4] After hearing the social worker's testimony concerning the factual basis for the petition, the trial court found Aaron unfit and scheduled the matter for a dispositional hearing. Aaron subsequently failed to appear at the dispositional hearing and after considering the evidence and testimony of A. T.'s case manager, the trial court entered its order terminating Aaron's parental rights.

We determine that no arguably meritorious issue arises from the admission-taking procedures in the unfitness phase.[5] Before accepting an admission to a termination petition, the trial court must engage the parent in a personal colloquy to: (1) determine that the admission 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 admission, (3) determine whether there is a factual basis for the admission, and (4) ensure that the parent has knowledge of the constitutional rights he or she is giving up by admitting and the direct consequences of his or her admission. *See* WIS. STAT. § 48.422(7); *See* ***Oneida Cnty. DSS v. Therese S.***, 2008 WI App 159, ¶¶5, 10-11, 16, 314 Wis. 2d 493, 762 N.W.2d 122. Here, the

[4] In pertinent part, WIS. STAT. § 48.415(1)(a)2., provides that abandonment is established by proving "[t]hat the child has been placed, or continued in a placement, outside the parent's home by a court order containing the [statutory notice requirements] and the parent has failed to visit or communicate with the child for a period of 3 months or longer."

[5] We observe that appointed counsel's no-merit report did not squarely address whether Aaron's admission to the ground of abandonment comported with the requirements of WIS. STAT. § 48.422(7) or relevant case law. Instead, counsel's no-merit report addressed the stated issues of whether Aaron's "procedural rights [were] protected" and the sufficiency of the evidence supporting the court's unfitness and best interests findings. Based on our independent review of the record, we determine that in accepting Aaron's stipulation to the unfitness ground of abandonment, the trial court satisfied the requirements set forth in § 48.422(7) and ***Oneida County DSS v. Therese S.***, 2008 WI App 159, 314 Wis. 2d 493, 762 N.W.2d 122. In the future, where a parent admits, enters a no-contest plea, or stipulates to grounds in a termination petition, counsel's no-merit report should analyze whether the procedures afforded satisfy these requirements.

record contains a colloquy in which the trial court ascertained that Aaron understood the process and the rights he was waiving by admitting grounds, the factual basis for and nature of the abandonment ground, that if the court accepted his admission it would find him unfit, and that the prevailing standard at disposition would be the best interests of the child. *See* ***Therese S.***, 314 Wis. 2d 493, ¶¶10, 16. Aaron confirmed his understanding that in order to establish abandonment the State would have to prove that he had no visits, communication or contact with A. T. for a minimum of three months while she was placed outside the home pursuant to a court order, and agreed with the court's statement that he wished to "stipulate or agree that there are grounds to terminate your parental rights on the basis of abandonment." Additionally, the social worker's undisputed testimony established a factual basis for the ground of abandonment. *See* § 48.422(7)(c).

We further conclude that there is no arguable merit to a claim that the trial court erroneously exercised its discretion in terminating Aaron's parental rights at disposition. In open court, Aaron was provided with the date of the dispositional hearing, ordered to appear at that hearing, and warned that if he failed to comply, the court could take action and make decisions in his absence. Without explanation, Aaron failed to appear at the dispositional hearing. After hearing the testimony of the case supervisor, the court correctly applied the best interests of the child standard and considered the factors set forth in WIS. STAT. § 48.426(3).[6] The trial court's

[6] In determining which disposition is in the child's best interests, the court shall consider factors including but not limited to: (1) the likelihood of adoption after termination; (2) the age and health of the child; (3) whether the child has substantial relationships with the parent or other family members, and if it would be harmful to the child to sever those relationships; (4) the subject child's wishes; (5) the duration of the parent-child separation; and (6) "[w]hether 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).

findings included that A. T. had been placed outside of Aaron's home since 2011, no substantial relationship existed between A. T. and Aaron or other members of his biological family, A. T. was likely to be adopted, and termination would allow A. T. to enter into a more stable and permanent family relationship. The court's discretionary decision to terminate Aaron's parental rights as in A. T.'s best interests 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, it appears from the record that all of the statutory deadlines were met or properly extended for good cause,[7] 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 order terminating parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing Aaron T. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

[7] Further, the failure to object to a continuance "waives any challenge to the court's competency to act during the period of delay or continuance." WIS. STAT. § 48.315(3).