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June 12, 2015

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

2015AP659-NM	In re the termination of parental rights to D.E., a person under the age of 18: State of Wisconsin v. Dequanna L. (L.C. #2013TP357)
2015AP660-NM	In re the termination of parental rights to D.T. , a person under the age of 18: State of Wisconsin v. Dequanna L. (L.C. #2013TP358)

Before Stark, J.[1]

Counsel for Dequanna L. has filed a no-merit report concluding there is no basis to challenge orders terminating her parental rights to her sons, D.E. and D.T. *See* WIS. STAT. RULES 809.107(5m) & 809.32. Dequanna L. was advised of her right to file a response, but she

[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 unless otherwise noted.

has not responded. Based upon our independent review of the records and the no-merit report, this court concludes an appeal would lack arguable merit. Therefore, the orders terminating Dequanna L.'s parental rights are summarily affirmed.

D.E. was born in December 2005, and D.T. was born in November 2007. Referrals to the Bureau of Milwaukee Child Welfare began in October 2010, but the children were not originally detained until June 28, 2011, under a pick-up order because Dequanna L. was actively avoiding social workers. The boys were deemed children in need of protection or services (CHIPS) on January 4, 2012, and a CHIPS dispositional order was entered on February 14, 2012. The children were returned to Dequanna L.'s care on June 15, 2012, but they were again detained in August 2012 and have been out of their parents' homes ever since.

The State filed termination petitions regarding D.E. and D.T. on November 12, 2013. As to Dequanna L.,[2] the petitions alleged that the boys continued to be in need of protection or services and that Dequanna L. had failed to assume parental responsibility. *See* WIS. STAT. §§ 48.415(2) & (6). Dequanna L. agreed to stipulate to the failure-to-assume ground, and the continuing-CHIPS allegation would be dismissed. Following a disposition hearing, the circuit court terminated Dequanna L.'s parental rights.

Appellate counsel raises two issues, but we first consider whether there is any arguable merit to a claim that the circuit court failed to comply with mandatory time limits, thereby losing competency to proceed. *See* WIS. STAT. §§ 48.422(1)-(2) & 48.424(4)(a); *see also* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. The statutory time limits

[2] D.E. and D.T. have different fathers, whose cases are not before us in these appeals.

cannot be waived, *see* ***April O.***, 233 Wis. 2d 663, ¶5, but continuances are permitted for good cause "and only for so long as is necessary," *see* WIS. STAT. 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. *See* WIS. STAT. § 48.315(3). Our review of the record satisfies us that the mandatory time limits were either followed, or adjourned for sufficient cause and for only so long as necessary, so there is no arguable merit to a challenge to the circuit court's competency.

The first issue counsel addresses is whether the circuit court met its statutory obligations under WIS. STAT. § 48.422 when accepting Dequanna L.'s stipulation to grounds. Before accepting a no-contest plea to a termination petition, the circuit court must engage the parent in a colloquy under WIS. STAT. § 48.422(7). *See* ***Oneida Cnty. Dept. of Soc. Servs. v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. Thus, the circuit court must: (1) address the parent and determine that the admission is made voluntarily, with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) establish whether any promises or threats were made to secure the plea; (3) establish whether a proposed adoptive resource for the children has been identified; (4) establish whether any person has coerced a parent to refrain from exercising his or her parental rights; and (5) determine whether there is a factual basis for the admission of facts alleged in the petition. *See* WIS. STAT. § 48.422(7). The circuit court must also ensure that the parent understands the constitutional rights she is giving up with the plea, *see* ***Therese S.***, 314 Wis. 2d 493, ¶5, and that the plea will result in a finding of parental unfitness, *see* ***id.***,¶10.

The circuit court reviewed with Dequanna L. the nature of the failure-to-assume grounds. It confirmed that she understood that she was not agreeing to termination as a disposition, and it explained the possible dispositions that could occur. The circuit court additionally confirmed that Dequanna L. knew she would be found unfit as a result of the stipulation.

The circuit court inquired whether any of Dequanna L.'s mental health issues were adversely impacting her ability to understand the proceedings. It asked whether she had discussed the possible stipulation with anyone else, how long she had been considering it, and whether she had adequately discussed it with her attorney. The circuit court confirmed that no threats or promises had been made to secure the stipulation, and that no one had attempted to coerce Dequanna L. to refrain from exercising her parental rights. The circuit court established the status of a potential adoptive resource for the boys, and ensured that Dequanna L. understood the constitutional rights she was giving up with the stipulation.

The circuit court then heard evidence in support of the factual basis for the failure-to-assume allegations. Failure to assume parental responsibility "shall be established by proving that the parent … [has] not had a substantial parental relationship with the child." WIS. STAT. § 48.415(6)(a). A substantial 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). When the factfinder evaluates whether a person has had such a relationship with the child, the factfinder may consider factors including, but not limited to, "whether the person has expressed concern for or interest in the support, care or well-being of the child, [and] whether the person has neglected or refused to provide care or support for the child[.]" ***Id.***

The State called case manager Mary LaBoo to testify. LaBoo offered her opinion that Dequanna L. had never "accepted and exercised significant responsibility for D.E. and D.T.'s daily supervision, education, protection, and care[.]" She explained that one of the reasons that D.E. and D.T. were detained in the first place was Dequanna L.'s "lack of follow through with their medical care[.]" They were also detained because of general neglect and their parents' drug and alcohol use.

As part of the stipulation, Dequanna L. agreed that the circuit court could rely on the documents from the CHIPS proceedings. Those documents reveal that the original detention occurred because of a report that seven adults and ten children were occupying a two-bedroom apartment. In addition, though the adults received nearly $2,000 in food assistance benefits, the food ran out early in the month, or the benefits were sold for drug money, leading the children to go outside to beg for food or money. After being returned to Dequanna L. in June 2012, the boys were again detained because another child had been injured in the home. Further, the safety plan in place was being ignored; among other things, social workers discovered the bathroom was flooded, with a clogged toilet and a layer of feces and urine on the floor. The Bureau of Milwaukee Child Welfare was also forced to seek temporary guardianship of the boys in August 2014 because Dequanna L. refused to sign, or could not be found to sign, necessary medical authorization forms.

During her testimony, LaBoo also explained that Dequanna L. was diagnosed with schizoaffective disorder, had suffered auditory hallucinations and suicidal and homicidal thoughts, and had marijuana and alcohol dependence. As a result, Dequanna L. had difficulty managing her living arrangements and providing for herself. She also had difficulty managing her mental health needs and addressing her drug dependence. All of these issues that made it

difficult for Dequanna L. to care for herself also made it difficult for her to assume parental responsibility.

Based on the foregoing, we agree with counsel's determination that there is no arguable merit to a claim the circuit court failed to follow statutory requirements in accepting Dequanna L.'s stipulation to grounds. Our review of the record satisfies us that the circuit court properly followed WIS. STAT. § 48.422(7) and that Dequanna L. knowingly, intelligently, and voluntarily entered the stipulation to grounds. *See* ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, ¶¶42, 51, 233 Wis. 2d 344, 607 N.W.2d 607. There is also no arguable merit to a claim of an insufficient factual basis for the failure-to-assume allegations.

The other issue counsel raises is whether the circuit court properly exercised its discretion in terminating Dequanna L.'s parental rights.[3] *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Bearing in mind that the children's best interests are the primary concern, *see* WIS. STAT. § 48.426(2), the court must also consider factors including, but not limited to:

> (a) The likelihood of the child's adoption after termination.
>
> (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
>
> (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
>
> (d) The wishes of the child.

[3] The Honorable John DiMotto accepted Dequanna L.'s stipulation; the Honorable Rebecca G. Bradley made the termination decision.

> (e) The duration of the separation of the parent from the child.
>
> (f) Whether 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).

The circuit court found as follows. The foster mother testified at the disposition hearing that she and her husband were not ready to commit to being the adoptive resource for D.E. and D.T. The boys were dealing with significant mental health issues and, while they were progressing in treatment, she wanted to see the boys' mental health stabilize further before making an adoption decision. It was noted, however, that the boys were improving with ongoing mental health treatment. The circuit court understood this desire from the foster family, but observed the foster parents had adopted another special needs child. Thus, the circuit court concluded the boys' mental health issues were not necessarily an impediment to adoption and, if their parents' rights were terminated, there was a strong possibility that the boys would be adopted.

The circuit court noted both boys were physically healthy, but had behavioral and mental health issues. This was not surprising, the circuit court explained, given that they had been exposed to domestic violence in the home, and that Dequanna L. refused to recognize such violence could adversely impact her children. The circuit court relied on reports that both boys were improving with the treatment they were receiving while outside Dequanna L.'s care.

The circuit court found neither D.E. nor D.T. had substantial relationships with Dequanna L. or other relatives. It found the boys had some sort of relationship with

Dequanna L. and that it might be "possibly very harmful" to sever that relationship, but the "sense of impermanence" the boys faced without termination was likely to be more harmful.

The circuit court commented that both boys had expressed some desire to be with their biological family, but the circuit court did not think this was uncommon. We note the foster mother testified that D.T. expressed a wish to be adopted, specifically stating he wanted his last name to be that of his foster parents. We also note the social worker testified that D.E., who wanted to go "home," expressed a wish to be with his father, with whom he briefly had a relationship in the early stages of the CHIPS proceeding before his father effectively abandoned him.

The circuit court observed that, at the time of the disposition hearing, the boys had been out of Dequanna L.'s care for almost three years. This was a substantial portion of D.E.'s life and nearly half of D.T.'s life.

Finally, with regard to stability and permanence, the circuit court noted it had no "crystal ball" to know what would ultimately happen, but it did know the boys' situation at the time of the disposition hearing was unstable. It commented that, if the boys knew there would be some stability in their life, it might help their behavior improve, which was then likely to lead to greater stability. Thus, the circuit court concluded, termination of Dequanna L.'s parental rights would help the boys achieve stability and permanence.

We discern no erroneous exercise of discretion in these findings and conclusions. There is no arguable merit to a challenge to the circuit court's termination decision.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Thomas K. Voss is relieved of further representation of Dequanna L. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals