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June 24, 2015

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

2015AP60-NM In re the termination of parental rights to Chance B., a person under the age of 18: State of Wisconsin v. Morgan B. (L.C. # 2013TP263)

Before Neubauer, P.J.[1]

Morgan B. appeals a circuit court order terminating her parental rights to her son, Chance B. Morgan's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. Morgan received a copy of the report, was advised of her right to file a

[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.

response, 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. *See* WIS. STAT. RULE 809.21.

The State of Wisconsin petitioned to terminate Morgan's parental rights on grounds that (1) she failed to assume parental responsibility and (2) Chance was a child in continuing need of protection or services. *See* WIS. STAT. § 48.415(2), (6). Following a bench trial,[2] the circuit court found that both grounds were proven and made the requisite finding of unfitness. It then terminated Morgan's parental rights after a dispositional hearing. Morgan filed a postjudgment motion for a rehearing, which the circuit court denied. This no-merit appeal follows.

The no-merit report addresses the following issues: (1) whether the evidence presented at trial was sufficient to sustain the circuit court's finding of unfitness, (2) whether the court properly exercised its discretion at the dispositional hearing in terminating Morgan's parental rights, and (3) whether the court properly denied Morgan's postjudgment motion. We agree with appellate counsel that these issues would not have arguable merit for appeal.

With respect to the finding of unfitness, we must consider the evidence in a light most favorable to the determination made by the circuit court. ***Tang v. C.A.R.S. Prot. Plus, Inc.***, 2007 WI App 134, ¶19, 301 Wis. 2d 752, 734 N.W.2d 169. Our review of the trial transcripts persuades us that the State produced sufficient evidence to prove both grounds for termination, i.e., that Morgan failed to assume parental responsibility and that Chance was a child in

[2] Morgan waived her right to a jury trial. The circuit court conducted a personal colloquy on the record to verify that her waiver was knowing, voluntary, and intelligent.

continuing need of protection or services. Once the court found that these grounds were proven, it was required to find Morgan unfit. *See* WIS. STAT. § 48.424(4).

With respect to the decision at the dispositional hearing, the record demonstrates that the circuit court properly exercised its discretion. The court's determination of whether to terminate parental rights is discretionary. ***State v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the "best interests of the child" is the prevailing standard, and the court is required to consider the factors delineated in § 48.426(3) in making this determination. ***Margaret H.***, 234 Wis. 2d 606, ¶¶34-35. Here, the circuit 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 Chance to terminate Morgan's parental rights.

Finally, with respect to the postjudgment motion, Morgan argued that she had new evidence warranting a rehearing.[3] Specifically, she noted that Chance was removed from his foster family's home shortly after the dispositional hearing, which was contrary to the expectation of the circuit court.[4] Whether new evidence warrants a rehearing rests in the sound discretion of the circuit court. *See* ***Schroud v. Milwaukee Cnty. Dep't of Pub. Welfare***, 53 Wis. 2d 650, 654, 193 N.W.2d 671 (1972). Here, the court declined to order a rehearing because it had considered Chance's adoptability in a general sense at the dispositional hearing,

[3] Morgan's postjudgment motion was brought under WIS. STAT. § 805.15 (new trials). However, the circuit court concluded that the applicable statute was actually WIS. STAT. § 48.46 (new evidence; relief from judgment terminating parental rights). Morgan's appellate counsel concedes that this was the correct conclusion, as it is a well-recognized principle of statutory interpretation that the specific statute trumps the general statute. We agree.

[4] The circuit court had indicated at the dispositional hearing that it was "highly likely" that Chance would be adopted by his foster family.

recognizing that it could not guarantee adoption by the foster family. Because the court's explanation reflects a proper exercise of discretion and is supported by the record, we are satisfied that no issue of arguable merit arises.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. 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 Morgan B.'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 Morgan B. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals