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July 14, 2015

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

2015AP931-NM In the interest of J. I. S., a person under the age of 18: State of Wisconsin v. I. S. (L. C. #2014TP8)

Before Stark, J.[1]

Counsel for I.S. filed a no-merit report concluding there is no arguable basis for I.S. to challenge an order terminating her parental rights to her son, J.I.S. I.S. was advised of her right

[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.

to respond to the report and has not responded. Upon this court's independent review of the record, no issue of arguable merit appears.

The jury found two grounds for termination of I.S.'s parental rights—namely, her son's continuing need of protection and services (CHIPS), and I.S.'s failure to assume parental responsibility. The no-merit report addresses whether the trial court properly rejected a ***Batson***[2] challenge based on the State's peremptory strikes of two African Americans from the jury pool; the sufficiency of the evidence to support the jury's verdict; and whether the court properly exercised its discretion when it terminated I.S.'s parental rights. This court agrees with counsel's analysis of these issues.

The record supports the trial court's finding that the State's attorney struck two African American persons from the jury pool based on race-neutral considerations. The State's attorney explained that she struck Juror 5 because he had no children. She struck all but two individuals from the pool who did not have children. The two jurors she retained were a special education teacher and a prelaw student who counsel believed would have more empathy with the child. She indicated she struck Juror 6 because that juror had guardianship of her granddaughter, and counsel believed I.S.'s defense might involve arguing alternative placement with a grandparent. After the peremptory strikes, two African Americans and one Hispanic juror remained on the panel. Therefore, the trial court's finding that Jurors 5 and 6 were stricken for race-neutral considerations is not clearly erroneous.

[2] ***Batson v. Kentucky***, 476 U.S. 79 (1986).

To establish continuing CHIPS as a ground for termination of parental rights, the State must prove four things: (1) the child has been adjudged to be in need in need of protection and services and placed outside his or her parent's home pursuant to court orders which contained a warning that failure to meet the conditions for return could result in termination of parental rights; (2) the agency responsible for care of the child and the family has made reasonable efforts to provide the services ordered by the court; (3) the parent failed to meet the conditions for return of the child; and (4) the parent will not likely meet those conditions within the nine-month period following the fact-finding hearing. *See* WIS. STAT. § 48.415. To establish the parent's failure to assume parental responsibility, the State must show the parent failed to establish a "substantial parental relationship" with the child, defined as the "acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child." *See* WIS. STAT. § 48.415(6). When reviewing whether the evidence supports the jury's findings regarding both grounds, this court views the evidence in the light most favorable to the verdict, and leaves to the jury the issues of witness credibility and the inferences that can be drawn from the evidence. ***Meurer v. ITT Gen. Controls***, 92 Wis. 2d 438, 450-51, 280 N.W.2d 156 (1979).

Sufficient evidence supports the jury's findings on both grounds. The record contains certified copies of the CHIPS orders containing the appropriate warnings. The CHIPS orders set five conditions for return of the child to I.S.'s home, focusing on: (1) I.S.'s participation in visitation and showing an interest in her son's welfare; (2) I.S.'s demonstration that she can ensure her son's safety and meet his needs on a daily basis, including scheduling and attending medical, dental and other appointments; (3) I.S.'s obtaining suitable housing and income; (4) I.S.'s complying with the terms and conditions of her probation; and (5) I.S.'s acknowledging and addressing her own mental health needs. I.S.'s case manager testified regarding the State's

efforts to assist I.S. in meeting these conditions. Those efforts were frequently interrupted by I.S. being taken into custody on various charges, being sent to prison, and having disciplinary restrictions imposed in prison. The case manager testified she took into account I.S.'s limited cognitive abilities and mental health needs, but was frustrated by I.S.'s failure to take her medications and inability to control her temper. After I.S. was released from custody on November 29, 2013, the case manager arranged for supervised visits, and I.S. attended six or seven visits that lasted for approximately two hours each. Those twelve to fourteen hours of contact were I.S.'s only personal contact with her son from the time he was four months old until he was over two years old. As of the date of the trial in June 2014, I.S. had not met any of the conditions for her son's return.

Based on her I.Q. of sixty-three, continuing mental health problems and failure to make progress toward meeting the conditions for the child's return, the jury could reasonably find that I.S. was unlikely to meet the conditions within nine months of the trial. The jury could also reasonably find that I.S. failed to assume parental responsibility based on the facts that I.S. was not the child's primary caregiver for over two years, had not paid any child support, did not know who his doctor was or attend any medical appointments since he was four months old, and did not know the name or location of his daycare provider.

The record also discloses no arguable basis for challenging the circuit court's discretionary decision to terminate I.S.'s parental rights. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The court appropriately considered the factors set out in WIS. STAT. § 48.426, finding the child "highly adoptable," in reasonably good health and without behavioral problems. The court found it was highly likely the foster family would adopt J.I.S. The court found the child had no substantial relationship with his biological family and the

prospective adoptive parents were willing to maintain a relationship between the child and his grandparents. The court found the child would enter into a more stable and permanent family relationship if I.S.'s parental rights were terminated. The court's consideration of these factors constitutes a proper exercise of its discretion.

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

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

IT IS FURTHER ORDERED that attorney Christine Quinn is relieved of her obligation to further represent I.S. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals