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July 28, 2015

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

2015AP774-NM	In re the termination of parental rights to A. J., a person under the age of 18: Kenosha County Department of Human Services v. L. K. F. (L.C. #2013TP49)
2015AP775-NM	In re the termination of parental rights to O. B., a person under the age of 18: Kenosha County Department of Human Services v. L. K. F. (L.C. #2014TP35)
2015AP776-NM	In re the termination of parental rights to O. B., a person under the age of 18: Kenosha County Department of Human Services v. L. K. F. (L.C. #2014TP36)

Before Curley, P.J.[1]

L.K.F. appeals orders terminating her parental rights to her three children, A.J., O.B. and O.B. Attorney Patrick Flanagan, who was appointed to represent L.K.F., filed a no-merit report.

[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.

See ***Brown Cnty. v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998); *see also* WIS. STAT. RULES 809.107(5m) & 809.32. L.K.F. was informed of her right to file a response to the no-merit report, but she has not done so.[2] After reviewing the no-merit report and conducting an independent review of the record, we conclude that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the orders terminating L.K.F.'s parental rights. *See* WIS. STAT. RULE 809.21.

A.J. was born on June 23, 2010, and was removed from L.K.F.'s home on April 7, 2011, when he was nine months old. L.K.F.'s twin boys, O.B. and O.B., were born on March 20, 2013, and were detained when L.K.F. was discharged from the hospital after their birth. On August 19, 2013, Kenosha County petitioned for involuntary termination of L.K.F.'s parental rights to A.J. on three grounds: (1) abandonment; (2) continuing need for protection and services; and (3) failure to assume parental responsibility. *See* WIS. STAT. § 48.415(1), (2) & (6). On August 4, 2014, Kenosha County petitioned for involuntary termination of L.K.F.'s parental rights to her twin sons on the same three grounds. After a trial, the jury concluded that the County had proven that all three grounds for termination existed as to all three children. The circuit court held a dispositional hearing a month later. The circuit court concluded that

[2] Attorney Flanagan sent L.K.F. a copy of the no-merit report and informed her of her right to respond. Flanagan sent the mail to the address L.K.F. provided him on 40th Street in Kenosha, Wisconsin. However, subsequent correspondence from the clerk of this court to L.K.F. at that address has been returned as undeliverable. Attorney Flanagan informs this court that L.K.F. has not provided him with a new address, although it appears that she has moved. We have directed Attorney Flanagan to provide information to this court about his attempts to locate L.K.F. Because it appears that L.K.F. received the no-merit report and letter informing her that she had a right to respond from Attorney Flanagan, which was sent before the returned correspondence from this court, and it is L.K.F.'s obligation to keep her attorney apprised of her location, we will proceed with our no-merit review in light of the expedited deadlines applicable to cases involving the termination of parental rights.

termination was in the children's best interest and entered orders terminating L.K.F.'s rights to all three children.

The no-merit report first addresses whether there was sufficient credible evidence to support the jury's verdicts. "Grounds for termination must be proven by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993); *see also* WIS. STAT. §§ 48.424(2) and 48.31(1).

At the trial in November 2014, the jury heard testimony from L.K.F. and other people involved with L.K.F. and her children, including L.K.F.'s grandmother; the foster mother of the three boys, who have all been living together as siblings in one foster home; Rachel Merino and Rochelle Moore, both social workers for the Kenosha County Division of Children and Family Services; Kenya Mason, L.K.F.'s probation and parole officer; and Kari Regan, who attempted to work with L.K.F. through Project Home, a program contracted through the Division of Children and Family Services that assists biological parents in meeting the conditions for the return of their children.

The trial testimony established that L.K.F.'s son A.J. has not lived with her since he was nine months old and L.K.F.'s twin sons have never lived with her. All three children are in continuing need of protection and services (CHIPS) and have been subject to CHIPS orders since they were detained by the Department. The CHIPS orders explained the conditions that L.K.F. needed to meet for the return of her children and warned her that her parental rights could be terminated if she did not meet those conditions.

Trial testimony showed that L.K.F. did not meet the conditions for return of her children. L.K.F. spent much of the time since her children were born in and out of jail for thefts and other crimes. She was ordered to attend anger management classes, domestic violence programming and individual counseling, which she did in part when she was in jail, but did not continue to pursue when she was not in jail. L.K.F. did not comply with the alcohol and drug assessment program in which the Department placed her and never demonstrated the ability to manage a household or maintain a stable residence. During her testimony, L.K.F. conceded that she had not met the conditions for return of her children.

The trial testimony also showed that L.K.F. did not maintain regular contact with the children. L.K.F. was inconsistent with visitation when she was not incarcerated, often failing to show up or cancelling her scheduled visits. The testimony showed that she has only had six visits with the twins since their discharge from the hospital at birth. L.K.F. was sporadic in her communications with the children. She occasionally wrote letters to the children, but only during periods when she was incarcerated. She wrote no letters to A.J. between October 2011 and May 2013 and wrote only four letters to the children during the entire year in 2013, one in May, one in June and two in December.

The testimony also showed that L.K.F. did not actively participate in the children's day to day lives. Although the children's foster mother told L.K.F. that she could call anytime before 9 p.m., L.K.F. did not call the foster family to inquire about the children's health and well-being, although she would ask the foster parents about the children when she saw them before or after court appearances. L.K.F. also did not communicate with the children's doctors, daycare providers or A.J.'s teachers, as the social workers encouraged her to do. During her testimony,

L.K.F. acknowledged that she did not know what school A.J. attends, did not know what time he went to bed, and did not know what his favorite food or color is. She also acknowledged that she did not know what time the twins went to bed or what foods they liked.

Based on the trial testimony, there was ample evidence to support the jury's findings that all three children had been placed outside L.K.F.'s care for longer than six months pursuant to CHIPS orders, that the County had made reasonable efforts to provide L.K.F. with services to help her meet the court-ordered conditions for the return of the children, that L.K.F. had not met the conditions, and there was a substantial likelihood that she would not meet the conditions within the next nine months. *See* WIS. STAT. § 48.415(2). There was also ample evidence to support the jury's finding that L.K.F. failed to assume parental responsibility for the children because she had not accepted and exercised significant parental responsibility for the daily supervision, education, protection and care of the children. *See* § 48.415(6). Finally, there was sufficient evidence to support the jury's conclusion that L.K.F. had abandoned the children, as that term is used in the termination statute, because the children had been placed outside the parental home pursuant to CHIPS orders warning her that her parental rights could be terminated if L.K.F. did not visit or communicate with the children for a three-month period and there was no good reason for her failure. *See* WIS. STAT. § 48.415(1)(a)2. Therefore, there would be no arguable merit to a claim that there was not sufficient credible evidence adduced at trial to support the jury's verdicts.

The no-merit report next addresses whether the circuit court properly exercised its discretion at the disposition hearing in deciding that it was in the children's best interest to terminate L.K.F.'s parental rights. The ultimate decision whether to terminate parental rights is

committed to the circuit court's discretion. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The best interests of the child is the prevailing factor. WIS. STAT. § 48.426(2). In considering the best interests of the child, the circuit court shall consider: (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 whether it would be harmful to the child to sever those relationships; (4) the wishes of the child; (5) the duration of the separation of the parent from the child; and (6) 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. *See* § 48.426(3).

At the disposition hearing, Merino testified that it was extremely likely that all three boys would be adopted together by their foster parents. She testified that the boys did not have a substantial relationship with L.K.F. because they had not spent enough time with her to develop or maintain a substantial relationship. She testified that A.J., who was nearly four and a half years old, had not lived with his mother since he was nine months old, and the other two boys had never resided with their mother. She testified that none of the boys had any medical, emotional or behavioral problems that would pose a barrier to adoption.

The circuit court acknowledged that terminating L.K.F.'s parental rights would be hard on L.K.F. because there was "no question she loves her children," but the circuit court explained that the focus of the disposition hearing was on what would be in the children's best interest, not on what L.K.F. wanted to happen. The circuit court said that L.K.F. simply was not able to parent due to many circumstances. In deciding that termination was in the children's best

interest, the circuit court considered the fact that all three children were healthy, thriving in their foster home and bonded to their foster parents and to each other. The circuit court found that the children would likely be adopted together by the foster parents, who had been caring for the twins since they were born and for A.J. most of his life. The circuit court found there would be no harm to the boys in severing L.K.F.'s legal relationship to them because they did not have a substantial relationship with her or other extended family members. The circuit court explained to L.K.F. that it was an unusual and very positive situation because all three boys would be able to continue to live together as siblings. Based on these circumstances, the circuit court properly exercised its discretion in concluding that termination of L.K.F.'s parental rights was in the children's best interests. *See* ***Gerald O.***, 203 Wis. 2d at 152 (A circuit court "properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach."). An appellate challenge to that determination would lack arguable merit.

The no-merit report next addresses whether L.K.F. was afforded effective assistance of trial counsel. To establish an ineffective assistance of counsel claim, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). After reviewing the transcripts of the circuit court proceedings, we agree with the no-merit report's conclusion that "[t]rial counsel vigorously contested the petitions at both the grounds phase and at disposition" and "presented arguments to the court that fully advocated his client's position." There would be no arguable merit to a claim that L.K.F. received ineffective assistance of trial counsel.

Our independent review of the record reveals no other potential issues. We therefore conclude that there is no arguable basis for reversing the orders terminating L.K.F.'s parental rights. Any further proceedings would be without arguable merit.

IT IS ORDERED that the orders terminating the parental rights of L.K.F. to A.J., O.B. and O.B. are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Patrick Flanagan is relieved of any further representation of L.K.F. on appeal.

Diane M. Fremgen
Clerk of Court of Appeals