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August 19, 2015

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

2015AP932-NM	In re the termination of parental rights to S. C. W.-P., a person under the age of 18: State of Wisconsin v. A. W. (L.C. #2013TP84)
2015AP933-NM	In re the termination of parental rights to J. P., a person under the age of 18: State of Wisconsin v. A. W. (L.C. #2013TP85)

Before Reilly, P.J.¹

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

In these consolidated appeals, A.W. appeals from circuit court orders terminating her parental rights to S.C. W.-P. and J.P. (the children). A.W.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m) (2013-14). A.W. received a copy of the report and has not filed a response to it. Upon consideration of the report and an independent review of the record, we summarily affirm the orders because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.²

The State of Wisconsin petitioned to terminate A.W.'s parental rights on the grounds that the children were in continuing need of protection or services, WIS. STAT. § 48.415(2), and A.W. had failed to assume parental responsibilities, § 48.415(6). A jury found both grounds for termination as to both children, and the circuit court thereafter terminated A.W.'s parental rights after a dispositional hearing.

The no-merit report addresses: (1) whether A.W. received a fair trial and disposition hearing; (2) whether the circuit court properly exercised its discretion in determining that it was in the children's best interests to terminate A.W.'s parental rights; (3) whether the record supports any claim of ineffective assistance of trial counsel; and (4) whether the circuit court lost competency to proceed. The no-merit report contains a correct statement of the law governing these issues and properly applies the law to the facts. We agree with appellate counsel that these issues would not have arguable merit for appeal.

² Due to the size of the record in these appeals, we extend the time to decide these appeals to the date of this opinion. WIS. STAT. RULES 809.107(6)(e), 809.82(2).

We conclude that the evidence supports the jury's verdict that there were grounds to terminate A.W.'s parental rights. "When reviewing a jury's verdict, we consider the evidence in the light most favorable to the verdict." *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d. 273, 797 N.W.2d 854. The credibility of the witnesses and the weight to be afforded to their testimony was for the jury to determine. *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989).

We have reviewed the circuit court's evidentiary rulings, voir dire and the jury instructions. We see no issues with arguable merit for appeal.

At trial, evidence was taken from child welfare and family support professionals, mental health and medical professionals, a teacher for the school-age child, a foster parent, and A.W. The circuit court found that the children were in need of protection or services and had been placed outside of A.W.'s home for six months or longer. The jury found that the Bureau of Milwaukee Child Welfare made reasonable efforts to provide court-ordered services, A.W. failed to meet the conditions for the children's return, and it was not substantially likely that A.W. would meet those conditions within nine months following the jury trial. The jury also found that A.W. failed to assume parental responsibility for the children. The jury's findings are supported in the trial record. The State met its burden to show grounds for termination by clear and convincing evidence. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768. We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence of the grounds to terminate A.W.'s parental rights.

The decision to terminate parental rights is within the circuit court's discretion. *B.L.J. v. Polk Cnty. Dep't of Soc. Servs.*, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991), *modified on other*

grounds, Sheboygan Cnty. DHHS v. Julie A.B., 2002 WI 95, 255 Wis. 2d 170, 648 N.W.2d 402. The circuit court must consider the statutory factors to determine if termination is in the child's best interests. WIS. STAT. § 48.426(3). The record in this case indicates that the court considered the appropriate factors: the likelihood of the children's adoption after termination, the children's age and health, the children's substantial family relationships and whether it would be harmful to sever those relationships, the duration of the parent-child separation, and future stability for the children as a result of the termination. The court's findings in support of termination were not clearly erroneous, WIS. STAT. § 805.17(2), and all the factors weighed in favor of the court's discretionary determination that it was in the children's best interests to terminate A.W.'s parental rights. We agree with counsel's conclusion that an appellate challenge on this basis would lack arguable merit.

We normally decline to address claims of ineffective assistance of trial counsel if the issue was not raised by a post-termination motion in the circuit court. *See State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether the record supports counsel's conclusion that an ineffective assistance of trial counsel claim would lack arguable merit. *Cf. State v. Allen*, 2010 WI 89, ¶88, 328 Wis. 2d 1, 786 N.W.2d 124 (broad scope of no-merit review suggests that we "should identify issues of arguable merit even if those issues were not preserved in the circuit court, especially where the ineffective assistance of postconviction counsel was the reason those issues were not preserved for appeal").

Our review of the record does not reveal a basis for an ineffective assistance of trial counsel claim. A.W. has not alerted this court to any claim regarding trial counsel's representation. The record indicates that A.W.'s counsel vigorously represented her.

We have considered whether there would be any arguable merit to a claim that the court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Continuances are permitted “upon a showing of good cause in open court ... and only for so long as is necessary[.]” WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court’s competency to act during the continuance. Sec. 48.315(3). The record shows that the circuit court found good cause to toll the time limits, and A.W. did not object. There would be no arguable merit to a challenge to the circuit court’s competency to proceed based on a failure to comply with statutory time limits.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any issues with arguable merit for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the orders terminating A.W.’s parental rights, and relieve Attorney Dennis Schertz of further representation of A.W. in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of further representation of A.W. in these matters.

Diane M. Fremgen
Clerk of Court of Appeals