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August 18, 2015

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

2014AP2580-NM

State of Wisconsin v. Jessica O. (L. C. No. 2013TP164)

Before Stark, J.¹

Counsel for Jessica O. has filed a no-merit report concluding there is no basis to challenge an order terminating Jessica's parental rights. This court has attempted to advise Jessica O. of her right to respond to the no-merit report, but our notices have been returned as

¹ This is an expedited appeal decided by one judge. See WIS. STAT. RULE 809.17; WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

undeliverable with no forwarding address. Upon contacting counsel, this court was advised that counsel is unable to locate her client, is unaware of Jessica's current whereabouts, and Jessica's father and other family members are also unaware of her current whereabouts.² Upon this court's independent review as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the order concerning termination of parental rights is affirmed. *See* WIS. STAT. RULE 809.21.

The Milwaukee County District Attorney's Office filed a petition for termination of parental rights to Jessica's son, alleging abandonment and failure to assume parental responsibility. The petition alleged that Jessica's son was found to be a child in need of protection or services two days after birth.³ The petition further alleged Jessica was a self-admitted, long-standing intravenous heroin user. She tested positive for THC, crack cocaine and benzodiazepines when her son was born, and her son was considered a drug-affected infant.⁴ The petition also alleged Jessica had a long history of criminal behavior. According to the

² In these instances where communication between counsel and the client has been truncated or terminated by the client, this court has taken the position that, due to the severe effects an order terminating parental rights has on fundamental rights of the parent and child, the best course of action is to allow no-merit reports. The no-merit report provides this court with the opportunity to review counsel's analysis and to independently review the entire circuit court record to determine if there are any issues of potential merit for appeal.

³ The petition alleged Jessica named four men as potential fathers of the child. Two were excluded from paternity by DNA testing. Another purported father was a drug dealer who allegedly threatened to kill the child, Jessica, and the child's grandmother if he was brought into the proceedings. The other alleged father died of a drug overdose. Termination of the father's parental rights is not the subject of this appeal.

⁴ At trial, Jessica testified that she used crack cocaine on a daily basis with her mother during the weeks prior to learning she was pregnant, and essentially used crack cocaine throughout her whole pregnancy, including using crack cocaine, valium and marijuana shortly before she went into labor the day her son was born.

petition, after she gave birth Jessica was transported to the Waukesha County jail due to an open warrant.

A jury trial was conducted, and the jury returned verdicts finding both abandonment and failure to assume parental responsibility. After a dispositional hearing, the circuit court terminated Jessica's parental rights.

Any challenge to the sufficiency of the evidence would lack arguable merit. Jessica testified at trial and did not dispute that she abandoned the child as defined in WIS. STAT. § 48.415(1)(a)2. Jessica had no visits, communication or contact with her son for a minimum of three months during which the child continued in a placement outside the home of a parent pursuant to a court order which contained the termination of parental rights notice required by law.

Jessica insisted she had good cause for her lack of contact with the child. *See* WIS. STAT. § 48.415(1)(c). She insisted her lack of contact was due to interference by the Bureau of Milwaukee Child Welfare. She also claimed she was not given the opportunity to parent the child due to her incarceration, and that visitation was "taken from me after I got out of jail." However, she admitted her drug addiction "robbed my ability to take care of myself let alone my own kid." She testified, "I'm trying to get myself together now." It was within the jury's province to reject Jessica's good-cause justification.

The evidence also established that Jessica had not had a substantial relationship with the child. *See* WIS. STAT. § 48.415(6)(a). Testimony established Jessica's son was removed as a newborn in August 2012. A family case manager attempted to meet with Jessica prior to the first visit with her child, but she was incarcerated. The first visit with mother and child was

facilitated by the family case manager on August 30, 2012. Several other visits were facilitated in September, but testimony at trial established that Jessica had not seen the child since October 2012. Testimony also established the child did not know Jessica as a familiar person, and it was not clear “if [Jessica] could pick the child out if other children were around.” Furthermore, Jessica conceded that other than “putting myself in NA and AA meetings,” and trying to “get myself better so I could be a good mom,” she did nothing to assume parental responsibility for her son.

There is also no arguable merit to any claim that the circuit court erroneously exercised its discretion when it terminated Jessica’s parental rights. The court correctly applied the best interests of the child standard and considered the factors set out in WIS. STAT. § 48.426(3). The court ultimately concluded that it was in the child’s best interest to terminate Jessica’s parental rights after considering the child’s adoptability and age, his lack of relationship with Jessica or her family, the duration of their separation and his need for a stable and permanent family relationship. The court stated, “How can it be in [the child’s] interest to remove him from the only home he has ever known?” The court also noted, “I mean really the only bond [Jessica] had with [the child] when she was pregnant was sadly – and I realize she was addicted – but sadly, she put crack cocaine into her system and into his system.” The court concluded, “[Jessica] has always had the opportunity to have a substantial relationship with [her son], but she’s never embraced what she needs to do, because life has just been too hard for her to get her hands around.” The court’s discretionary decision to terminate Jessica’s parental rights demonstrated a rational process and is justified by the record. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

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

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

IT IS FURTHER ORDERED that attorney Kerri Cleghorn is relieved of further representing Jessica O. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals