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September 17, 2015

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

2015AP1144-NM State v. B. S. (L. C. #2014TP117)

Before Hruz, J.¹

Counsel for B. S. filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable basis for challenging an order terminating B. S.'s parental rights to her

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.

daughter, S. S.-C.² B. S. was advised of her right to respond to the report and has not responded. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issue of arguable merit appears. Therefore, the order terminating B. S.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.³

On October 5, 2012, S. S.-C. (born December 23, 2010) was placed in protective care as a result of alleged physical abuse by B. S. Ultimately, S. S.-C. was adjudicated as a child in need of protection or services (CHIPS) by order entered January 3, 2013. On May 20, 2014, the State petitioned for termination of B. S.'s parental rights, alleging the continuing need for protection or services and a failure to assume parental responsibility.⁴ B. S. contested the grounds for termination and requested a jury trial. After a four-day trial, the jury returned verdicts against B. S. on both grounds for termination. Following a dispositional hearing, the court found B. S. unfit and concluded it was in the child's best interest to terminate B. S.'s parental rights.

Any challenge to the proceedings based on a failure to comply with statutory time limits lacks arguable merit. All of the mandatory time limits were either complied with or properly

² The child's father voluntarily terminated his parental rights. That termination is not a subject of this appeal.

³ Cases appealed under WIS. STAT. RULE 809.107 "shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply brief" The no-merit report was filed on July 7, 2015. The appellant's response to the no-merit report was due July 21, 2015, making an opinion from this court due August 20, 2015. Conflicts in this court's calendar and the size of the record in this matter have resulted in a short delay in the opinion's release. Therefore, we sua sponte extend our decision deadline to the date of this opinion. *See* WIS. STAT. RULE 809.82(2)(a) ("[T]he court upon its own motion ... may enlarge or reduce the time prescribed by these rules or court order for doing any act"); *see also Rhonda R.D. v. Franklin R.D.*, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995).

⁴ Although the petition also included an allegation of child abuse as a ground for the termination, that allegation was not pursued at trial.

extended for good cause, without objection, to accommodate the parties' varying schedules. The failure to object to a delay waives any challenge to the court's competency on these grounds. *See* WIS. STAT. § 48.315(3). Moreover, scheduling difficulties constitute good cause for tolling time limits. *See State v. Quinsanna D.*, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

Any challenge to the jury's verdict finding grounds for termination would lack arguable merit. When we review a jury's verdict, "we consider the evidence in the light most favorable to the [jury] verdict." *Tammy W.-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d 273, 797 N.W.2d 854 (citing *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990)). If more than one reasonable inference can be drawn from the evidence, we must accept the one drawn by the jury. *Poellinger*, 153 Wis. 2d at 504.

The continuing need for protection or services ground is established by showing four circumstances: (1) that the child was adjudged to be in need of protection and services and was placed outside the parent's home for a cumulative period of six months or longer pursuant to one or more court orders containing required termination warnings; (2) that the relevant agency made a reasonable effort to provide court-ordered services; (3) that the parent failed to meet the conditions for the child's safe return to the home; and (4) that there is a substantial likelihood that the parent will not meet the conditions within the nine-month period following the fact-finding hearing. *See* WIS. STAT. § 48.415(2)(a)1.-3. The State bears the burden of making its case by clear and convincing evidence. *See* WIS. STAT. § 48.31(1).

Trial evidence established that the child had been placed outside B. S.'s home for more than six months. A family case manager testified about the agency's efforts to provide court-ordered services. The case manager testified that B. S. was inconsistent in her efforts to attend

visits with her child, as well as individual therapy that had been scheduled for B. S. The case manager added that B. S. did not appear to recognize things that trigger her anger or how to control her anger in an appropriate manner. According to the case manager, B. S. had also failed to obtain a safe, suitable and stable home, as she had “been bouncing around from different rooming houses.” Although there was testimony that B. S. had recently made some positive steps toward meeting the conditions of her child’s safe return—e.g., recent employment, some college classes, and an increase in the quality of visitation—the jury could nevertheless reasonably find, based on the evidence before it, that it was substantially unlikely B. S. would meet the conditions for her child’s safe return within the nine-month period following the fact-finding hearing. The record supports the jury’s finding that the child was in continuing need of protection or services.⁵

There is no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated B. S.’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 considered the child’s age, health and adoptability, noting the likelihood of adoption by her foster parents. The court acknowledged that the child has a substantial relationship with B. S., but added that the relationship is “not as good as it could be or should be or might have been.” Although the court determined the child would be harmed by severing her relationship with B. S., the court recounted the foster mom’s “credible” testimony that she wished to continue

⁵ Only one ground for termination need be established. *See* WIS. STAT. § 48.415 (“Grounds for termination of parental rights shall be *one* of the following:”) (emphasis added). Therefore, we need not review the alternate ground of failure to assume parental responsibility, even if there were an arguable basis for challenging the jury’s verdict as to that ground.

contact with B. S. and her family. The court therefore concluded that any harm in terminating B. S.'s parental rights would be "significantly mitigated" by continued contact between B. S. and the foster parents.⁶ The court emphasized that the child had been separated from her mother for more than half of her life and noted that she had a good and stable placement with her foster parents. The court's discretionary decision to terminate B. S.'s parental rights demonstrates a rational process that 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 issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Timothy T. Kay is relieved of his obligation to further represent B. S. in this matter. See WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

⁶ Although the obligation for B. S.'s continued contact with S. S.-C. would no longer exist following termination of B. S.'s parental rights, under WIS. STAT. § 48.426(3) the court could properly consider the likelihood of a continued relationship in assessing the best interests of the child. In particular, the circuit court expressly assessed the foster mother's credibility in weighing the likelihood of a continued relationship, particularly noting that the foster mother was "really very reflective when she talk[ed] about the importance in her mind of [the child] continuing to have a relationship with biological family members ... in particular [B. S.]."