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October 14, 2015

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

2015AP1203-NM	In re the termination of parental rights to K.O. , a person under the age of 18: State of Wisconsin v. K.O. (L.C. #2013TP337)
2015AP1204-NM	In re the termination of parental rights to S.E. , a person under the age of 18: State of Wisconsin v. K.O. (L.C. #2013TP338)
2015AP1205-NM	In re the termination of parental rights to C.E. , a person under the age of 18: State of Wisconsin v. K.O. (L.C. #2013TP339)

Before Neubauer, C.J.¹

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.

In these consolidated appeals, K.O. appeals from orders involuntarily terminating her parental rights to K.K.O., S.E., and C.E. On appeal, K.O.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32, *Anders v. California*, 386 U.S. 738 (1967), and *Brown County v. Edward C.T.*, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). K.O. received a copy of the report and was advised of her right to file a response but, despite being granted an extension of time, she has not done so. Upon consideration of the no-merit report and an independent review of the record, we conclude no issues would have arguable merit for appeal. We summarily affirm the orders terminating her parental rights, *see* WIS. STAT. RULE 809.21, accept the no-merit report, and relieve Attorney Kaitlin A. Lamb of further representation of K.O. in this matter.

The State filed petitions alleging two grounds for termination of parental rights (TPR), failure to assume parental responsibility and commission of a serious felony against C.E. *See* WIS. STAT. § 48.415(6), (9m). The State moved for partial summary judgment on the basis that, as K.O. was convicted of violating WIS. STAT. § 948.03(3)(a) after pleading guilty to felony child abuse against C.E., no genuine issue of fact existed as to the elements it had to prove to establish the § 48.415(9m) grounds. The trial court rejected K.O.'s argument that summary judgment could apply only to C.E., not K.O. or S.E., and her arguments in a subsequent motion that § 48.415(9m) is unconstitutional on its face and as applied. After a "prove-up," the trial court found K.O. unfit. The failure-to-assume-parental-responsibility ground was dismissed on the State's motion and the court found that a TPR was in each of the children's best interests. This no-merit appeal followed.

The no-merit report first considers whether any procedural defects marred the proceedings. No arguable claim could arise from this point. The petitions were in proper form. The court took great care to ensure that mandatory time limits were met or were extended for good cause and without objection. *See* WIS. STAT. § 48.315(1)(b), (2). K.O. was advised of her procedural rights, WIS. STAT. § 48.42, and given proper notice of matters along the way. Dispositional orders and extensions were reduced to writing and included written TPR warnings. *See* WIS. STAT. § 48.415(2)(a)1.

The report also examines whether the grant of partial summary judgment finding K.O. an unfit parent of all three children presents an issue of arguable merit. We agree it does not.

Use of summary judgment procedure is consistent with due process in the grounds phase of a TPR case. *Steven V. v. Kelley H.*, 2004 WI 47, ¶44, 271 Wis. 2d 1, 678 N.W.2d 856. It is appropriate where there is no genuine issue of material fact in dispute, the petitioner is entitled to partial summary judgment on parental fitness as a matter of law, and “where the entire proof of unfitness under the statute is an undisputed court record.” *Id.*, ¶¶34, 39.

The trial court concluded that the plain language of WIS. STAT. § 48.415(9m) does not limit TPR grounds to the child against whom a parent commits a serious felony. The State proved that K.O. committed a serious felony against C.E. by producing, among other records, the judgment convicting K.O. of violating WIS. STAT. § 948.03(3)(a). *See* § 48.415(9m)(b)2.a.; *see also Steven V.*, 271 Wis. 2d 1, ¶37. The State was entitled to judgment as a matter of law.

We also agree with appellate counsel that no issue could be raised regarding the challenge to the constitutionality of WIS. STAT. § 48.415(9m). The statute is not void for

vagueness because it gives fair notice of the conduct prohibited and provides an objective standard for enforcement. *State v. Ruesch*, 214 Wis. 2d 548, 561, 571 N.W.2d 898 (Ct. App. 1997). It also is not a violation of due process because the State has a compelling interest in the continuing welfare of its children, including protecting them from abuse, and the statute furthers this goal. *See R.D.K. v. Sheboygan Cty. Soc. Servs. Dep't*, 105 Wis. 2d 91, 110, 312 N.W.2d 840 (Ct. App. 1981).

The no-merit report next examines whether the court properly ordered the TPRs. That ultimate determination is discretionary with the trial court. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. The best interests of the child is primary. WIS. STAT. § 48.426(2). In considering the children's best interests, pursuant to § 48.426(3) the court considered that: (1) the foster family was committed to adopting the siblings; (2) the children's ages pose no barrier to adoption and the potential adoptive family has carefully considered their resources and abilities to address the children's significant special needs; (3) K.O. had no contact with the children in the over two years since her arrest, none of the children has a substantial relationship with her, and they do not ask about her; (4) the children call their foster parents "mom" and "dad," the eldest expressed his desire to remain in the foster home, the middle child seemed not to understand why she was asked if she wanted to live with her mom and dad, saying she did live with "mom" and "dad," and the youngest was too young to make his wishes known; (5) the duration of K.O.'s separation from the children was "so significant" that they view the foster parents as their parents; and (6) the foster parents will be able to keep the siblings together in a stable, permanent home with their three biological children. The court's well-reasoned decision explaining why the TPRs were in the children's best interests reflects a proper exercise

of discretion. *See Margaret H.*, 234 Wis. 2d 606, ¶32. An appellate challenge would lack arguable merit.

Our independent review of the record reveals no other potential appellate issues.

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 Kaitlin A. Lamb is relieved from further representing K.O. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals