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February 10, 2016

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

2015AP2507-NM Wood Co. DHS v. C. B. (L. C. Nos. 2014TP16, 2014TP17)
2015AP2508-NM

Before Seidl, J.[1]

Counsel for C.B. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable merit to any issue that could be raised on appeal from orders

[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. These appeals were consolidated by order dated December 22, 2015. *See* WIS. STAT. RULE 809.10(3).

terminating C.B.'s parental rights to her children, D.B. and D.F.[2] C.B. was informed of her right to file a response to the report and has not responded. Upon this court's independent review of the records as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the orders terminating C.B.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

On December 16, 2010, D.B. (born February 9, 2009) and D.F. (born January 7, 2007) were placed in protective care as a result of alleged physical abuse against D.B. by his father, who was C.B.'s significant other. On February 11, 2011, D.B. and D.F. were adjudged to be children in need of protection or services and placed outside their parental home. On September 2, 2014, the Wood County Human Services Department petitioned for termination of C.B.'s parental rights on the ground that the children had a continuing need of protection or services. C.B. initially contested the ground for termination and requested a jury trial, but ultimately consented to a voluntary termination of her parental rights. After a colloquy, the circuit court determined C.B. was voluntarily consenting to the termination of her parental rights and set the matter over for disposition. Following a dispositional hearing, the court determined it was in the children's best interests to terminate C.B.'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 extended for good cause, without objection, to accommodate the parties' varying schedules. The

[2] The identity of D.F.'s father is unknown. The order regarding D.B., however, terminated the parental rights of both D.B.'s mother and father. Termination of the father's parental rights is not the subject of this appeal.

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.

In ***T.M.F. v. Children's Service Society of Wisconsin***, 112 Wis. 2d 180, 332 N.W.2d 293 (1983), our supreme court set forth the basic information the circuit court must ascertain to determine on the record whether consent to terminate one's parental rights is voluntary and informed:

> 1. the extent of the parent's education and the parent's level of general comprehension; 2. the parent's understanding of the nature of the proceedings and the consequences of termination, including the finality of the parent's decision and the circuit court's order; 3. the parent's understanding of the role of the guardian ad litem (if the parent is a minor) and the parent's understanding of the right to retain counsel at the parent's expense; 4. the extent and nature of the parent's communication with the guardian ad litem, the social worker, or any other adviser; 5. whether any promises or threats have been made to the parent in connection with the termination of parental rights; [and] 6. whether the parent is aware of the significant alternatives to termination and what those are.

Id. at 196-97.

At the final pretrial hearing, C.B. informed the court she wished to voluntarily terminate her parental rights. C.B. indicated on the record that she had the equivalent of an associate's degree and confirmed her understanding of the nature of the proceedings and the consequences of termination. C.B., who was represented by counsel, also confirmed her understanding of the guardian ad litem's role and the significant alternatives to termination. C.B., who was pregnant, indicated she was consenting to voluntarily terminate her parental rights to avoid the possibility of an involuntary termination being used as grounds to terminate parental rights to her unborn

child. Although C.B. stated she felt the circumstances left her with "no choice," she acknowledged she was actually choosing "the lesser of two evils." When C.B. repeated that she felt "forced" to make the decision, and further indicated she had not had sufficient time to confer with "advisors," including her therapist, the circuit court concluded "[t]his is not a voluntary situation." The matter remained scheduled for a jury trial the following week.

When C.B. appeared for trial, she unequivocally reiterated her desire to voluntarily terminate her parental rights after acknowledging she had additional time to think about her decision. C.B. was again engaged in a colloquy to confirm whether her decision was voluntary and informed. C.B.'s appellate counsel notes that at this subsequent hearing, the trial court did not ascertain whether C.B. was aware of the significant alternatives to termination. It appears, however, that C.B. cannot allege she was unaware of the alternatives to termination since she had confirmed her understanding of the alternatives just one week earlier. Moreover, C.B.'s counsel represents that C.B. does not wish to pursue any post-termination relief in the circuit court, and C.B. has not responded to refute that representation. Therefore, to the extent such an argument could even be made, we conclude C.B. has waived any challenge to her voluntary consent based on a claim that C.B. was unaware of the significant alternatives to termination. No issue of arguable merit otherwise exists from C.B.'s consent to voluntarily terminate her parental rights.

There is no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated C.B.'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 children's respective ages, health and adoptability, noting the likelihood of adoption by their foster parents. The court acknowledged that the children had a relationship with C.B., but concluded it would not be harmful to sever that relationship given the age of the

children when they were removed from their mother's home, and the substantial time they spent separated from their mother. The court noted the children had a "stronger bonding relationship" with the foster parents. The court emphasized that the children had a good and stable placement with their foster parents. The court's discretionary decision to terminate C.B.'s parental rights demonstrates a rational process that is justified by the record.[3] *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

Finally, the record discloses no arguable basis for challenging the effectiveness of C.B.'s trial counsel. To establish ineffective assistance of counsel, C.B. must show both that counsel's performance was deficient and that the deficiency prejudiced C.B.'s case. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The ***Strickland*** test for ineffective assistance of counsel applies to involuntary termination of parental rights cases. *See* ***A.S. v. State***, 168 Wis. 2d 995, 1005, 485 N.W.2d 52 (1992). We agree with C.B.'s appellate counsel's conclusion that there is no arguable basis for challenging C.B.'s trial counsel's performance and no grounds for counsel to request a ***Machner***[4] hearing.

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

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

[3] The no-merit report notes that the circuit court took no testimonial evidence at the dispositional hearing but, rather, relied on the social worker's report and the guardian ad litem's recommendation. We agree with appellate counsel's conclusion that there was sufficient documentary evidence in the record to support the circuit court's determination.

[4] ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

IT IS FURTHER ORDERED that attorney Steven W. Zaleski is relieved of further representing C.B. in these matters. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals