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February 29, 2016

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M. O.

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

2015AP2359-NM In re the termination of parental rights to M.O., a person under the age of 18: Racine County Human Services Department v. M.O. (L.C. #2014TP33)

Before Brennan, J.[1]

M.O. appeals an order terminating his parental rights to his child, whose initials are also M.O. Attorney Colleen Marion was appointed to represent the father and filed a no-merit report. *See* ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998); *see also* WIS. STAT. RULES 809.107(5m) & 809.32. M.O. was informed of his right to respond to the no-

[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.

merit report, but he has not done so. After reviewing the no-merit report and conducting an independent review of the record, we conclude that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the order terminating M.O.'s parental rights. *See* WIS. STAT. RULE 809.21.

The child was born on April 29, 2013, with a medical condition that required immediate surgery. He was released from the hospital on May 14, 2013, to the care of his mother and father. On June 3, 2013, the child was placed in a foster home when both of his parents were arrested during a violent domestic dispute. On July 26, 2013, the circuit court entered an order finding the child to be in need of protection and services.

On September 24, 2014, Racine County petitioned to terminate M.O.'s parental rights to the child on the grounds that he had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(6). On February 3, 2015, the parties asked the circuit court to approve a "hold-open agreement" pursuant to which M.O. would admit that the State could prove that grounds existed to terminate his parental rights because he failed to assume parental responsibility, and the County would ask the court to stay a finding that M.O. was unfit while the County worked with M.O. to meet specified conditions for the child's return. The County also agreed that it would move to dismiss the TPR petition after nine months if M.O. satisfied the conditions for the child's return. The court approved the agreement and accepted M.O.'s no-contest plea.

On April 27, 2015, the County moved the circuit court to lift the stay, find M.O. unfit and proceed to disposition because M.O. was not meeting the conditions for the child's return. The court granted the motion and held a dispositional hearing on June 22, 2015. The court then terminated M.O.'s parental rights.

The no-merit report first addresses whether there would be any arguable merit to a claim that the circuit court lost competency to proceed by failing to abide by mandatory statutory timelines. *See* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. The statutes provide mandatory time frames for holding initial, fact-finding, and disposition hearings. *See* WIS. STAT. §§ 48.422(1)-(2) & 48.424(4)(a). The time limits themselves cannot be waived, *see* ***April O.***, 233 Wis. 2d 663, ¶5, though continuances may be granted upon a showing of good cause, in open court, for only "so long as is necessary." WIS. STAT. § 48.315(2). Here, M.O.'s hearings were delayed beyond the statutory time frames in some instances, but the court extended the deadlines for good cause. Moreover, M.O. did not object to the extensions. Therefore, there would be no arguable merit to a claim that the court lost competency to proceed for failure to comply with the mandatory statutory time limits.

The no-merit report next addresses whether there would be arguable merit to a claim that M.O.'s no-contest plea during the grounds phase of the proceeding was invalidly entered. Prior to accepting a no-contest plea regarding the grounds contained within a termination petition, the circuit court must personally question the parent and assure that the parent is voluntarily admitting that grounds for termination exist. *See* WIS. STAT. § 48.422(7); ***Oneida County DSS v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The court must: (1) address the parent and determine that the admission is made voluntarily, with an understanding of the nature of the acts alleged in the petition and the potential disposition; (2) establish whether any promises or threats were made to elicit an admission to the facts; (3) establish whether a proposed adoptive parent for the child has been identified; (4) establish whether any person has coerced a parent to refrain from exercising parental rights; and (5) make

such inquiries as satisfactorily establish a factual basis for the parent's admission. WIS. STAT. § 48.422 (7).

The circuit court conducted a colloquy with M.O. before it accepted his no-contest plea during which it explained the proceedings to M.O. in detail and informed M.O. what the State would have to establish to show that he had failed to assume responsibility for his son. The circuit court explained to M.O. the constitutional rights he was waiving by entering a plea, including his right to a jury trial, and asked M.O. whether any threats or promises had been made to coerce him into entering the plea. To gauge his ability to understand, the court asked M.O. his age, the amount of schooling he had, and whether he had a mental illness that interfered with his ability to understand the proceedings. The court ascertained that M.O. had enough time to talk to his lawyer and ensured that he understood the ramifications of his plea, explaining that if he did not meet the conditions of the hold-open agreement, the court would proceed to make a finding that he was unfit based on his no-contest plea. M.O. admitted that the facts in the petition were sufficient for the jury or a court to find that he failed to assume parental responsibility for his child. Based on the court's thorough colloquy with M.O. prior to accepting his no-contest plea, there would be no arguable merit to a claim that M.O.'s no-contest plea was not knowingly, intelligently, and voluntarily entered.[2]

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erred in concluding that M.O. violated the terms of the hold-open agreement.

[2] The circuit court did not explicitly address on the record whether a proposed adoptive parent for the child had been identified. However, a permanency plan dated April 27, 2015, listed the child's foster mother as a proposed adoptive resource.

The County moved to lift the stay imposed pursuant to the hold-open agreement because M.O. was not adequately making progress to meet the conditions for the return of his child as specified in the agreement. At the hearing on the motion to lift the stay, Kristen Kaskin, a Racine County Human Services Department case manager working in the child protective services unit, testified that she reviewed the agreement personally with M.O. and personally provided him a copy of the agreement so that he would know what steps he needed to take to comply with the agreement. Kaskin testified that she had difficulty communicating with M.O. because he did not return her calls and missed appointments. She testified that although he met some of the conditions in the agreement, he did not meet other important conditions, like maintaining sobriety and obtaining an assessment for alcohol and drug abuse. She also testified that in the first ninety days of the agreement, he completed only a psychological evaluation and two office visits with her, and drug testing showed on multiple occasions that he was using marijuana in violation of the agreement.

After considering Kaskin's testimony, the circuit court found that M.O. violated the conditions of the agreement: he did not maintain sobriety; he was not evaluated for drug and alcohol abuse; he did not attend all of his appointments. Based on these factual findings, which were grounded on Kaskin's testimony, there would be no argument merit to a claim that the court erred in concluding that M.O. violated the terms of the hold open agreement.

The no-merit report next addresses whether the circuit court properly exercised its discretion at the disposition hearing in deciding that it was in the child's best interest to terminate M.O.'s parental rights. The ultimate decision whether to terminate parental rights is committed to the circuit court's discretion. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The best interests of the child is the prevailing factor. WIS. STAT. § 48.426(2). In considering the best interests of the child, the circuit court shall consider: (1) the likelihood of

adoption after termination; (2) the age and health of the child; (3) whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever those relationships; (4) the wishes of the child; (5) the duration of the separation of the parent from the child; and (6) whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements. *See* § 48.426(3).

At the dispositional hearing, Kaskin testified that she has been a case manager for Racine County for thirteen years and has managed M.O.'s case since November 17, 2014. Kaskin testified that she worked with the previous case manager, Amber Murdoch, before that time. Kaskin testified that M.O.'s son was two years old and had lived with his biological parents for a total of approximately three weeks in his life, when he was released from the hospital after his birth. She testified that the child does not have a substantial relationship with M.O. or other extended members of his biological family. She also testified that the child is very bonded to his foster mother and his foster sister, who is a few years older than he is. Kaskin testified that the child's foster mother has provided for his needs, assured that he attended medical appointments and participated in all birth-to-three programming that he required. Kaskin testified that the child's age and health are not a barrier to adoption and that the foster mother was an adoptive resource.

After considering the testimony, the circuit court found that the child was extremely likely to be adopted. The court found that the child's age and health did not present barriers to his adoption. The court found that the child did not have a substantial relationship with M.O. and had been separated from him for most of his life. The court also found that the child was

thriving in his foster home and had significant relationships with his foster mother and foster sister. Based on these findings, the court properly exercised its discretion in concluding that termination of M.O.'s parental rights was in the child's best interest. *See* ***Gerald O.***, 203 Wis. 2d at 152 (A circuit court "properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach."). An appellate challenge to that determination would lack arguable merit.

Our independent review of the record reveals no other potential issues. We therefore conclude that there is no arguable basis for reversing the order terminating M.O.'s parental rights. Any further proceedings would be without arguable merit.

IT IS ORDERED that the order terminating the parental rights of M.O. to his child, who also has the initials M.O., is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Colleen Marion is relieved of any further representation of M.O. on appeal.

Diane M. Fremgen
Clerk of Court of Appeals