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August 31, 2016

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

2016AP904-NM

In re the termination of parental rights to J.J.F., a person under the age of 18: Walworth County Department of Health & Human Services v. D.R.S. (L.C. # 2014TP32)

Before Blanchard, J.

D.R.S. appeals an order terminating her parental rights (TPR) to her son, J.J.F. Assistant State Public Defender Ellen Krahn has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14);¹ *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses whether all the applicable TPR deadlines were met or properly extended, whether summary judgment on the grounds phase of the TPR proceeding was properly granted, and the court's exercise of discretion at disposition. D.R.S. was sent a copy of the report and filed a response alleging that she was discriminated against due to a learning disability, that counsel had a conflict of interest, and that she was not provided with timely notice in an underlying CHIPS proceeding. Upon reviewing the entire record, as well as the no-merit report and responses, we agree with counsel's assessment that there are no arguably meritorious appellate issues.²

Deadlines

First, we agree with counsel's assessment that there was good cause under WIS. STAT. § 48.315(2) for extensions in this case to provide additional notices, to allow D.R.S. to obtain counsel and successor counsel and to review discovery, and to grant D.R.S.'s request for a substitution of judge. Additional extensions were also appropriately granted at D.R.S.'s own request.

Summary Judgment on Grounds

Grounds in a termination of parental rights proceeding may be decided by summary judgment when there are no facts in dispute pertinent to the legal standard for finding parental unfitness. *Steve V. v. Kelly H.*, 2004 WI 47, ¶5, 271 Wis. 2d 1, 678 N.W.2d 856. Summary judgment may be particularly appropriate in TPR cases that are based upon so-called "paper

² D.R.S. moved for an extension of time to file her response to the no-merit report, based upon confusion as to the deadline. We hereby grant that motion and accept the response, as timely. On our own motion, we further extend our own deadline for issuing a decision in this matter.

grounds” that could be proved by prior court orders or other official documentary evidence, including the prior termination of parental rights. *Id.*, ¶37.

Here, the County alleged two grounds for termination in its petition: the prior termination of D.R.S.’s parental rights involving two of J.J.F.’s older brothers under WIS. STAT. § 48.415(10), and abandonment under § 48.415(1). The County subsequently moved for partial summary judgment based upon the first alleged ground, the prior terminations of D.R.S.’s parental rights.

WISCONSIN STAT. § 48.415(10) permits the termination of parental rights when, first, the child who is the subject of the current petition has been adjudged to be in need of protection or services under WIS. STAT. § 48.13(2), (3), or (10), and second, within three years prior to the date on which the court adjudged the child to be in need of protection or services, a court had ordered the termination of parental rights of another child of the person whose parental rights are sought to be terminated based upon one of those same three grounds.

Two successive attorneys who represented D.R.S. acknowledged that there was no factual basis to challenge grounds under WIS. STAT. § 48.415(10). Specifically, the State provided the requisite documentary evidence to establish that J.J.F. was the subject of a CHIPS petition in which he had been adjudged on August 7, 2014, to be in need of protection and services pursuant to WIS. STAT. § 48.13(10) because D.R.S. was unable to care for him, and that on July 11, 2013, less than three years prior to J.J.F.’s CHIPS adjudication date, orders had been entered terminating D.R.S.’s parental rights to J.J.F.’s older brothers on the dual grounds of abandonment and continuing need of protection and services.

We note that D.R.S.'s complaints regarding the underlying CHIPS order for J.J.F.—including whether D.R.S. received timely notice of the CHIPS petition and J.J.F.'s out-of-home placement, and whether county officials provided D.R.S. sufficient resources and opportunities to satisfy the CHIPS plan, given her learning disabilities—are outside the scope of this appeal, because they relate to a dispositional order in a separate proceeding that was entered four months before the present TPR petition was filed and could have been separately appealed. In sum, the court properly relied upon the CHIPS order for J.J.F. and the prior TPR orders for his brothers to grant partial summary judgment on TPR grounds for J.J.F. in this case, making the determination that D.R.S. is unfit to serve as a parent for J.J.F.

Assistance of Counsel

D.R.S. alleges that her court-appointed attorney James Duquette had a conflict of interest. However, the record shows that the only attorneys representing D.R.S. at hearings in this matter were, first, Assistant State Public Defender Rebecca Hammock, and second, Jeremiah Maynard.

It appears from docket entries that Duquette was one of several attorneys who was named as being precluded from representing D.R.S. on the CHIPS petition involving J.J.F., due to their prior involvement in the CHIPS and/or TPR proceedings involving J.J.F.'s older brothers. We see nothing in the record to indicate that any of those attorneys in fact represented D.R.S. in the present matter. Nor is there anything in the record to suggest that either Hammock or Maynard provided ineffective assistance.

Disposition

At the dispositional hearing, the trial court was required to consider such factors as the likelihood of the child's adoption, the age and health of the child, the nature of the child's relationship with the parents or other family members, the wishes of the child and the duration of the child's separation from the parent, with the prevailing factor being the best interests of the child. WIS. STAT. § 48.426(2) and (3). The record shows that the trial court did so in a methodical manner, addressing each factor in turn. The court emphasized that J.J.F. was highly likely to be adopted by his foster parents, who had already adopted two of his brothers; that J.J.F. had overcome a deficit in his speech abilities and was having all of his needs met while in the foster parents' care; and that J.J.F. considered his foster parents his mom and dad, and was far more bonded with them and his brothers than with D.R.S., with whom he had not had contact in over a year. The court also found that the social worker was more credible than D.R.S. on the issue of whether D.R.S. had met any of the conditions for the return of J.J.F. in the underlying CHIPS case. In short, the record shows that the trial court reasonably applied the proper legal standard to the facts of record when reaching its disposition.

We have discovered no other arguably meritorious grounds for an appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the order terminating D.R.S.'s parental rights to J.J.F. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Assistant State Public Defender Ellen Krahn is relieved of any further representation of D.R.S. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals