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September 15, 2016

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

2016AP1366-NM State v. T. M. B (L.C. # 2014TP308)

Before Brash, J.[1]

T.M.B. appeals from an order terminating her parental rights to daughter G.N.B. Appellate counsel, Jane S. Earle, has filed a no-merit report. *See* ***Brown County v. Edward C.T.***,

[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.

218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam); *see also* WIS. STAT. RULES 809.107(5m) and 809.32. T.M.B. has not responded. Based upon an independent review of the record and the no-merit report, this court concludes that an appeal would lack arguable merit. Therefore, the order terminating T.M.B.'s parental rights is summarily affirmed.

G.N.B. was born in January 2009. She and her younger twin sisters were detained in September 2013 after one of the twins was found to have an unexplained head injury that seemed to indicate abuse. Testing revealed both old and new blood on the girl's brain, suggesting at least one traumatic event. G.N.B. was deemed a child in need of protection or services in October 2013. A dispositional order placing her outside T.M.B.'s home was entered in March 2014 and extended on November 18, 2014.

The termination petition in this matter was filed on November 25, 2014, alleging two grounds: that G.N.B. was a child in continuing need of protection or services and that T.M.B. had failed to assume parental responsibility. T.M.B. ultimately entered a no-contest plea to the failure-to-assume ground. After a disposition hearing, the circuit court terminated T.M.B.'s parental rights to G.N.B.

Counsel addresses whether there is any arguable merit to challenge T.M.B.'s plea or the circuit court's termination decision. However, we first consider whether there is any arguable merit to a claim the court failed to comply with mandatory time limits, thereby losing competency to proceed. *See* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927.

After a petition to terminate parental rights is filed, the circuit court has thirty days to hold an initial hearing and ascertain whether any party wishes to contest the petition. WIS. STAT.

§ 48.422(1). If a party contests the petition, the court must set a fact-finding hearing to begin within forty-five days of the initial hearing. *See* WIS. STAT. § 48.422(2). If grounds for termination are established, the court is to proceed with an immediate disposition hearing, although that may be delayed up to "no later than [forty-five] days after the fact-finding hearing" if all the parties agree. *See* WIS. STAT. § 48.424(4)(a).

These statutory time limits cannot be waived. ***April O.***, 233 Wis. 2d 663, ¶5. Continuances, however, are permitted "upon a showing of good cause in open court … and only for so long as is necessary[.]" WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. *See* WIS. STAT. § 48.315(3).

Our review of the record satisfies us that any continuances were granted for good cause and only for so long as necessary. Further, there were no objections to any of the continuances, and there would have been no successful objections to make, as the continuances were granted to give T.M.B. a chance to obtain counsel and to accommodate the parties' scheduling limitations. There is no arguable merit to a challenge to the circuit court's competency.

Counsel discusses whether T.M.B. could argue that the circuit court erred in accepting her no-contest plea in the grounds portion of the termination proceedings. Counsel concludes that the circuit court "properly conducted a thorough plea colloquy" and determined that T.M.B.'s plea was knowing, voluntary, and intelligent.

Before accepting a no-contest plea to a termination petition, the circuit court must engage the parent in a colloquy under WIS. STAT. § 48.422(7). *See* ***Oneida County Dep't of Soc. Servs. v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. Thus, the circuit 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 dispositions; (2) establish whether any promises or threats were made to secure the plea; (3) establish whether a proposed adoptive resource for the child has been identified; (4) establish whether any person has coerced a parent to refrain from exercising his or her parental rights; and (5) determine whether there is a factual basis for the admission of facts alleged in the petition. *See* WIS. STAT. § 48.422(7). The parent must also have knowledge of the constitutional rights being given up pursuant to their plea. *See* ***Kenosha Cty. Dep't of Human Servs. v. Jodie W.***, 2006 WI 93, ¶25, 293 Wis. 2d 530, 716 N.W.2d 845. Our review of the record satisfies us that the circuit court properly complied with these requirements for accepting a no-contest plea to grounds. There would be no arguable merit to challenging the plea.

When the petition is uncontested, the circuit court must still hear evidence in support of the petition, "including testimony as required in sub. (7)." *See* WIS. STAT. § 48.422(3), (7). This is often referred to as the "prove-up." Counsel does not address whether there was sufficient evidence to support the failure-to-assume ground, although our review of the record satisfies us that there was.

Failure to assume parental responsibility "shall be established by proving that the parent … [has] not had a substantial parental relationship with the child." WIS. STAT. § 48.415(6)(a). A substantial parental relationship "means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child." WIS. STAT. § 48.415(6)(b). When the fact-finder evaluates whether a person has had such a relationship with the child, the fact-finder may consider such factors including but not limited to "whether the person has expressed concern for or interest in the support, care or well-being of

the child, [and] whether the person has neglected or refused to provide care or support for the child[.]" ***Id.***

Following her removal from T.M.B.'s household, G.N.B. was placed with her maternal grandmother, C.B. During the prove-up, testimony indicated that C.B. had been G.N.B.'s primary caregiver even before the protective placement. To the case manager's knowledge, T.M.B. had never cared for G.N.B. for more than a month or a few weeks at a time. T.M.B. did not attend any of G.N.B.'s doctor appointments or school meetings. T.M.B.'s visitation had been suspended, first voluntarily in August 2014 and then later by court order, based on the recommendation of G.N.B.'s therapist. It was suggested that T.M.B. could write letters to G.N.B., to be delivered by the therapist if appropriate. Between the August 2014 suspension of visitation and the July 27, 2015 plea hearing, T.M.B. had written only two letters. Testimony further indicated that G.N.B. did not view T.M.B. as a parental figure. There would be no arguable merit to challenging the sufficiency of the evidence supporting the failure-to-assume ground.

Finally, counsel discusses whether there is any arguable merit to a claim that the circuit court erroneously exercised its discretion in terminating T.M.B.'s parental rights. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Bearing in mind that the children's best interests are the primary concern, *see* WIS. STAT. § 48.426(2), the court must also consider factors including but not limited to:

> (a) The likelihood of the child's adoption after termination.
>
> (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

> (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
>
> (d) The wishes of the child.
>
> (e) The duration of the separation of the parent from the child.
>
> (f) 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.

WIS. STAT. § 48.426(3).

The circuit court found that adoption after termination was very likely. G.N.B.'s placement with C.B. was successful, and C.B. indicated her desire to adopt G.N.B.

The circuit court noted that G.N.B. was "quite healthy," so there was no health barrier to adoption. It further noted that while G.N.B. continued to suffer from anxiety she had at the time of her removal, that issue typically worsened when G.N.B. expected visitation with T.M.B. As visitation would be permanently discontinued upon termination, the circuit court expected the anxiety could be addressed in a more productive manner going forward.

The circuit court stated that G.N.B. had a substantial relationship with T.M.B., but it was not a positive relationship, so it would not be harmful to sever.[2] The circuit court noted that G.N.B.'s most important familial relationship appeared to be the one she had with her younger twin sisters. While the twins' father was making efforts in his attempt to obtain guardianship, the twins were at the moment also placed with C.B., so that relationship could continue for the

[2] G.N.B.'s father, who had seen her approximately five times in her entire life, failed to attend most of the termination proceedings and was ultimately found in default. His parental rights were also terminated, and there is no indication that G.N.B. had any relationships, much less substantial ones, with her paternal relatives.

time being. The circuit court also perceived that the twins' father was "very aligned" with C.B. and interested in making sure they continued a relationship with her—and, by extension, with G.N.B.

The circuit court observed that there was "a pretty universal agreement" that G.N.B. had no desire to be reunited with T.M.B.[3] G.N.B. had expressed to multiple people her desire to remain with C.B.

The circuit court calculated that, at the time of the January 2016 disposition hearing, G.N.B. had officially been out of T.M.B.'s home for two and a half years. The circuit court commented that this was a significant period of time for someone turning seven years old.

Finally, the circuit court concluded that termination would allow G.N.B. to enter a more stable and permanent family relationship. G.N.B. had been with C.B. for a significant amount of time, even before the protective placement. That informal placement appeared to have gone well, and the current placement was excellent. It was unlikely there would need to be other placements. Further, the existing placement was likely to preserve almost all of G.N.B.'s other family ties, including with maternal aunts who lived with C.B.

The existing findings are clearly supported by the record, and we are unable to discern any improper factors which the circuit court might have inappropriately considered. Accordingly, there is no arguable merit to a challenge to the circuit court's discretionary decision to terminate T.M.B.'s parental rights to G.N.B.

[3] As noted, the record indicates that G.N.B. was fearful of T.M.B. and had made several serious if unsubstantiated allegations of abuse against T.M.B.

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

Upon the foregoing, therefore,

IT IS ORDERED that the order terminating T.M.B.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jane S. Earle is relieved of further representation of T.M.B. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals