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October 28, 2016

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

2016AP1461-NM State v. C. W. (L.C. # 2015TP191)
2016AP1462-NM State v. C. W. (L.C. # 2015TP192)

Before Brennan, J.[1]

C.W. appeals orders terminating her parental rights to her children, J.W. and E.W. Attorney Christine M. Quinn was appointed to represent C.W. and filed a no-merit report. *See*

[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.

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. C.W. responded to the report. After reviewing the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the orders terminating C.W.'s parental rights. *See* WIS. STAT. RULE 809.21.

J.W. was born on April 3, 2012. E.W. was born on December 10, 2013. The children were detained on June 10, 2014, when J.W. was two years, two months old and E.W. was seven months old. On June 17, 2014, the circuit court entered an order finding the children to be in need of protection and services. On June 16, 2015, the State petitioned to terminate C.W.'s parental rights to the children on the grounds that she had abandoned them, they continued to be in need of protection and services, and she failed to assume parental responsibility. *See* WIS. STAT. § 48.415(1), (2) & (6). The circuit court found C.W. to be in default during the final pretrial hearing. After a combined prove-up and dispositional hearing, at which C.W. was not present, the circuit court terminated C.W.'s parental rights to both children.

The no-merit report first addresses whether there would be any arguable merit to a claim that the circuit court lost competency to proceed because it failed 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 dispositional hearings. *See* WIS. STAT. §§ 48.422(1)-(2) & 48.424(4)(a). Continuances may be granted "only upon a showing of good cause in open court … and only for so long as is necessary." WIS. STAT. § 48.315(2). Here, C.W.'s hearings were delayed beyond the statutory time frames in some instances, but the court extended the deadlines for good cause. Moreover, C.W. 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 the circuit court misused its discretion in finding C.W. in default at the final pretrial conference. The court may make a default finding when a parent violates a court order to appear. *See* ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768. Whether to enter a default judgment is committed to the circuit court's sound discretion. ***Id.***, ¶18.

On January 26, 2016, the State moved for default because C.W. failed to appear for depositions in advance of trial on two different occasions: January 6, 2016, and January 26, 2016. When C.W. again failed to appear for the final pretrial conference held February 8, 2016, the circuit court granted the motion on the grounds that C.W. had disregarded a court order to appear and could have arranged to be present if she had timely told the half-way house where she was living that she had a court appearance. Given the circuit court's repeated warnings to C.W. at prior hearings that if she failed to appear for court proceedings as ordered default judgment could be entered against her, and given her failure to attend the pretrial hearing and the two scheduled depositions, we conclude that the circuit court properly exercised its discretion in finding C.W. in default. There would be no arguable merit to this claim.

The no-merit report next addresses whether there was an adequate factual basis for the circuit court to conclude that grounds existed to terminate C.W.'s parental rights. Where, as here, a party is found in default for violating a court order, the court must hold a fact-finding hearing to establish that grounds exist to terminate parental rights regardless of the default. *See* WIS. STAT. § 48.424(1)(a).

The State introduced CHIPS orders and other documentation that showed that the children had been placed outside C.W.'s care since June 10, 2014. Angela Threets, the children's case manager, testified that the children were taken into custody because they were being neglected and abused. Threets testified that C.W. was not appropriately caring for her children and left them with relatives for weeks or months at a time. Threets said that C.W. did not contact or visit the children for an entire year after they were taken into custody, from June 2014 to June 2015. Threets testified that C.W. had not seen her children in the three months prior to the prove-up/disposition hearing although Threets had attempted to provide her with visits. Threets also said that C.W. had not attended any of the children's medical or education-related appointments and that she was not in communication with the foster parents about the children.

With regard to meeting the conditions for return of the children, Threets testified that C.W. had been provided with many services in an attempt to reunify her with her children, including a psychological evaluation, individual therapy, supervised visitation, and referrals to parenting services. C.W. never moved to unsupervised visits with her children because she was not able to parent the children appropriately during supervised visits. As an example, Threets testified that C.W. fell asleep during one of the visits, so the visitation worker had to step in and take care of the children. Threets also testified that C.W. had been unable to provide a safe, suitable and stable home for her children.

Threets testified that there was an allegation of sexual abuse with regard to one of the boys involving penis-to-mouth contact. C.W. did not follow through with the forensic interview for six months and did not seem to understand the urgency of the situation. Threets also testified that C.W. had two older children placed outside of her home who were living with their paternal

grandmother, and C.W. had not taken the steps necessary to get those children back in her care. Finally, Threets said that she had concerns about C.W.'s drug use, noting that C.W. had recently been arrested for possession of heroin.

As briefly summarized above, there was ample evidence to support the court's finding that C.W. had abandoned the children, as that term is used in the termination statute, by failing to visit or communicate with them for a period of three months or longer, and that she had failed to assume parental responsibility for the children because she had not accepted and exercised significant parental responsibility for their daily supervision, education, protection and care. *See* WIS. STAT. § 48.415(1) & (6). There was also sufficient evidence adduced to show that the children were in continuing need of protection and services and C.W. would be unable to meet the conditions for their return in the next nine months. *See* § 48.415(2). Therefore, there would be no arguable merit to a claim that there was insufficient evidence to show that grounds existed to terminate C.W.'s parental rights.

The no-merit report next addresses whether the circuit court properly exercised its discretion in deciding that it was in the children's best interest to terminate C.W.'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).

During the dispositional phase of the hearing, Threets testified that the children were living in different foster homes and thriving in those environments. Threets testified that both of the families were adoptive resources. Threets said that the children had bonded with their foster parents and their physical and medical needs were being addressed. She testified that J.W. was severely delayed for his age when he was detained and was unable to dress himself, wash his hands, and walk, but that he was now able to do those things because he had been participating in occupational therapy and physical therapy. Threets said that neither boy had a substantial relationship with their mother. Threets testified that the adoptive families were willing to maintain the relationship the boys have with each other and their two older siblings, and that they had been meeting on a monthly basis to build and maintain the ties between the siblings. J.W.'s foster mother and E.W.'s foster parents both attended the hearing and expressed their love for the children and their desire to adopt them.

After considering the testimony, the circuit court found that the children were likely to be adopted. The court found that the children's age and health did not present barriers to adoption. The court found that the children did not have a substantial relationship with C.W. and had been living outside of her home for most of their lives. The court also found that the children were thriving in their foster homes and had significant relationships with their foster parents. Based on these findings, the court properly exercised its discretion in concluding that termination of C.W.'s parental rights was in the children'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.

In her response, C.W. states that she left her children with relatives because she needed help and discusses various events that occurred in her children's lives, providing her perspective on them. She also asks for another opportunity to have J.W. and E.W. returned to her. Because C.W.'s parental rights have already been terminated by the circuit court, the time for C.W. to have another opportunity to meet the conditions for her children's return has passed. While it is clear that C.W. cares about her children, the information C.W. has provided to this court in her response does not provide legal grounds for reversing the orders terminating her parental rights.

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

IT IS ORDERED that the orders terminating the parental rights of C.W. to her children J.W. and E.W. are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Christine Quinn is relieved of any further representation of C.W. on appeal.

Diane M. Fremgen
Clerk of Court of Appeals