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December 13, 2016

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

2016AP1873-NM	State v. K. B. M.
2016AP1874-NM	(L.C. Nos. 2015TP95, 2015TP96, 2015TP97, 2015TP98)
2016AP1875-NM	
2016AP1876-NM	

Before Seidl, J.¹

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Counsel for K. B. M. filed a no-merit report concluding there is no arguable basis for appealing orders terminating K. B. M.'s parental rights to four children. K. B. M. filed a response, contending a letter from one of the children to the court requesting adoption by the foster parents was not written by the child because of inconsistencies in the way the letters "A" and "I" are written. Upon this court's independent review of the record, no issue of arguable merit appears, and the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

The petition alleged three grounds for termination of parental rights: abandonment; the children's continuing need of protection and services (CHIPS); and failure to assume parental responsibility. K. B. M. entered a no-contest plea to the continuing CHIPS allegation, and the other grounds were dismissed.² Before accepting the no-contest plea, the circuit court informed K. B. M. that the State would have to prove: (1) the children were placed outside the parental home because they were in need of protection or services, (2) they have been outside the parental home for six months or longer, (3) the Bureau of Milwaukee Child Welfare made reasonable efforts to provide K. B. M. with the services that would help him have the children returned to his home, (4) he has not met the conditions for return of the children, and (5) he would not likely meet the conditions within the next nine months. The court reminded K. B. M. of his right to a jury trial, the State's burden of proof, and his rights to subpoena witnesses, to testify on his own behalf and to confront the State's witnesses. The court informed K. B. M. that his no-contest plea would result in a finding of unfitness and informed him of the nature of the dispositional

² The no-contest plea hearing was conducted by Judge Mark Sanders. Judge Christopher Foley heard K. B. M.'s subsequent motion to withdraw the no-contest plea and conducted the dispositional hearing.

hearing that would take place upon acceptance of the no-contest plea. The court ascertained that no one made any promises or threats to induce the plea, K. B. M. had not consumed any alcohol or drugs within twenty-four hours of the hearing, he had not been diagnosed with any mental illness, and he knowingly and understandingly entered the plea.

The circuit court conducted a hearing to establish a factual basis for the plea. Madia Ali, the case manager for St. A's, provided details regarding the CHIPS orders, the conditions for the return of the children, K. B. M.'s noncompliance and his refusal of many services. The conditions for the return of the children included K. B. M.'s understanding of his own mental health needs (including psychological evaluations and referrals for therapy), regularly attending visitation, providing a safe environment for the children, and cooperation with the Bureau of Milwaukee Child Welfare. K. B. M. attended only one domestic violence class and did not complete individual therapy as required by the CHIPS orders. He did not engage in AODA treatment. He was discharged from supervised visitation because of his behavior, which raised concerns of female staff members. He had no personal contact with the children from February 2014 to the date of the trial in December 2015 because he was incarcerated in another county, charged with second-degree sexual assault and strangulation. Due to K. B. M.'s incarceration, Ali opined that he would be unable to meet the conditions for the return of the children within the next nine months.

The day before the dispositional hearing, K. B. M. moved to withdraw his no-contest plea.³ The motion alleged K. B. M.'s no-contest plea was entered hastily and in confusion, without adequate consultation with his attorney, and that it was coerced by his attorney. The circuit court found no basis for withdrawing the plea. As the court noted, the colloquy was "painfully detailed and specific." The record shows that before taking K. B. M.'s no-contest plea, the court recessed the matter for approximately two hours to ensure K. B. M. had adequate opportunity to consult with his attorney and to consider his decision. K. B. M. assured Judge Sanders that he had sufficient time to consult with his attorney and had no questions of the judge or his attorney. He also assured the court that no promises or threats induced his plea. Our review of the record confirms the court's conclusion that there is no basis for withdrawal of the no-contest plea.

At the dispositional hearing, the circuit court considered the factors set out in WIS. STAT. § 48.426(3). The court found the foster parents were willing to adopt the children, and the children wished to be adopted. In his response to the no-merit report, K. B. M. suggested one of the letters submitted to the court by his daughter requesting adoption may have been written by someone else because of his evaluation of differences in the penmanship. That letter was stamped received by the children's court clerk, but was never marked as an exhibit. It was sent to the court before the grounds phase of the mother's trial⁴ and before K. B. M.'s no-contest plea.

³ Because the case had been assigned to a new judge and the transcript of the plea hearing had not been completed, the court delayed ruling on the motion until after the dispositional hearing.

⁴ The mother's parental rights were terminated following a jury trial, and the dispositional hearing applied to both parents.

The judge conducting the dispositional hearing made no mention of the earlier letter, and nothing in the record suggests he ever saw that letter. That child's desire to be adopted by the foster parents was established by another letter to the court submitted at the time of the dispositional hearing. Through communication forwarded to the court by the foster parents, K. B. M.'s oldest child said she loved her birth parents but expressed a desire to be adopted. The finding that the children wished to be adopted was supported by other evidence, rendering the earlier letter cumulative at best. Therefore, there is no reason to pursue the question of whether K. B. M.'s daughter penned the letter in question.

The foster mother's testimony established the children's substantial bonding with the foster family and alienation from the children's birth parents due to the prevalence of domestic violence in their home. The record supports the circuit court's finding that termination of parental rights was in the best interests of the children.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Eileen Evans is relieved of her obligation to further represent K. B. M. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals