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DISTRICT III

January 10, 2017

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

2016AP1904-NM State v. C. L. L. (L. C. No. 2016TP18)

Before Seidl, J.[1]

Counsel for C.L. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable merit to any issue that could be raised on appeal from an order terminating C.L.'s parental rights to her daughter, T.L.[2] C.L. filed a response challenging the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] The order also terminated the parental rights of T.L.'s father. Termination of the father's parental rights is not the subject of this appeal.

grounds for termination, claiming she was prevented from seeing her daughter. Upon this court's independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the order terminating C.L.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

T.L. was born April 3, 2004, and guardianship of the child was granted to her maternal grandfather in October 2004. In June 2013, T.L. was found to be a child in need of protection or services and, on September 4, 2013, the guardianship was terminated and T.L. was placed outside her parental home. On January 19, 2016, the State petitioned for termination of C.L.'s parental rights, alleging the failure to assume parental responsibility. C.L. failed to appear for the initial hearing, and the circuit court found her in "default subject to a prove-up." C.L. appeared in person at a May 16, 2016 hearing during which T.L.'s father pleaded no contest to the grounds for termination. At that hearing, the circuit court directed C.L. to seek representation from the public defender's office. The court added: "Tell your subsequently assigned lawyer you've been defaulted and that's where they need to start, with a motion to vacate the default finding." The record shows that the court scheduled the father's dispositional hearing for June 14, 2016, with the apparent expectation that C.L.'s motion to vacate the default would be heard at that time. A public defender was appointed to represent C.L. two days later, but no motion to vacate was ultimately filed.

At the June 14 hearing, C.L. failed to personally appear. Michaela Habberley, the family case manager, testified she had reminded C.L. of the court date, time and branch four days earlier, and had no explanation for her absence. The court was also informed by C.L.'s appointed attorney that despite several efforts, he had been unable to make contact with C.L. since his appointment, thus hindering his ability to file a motion to vacate the default. The court

determined counsel would remain on the case and proceeded with a hearing on grounds and disposition as to C.L. The court found C.L. unfit and concluded it was in the child's best interest to terminate C.L.'s parental rights.

Any challenge to the proceedings based on a failure to comply with statutory time limits would lack arguable merit. All of the mandatory time limits were either complied with or properly extended for good cause, without objection, to accommodate the parties' varying schedules. The failure to object to a delay waives any challenge to the court's competency on these grounds. *See* WIS. STAT. § 48.315(3). Moreover, scheduling difficulties constitute good cause for tolling time limits. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

Any claim that the circuit court erred by refusing to discharge counsel would lack arguable merit. In a proceeding involving an involuntary termination of parental rights, any parent "shall be represented by counsel" unless the parent either makes a knowing and voluntary waiver of counsel, *see* WIS. STAT. § 48.23(2)(b)1., or is presumed to have waived counsel by a finding that the parent's failure to appear in person was egregious and without clear and justifiable excuse, *see* WIS. STAT. § 48.23(2)(b)3. If the court finds a parent's conduct in failing to appear was egregious and without clear and justifiable excuse, the court must delay the dispositional hearing. ***Id.*** The decision whether to discharge counsel where there is either a knowing and voluntary waiver or a presumed waiver by conduct is discretionary. *See* WIS. STAT. § 48.23(4m). Here, the court, in its discretion, recognized counsel lacked substantive input from his client, but determined that further delay resulting from counsel's discharge was not in the child's best interest. The court's discretionary decision to not discharge counsel is supported by the record.

Any challenge to the default finding entered against C.L. would lack arguable merit. In a termination of parental rights case, it is within the circuit court's discretion to find a party in default. *See* ***Evelyn C. R. v. Tykila S.***, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768. Here the summons warned that failure to appear may result in termination of parental rights. The State attempted service by mail at two of C.L.'s known addresses, with no returned mail from either address. In addition to accomplishing service by publication, the State also made several attempts to personally serve C.L. at those addresses. When C.L. failed to appear at the initial hearing, the State moved for default. The circuit court determined that the "legally-required service efforts" and personal service efforts undertaken by the State established due diligence and found C.L. in "default subject to a prove-up."

Although a circuit court may find a party in default, the court may not enter a judgment as to grounds without holding an evidentiary hearing and finding the alleged grounds for termination by clear and convincing evidence. ***Id.***, ¶24. As noted above, the petition alleged a failure to assume parental responsibility, which is established by proving that C.L. has not had a substantial parental relationship with the child. WIS. STAT. § 48.415(6)(a). "[S]ubstantial 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). Failure to assume parental responsibility is determined by consideration of the totality of the circumstances. ***Tammy W.-G. v. Jacob T.***, 2011 WI 30, ¶¶3, 27-35, 333 Wis. 2d 273, 797 N.W.2d 854.

Habberley testified that guardianship of T.L. was granted to her maternal grandfather when T.L. was under one year old and that her grandfather was T.L.'s primary caregiver for the majority of her life. Guardianship was terminated when the grandfather developed dementia.

According to Habberley, C.L. had failed to accept and exercise significant responsibility for T.L.'s daily supervision, education, protection and care. Habberley added that during the time when C.L. was allowed contact with T.L., the child was sexually abused by C.L.'s boyfriend and physically abused while in C.L.'s care. Based on the testimony presented, the circuit court found that the State had established C.L. failed to assume parental responsibility. Any challenge to the court's finding would lack arguable merit.

In her response to the no-merit report, C.L. challenges the grounds for termination, claiming she was prevented from seeing her daughter. Even assuming C.L. has not waived her challenge to grounds by defaulting, the record shows she was not T.L.'s primary caregiver for the majority of the child's life. When the grandfather's guardianship ended and the Bureau of Milwaukee Child Welfare attempted to establish supervised visits between mother and child, C.L. failed to cooperate with her family case manager. Specifically, C.L. was often a "no call" or "no show" to scheduled meetings. After more than a year of consistent, yet unsuccessful, efforts by the family case manager to meet with C.L. and assess her for safety and diminished protective capacities, and after the physical and sexual abuse of T.L. was revealed, a visitation schedule was not arranged. Because C.L.'s own conduct precluded visits with her daughter, C.L.'s challenge to the grounds for termination lacks arguable merit.

There is no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated C.L.'s parental rights. The court correctly applied the best interests of the child standard and considered the factors set out in WIS. STAT. § 48.426(3). The court considered T.L.'s adoptability and age, along with the absence of any substantial relationship with C.L., noting T.L. had been out of her mother's care for virtually all of her life "between the guardianship and the foster care placements." The court added that any relationship the child has

had with her mother has been a "very, very negative factor" in T.L.'s life, emphasizing the "abhorrent" treatment T.L. suffered while in her mother's care. The court noted it was T.L.'s wish to be adopted and the child needed to have permanence in a safe, loving environment. The court heard testimony that other than expressing interest in the well-being of her maternal grandfather, T.L. did not express a desire to maintain contact with her maternal family. The court's discretionary decision to terminate C.L.'s parental rights demonstrates a rational process that is justified by the record. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

This court's independent review of the record discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Christine M. Quinn is relieved of further representing C.L. in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals