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

2016AP2379-NM

In re the termination of parental rights to L. A. B., a person under the age of 18: State of Wisconsin v. K. A. B. (L.C. # 2015TP123)

Before Blanchard, J.

K.A.B. appeals an order terminating her parental rights to L.A.B. Attorney Steven Zaleski has filed a no-merit report seeking to withdraw as appellate counsel and concluding that there would be no arguable merit to challenging the order on appeal. *See* WIS. STAT. RULE

809.32 (2015-16);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 449 (1987), *aff'd*, 486 U.S. 429 (1988). K.A.B. was sent a copy of the report, and has filed a response alleging that she was “improperly serv[ed]” by her attorneys and the agencies involved with her case. Upon reviewing the entire record, as well as the no-merit report and response, we agree with counsel’s assessment that there are no arguably meritorious appellate issues.

The State filed a petition for termination of parental rights as to L.A.B. on May 6, 2015. The petition alleged, as grounds for termination, continuing need of protection or services (CHIPS) and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2) and (6). We agree with counsel’s assessment that there would be no arguable merit to challenging the sufficiency of the evidence to support the jury’s finding as to the termination ground of continuing CHIPS. As to that ground, the State needed to show that: (1) the child, L.A.B., had been adjudged in need of protection or services and placed outside the home for six months or more pursuant to a court order containing statutory notice of TPR proceedings; (2) the State had made reasonable efforts to provide the services ordered by the court; (3) K.A.B. failed to meet the conditions established for the safe return of the child; and (4) there was a substantial likelihood that K.A.B. would not meet the conditions within the next 9 months. *See* § 48.415(2).

The State introduced, as an exhibit, the prior court order needed to prove the first CHIPS element. The order specified that, to meet the conditions established for the safe return of her child, K.A.B. needed to control mental health issues, supervise the child and place his needs

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

before her own, have age appropriate expectations of the child, meet his medical and special education needs, and keep a safe, clean home. As to the second CHIPS element, K.A.B. asserts in her no-merit response that she believes that she did not receive adequate services to meet the conditions. However, the record establishes otherwise. The record contains testimony from social workers who worked with K.A.B. that K.A.B. had been provided bus tickets for supervised visits with L.A.B., parent coaching, housing assistance and home management resources, and referrals for mental health services and drug and alcohol treatment. Nothing in the no-merit response submitted by K.A.B. persuades us that there would be arguable merit to challenging the jury's finding as to the second CHIPS element.

With regard to the third and fourth CHIPS elements, progress toward meeting the conditions of return and likelihood of future progress, the State presented testimony from a series of therapists and social workers over the three-day jury trial regarding K.A.B.'s history of multiple mental health disorders, admittance to mental health facilities, and her failure to control her mental health issues during the time period relevant to the petition. The record reflects that K.A.B.'s visits with L.A.B. and her visits with social workers had been inconsistent, and that supervised visits with L.A.B. had to be discontinued so that K.A.B. could undergo a psychological evaluation. K.A.B. was diagnosed with delusional disorder and cannabis use disorder. K.A.B.'s case manager testified that K.A.B. had failed to provide a safe, clean home for L.A.B. and had failed to meet L.A.B.'s educational needs. K.A.B. admitted in her trial testimony on May 3, 2015, that she had not been to any of L.A.B.'s parent/teacher conferences in over a year and that she had not taken him to any of his doctor or dentist appointments for over two years. Tracie N., who had had continued foster placement of L.A.B. since February 26, 2014, testified that she took L.A.B. to all of his doctor, dentist, and therapy appointments during

that time. With the exception of one IEP meeting that K.A.B. attended, Tracie N. testified that K.A.B. had not been involved with L.A.B.'s educational needs at all. In light of all of the above, we agree with counsel that the evidence was sufficient for the jury to find that all of the required elements had been established as to the termination ground of continuing CHIPS, such that there would be no arguable merit to challenging the finding on appeal.²

We also agree with counsel's assessment that there would be no arguable merit to challenging the outcome of the dispositional phase of the proceedings. At the dispositional hearing, the circuit 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 circuit court did so, and explained the basis for its disposition in a written decision. The court noted that Tracie N. wanted to adopt L.A.B., and her testimony at the dispositional hearing reflects that she had gone through the licensing process to be able to do so. The court also noted that Tracie N. had "demonstrated remarkable understanding of and commitment" to the treatment and management of L.A.B.'s diagnosed autism. The record also reflects that L.A.B. had expressed desire to be adopted by Tracie N.

The court acknowledged that L.A.B.'s maternal grandmother was a willing caregiver, but ultimately concluded that she was not a fit caregiver, in part because of her failure to sufficiently

² Only one ground for termination need be established. *See* WIS. STAT. § 48.415 ("Grounds for termination of parental rights shall be *one* of the following:") (emphasis added). Therefore, we need not review the alternate ground of failure to assume parental responsibility.

appreciate how disabling and dangerous K.A.B.'s mental health issues were to L.A.B. The court also noted that L.A.B. had been out of K.A.B.'s care for more than two years and, although K.A.B. had made some positive improvements in terms of employment and therapy, her parenting capacity continued to be compromised by her mental health issues. In short, the record shows that the circuit court reasonably applied the proper legal standard to the facts of record when reaching its disposition, such that any challenge to the disposition on appeal would be without arguable merit.

In addition, it appears from the record that all of the statutory deadlines were met or properly extended for good cause, and that required notices were given. Nothing in the record, the no-merit report, or K.A.B.'s response reveals any action taken or not taken by trial counsel that would give rise to a claim for ineffective assistance of counsel. K.A.B. asserts in the no-merit report that there are facts related to the underlying CHIPS order that should have been considered by the circuit court, such as interactions she had with child protective services in December 2013. However, the underlying CHIPS order is outside the scope of this appeal, because it was entered over eight months before the present TPR petition was filed and could have been separately appealed.

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 K.A.B.'s parental rights to L.A.B. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of any further representation of K.A.B. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals