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March 14, 2017

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O. H.

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

2017AP26-NM
2017AP27-NM
2017AP28-NM

State of Wisconsin v. O. H.
(L.C. #'s 2015TP000347, 2015TP000348, 2015TP000349)

Before Brennan, P.J.[1]

O.H. appeals from trial court orders terminating her parental rights to her three children, N.S., T.H., and K.H.[2] O.H.'s appointed attorney, Jeffrey W. Jensen, has filed a no-merit report.

[1] These appeals, which were consolidated by order of this court, are decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] The father of N.S. and T.H. is deceased. The parental rights of K.H.'s father were terminated and are not at issue in this appeal.

See ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (per curiam); *see also* WIS. STAT. RULES 809.107(5m) and 809.32. O.H. has not filed a response. This court has considered counsel's report and has independently reviewed the record. This court agrees with counsel's conclusion that an appeal would lack arguable merit. Therefore, the orders terminating O.H.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

The children were removed from O.H.'s home in June 2014 and have not been returned to her care. They were found to be in need of protection or services in October 2014. *See* WIS. STAT. § 48.13 (governing "CHIPS" cases). The children were placed with a relative for about fourteen months, until she indicated she was unable to continue caring for them. In September 2015, the children were placed in a potential adoptive home with a foster mother, foster father, and their three children.

In December 2015, the State petitioned to terminate O.H.'s parental rights to all three children based on WIS. STAT. § 48.415(2) (continuing CHIPS) and § 48.415(6) (failure to assume parental responsibility). After counsel was appointed, O.H. indicated that she was contesting the allegations in each petition, and the case was scheduled for a jury trial.[3] However, at the final pretrial, O.H. indicated that she had decided to enter no-contest pleas to the continuing CHIPS ground in each case. She also indicated that she planned to argue against termination of her parental rights at the dispositional hearing. The trial court conducted a thorough plea colloquy with O.H. and ultimately accepted her no-contest pleas and her waiver of the right to a jury trial on grounds for termination. On a subsequent date, the trial court also heard testimony from a

[3] The original guardian ad litem did not contest the petitions and the successor guardian ad litem supported the acceptance of O.H.'s no-contest plea.

family case manager that allowed the trial court to find a factual basis for the continuing CHIPS ground alleged in each petition.

In September 2016, the trial court conducted the dispositional hearing. The trial court found that it was in each child's best interest that O.H.'s parental rights be terminated. These appeals follow.

The no-merit report addresses whether there would be any arguable merit to challenge O.H.'s no-contest pleas or the trial court's finding that termination of O.H.'s parental rights was in the children's best interest. We agree with appellate counsel that there would be no merit to further proceedings or an appeal based on those issues, as we will briefly explain below. We also address whether there would be any merit to assert that the trial court failed to follow the statutory rules regarding time limits.

We begin our analysis with the statutory time limits. The fact-finding hearing must be held "within 45 days after the hearing on the petition" *see* WIS. STAT. § 48.422(2), and the dispositional hearing must be held immediately after the fact-finding hearing, or within forty-five days under certain circumstances (including if the parties agree), *see* WIS. STAT. § 48.424(4). These statutory time limits cannot be waived. ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. 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* § 48.315(3).

We have carefully examined the record. At each hearing, the time limits were observed or tolled for good cause on the record after the parties either consented or did not state an objection. After finding a factual basis for the continuing CHIPS ground, the trial court held the dispositional hearing ten days later, with the agreement of the parties. There would be no merit to alleging that the trial court lost competency during the pendency of the cases.

Next, we consider O.H.'s no-contest pleas to the continuing CHIPS ground in each case. In ***Brown County DHS v. Brenda B.***, our supreme court summarized the applicable legal standards:

> A parent who chooses to enter a no contest plea during th[e grounds] phase is giving up valuable protections and must have knowledge of the rights being waived by making the plea.
>
> The principles and analysis of ***Bangert*** apply.[4] The [trial] court must engage the parent in a colloquy to ensure that the plea is knowing, voluntary, and intelligent. This colloquy is governed by the requirements of [WIS. STAT.] § 48.422(7) and notions of due process.
>
> If the parent can later show that the colloquy was deficient and also alleges that he or she did not know or understand the information that should have been provided, that parent has made a prima facie case that the plea was not knowing, voluntary, and intelligent. At that point, the burden shifts to the petitioner to demonstrate by clear and convincing evidence that the parent knowingly, voluntarily, and intelligently pled no contest.

Brenda B., 2011 WI 6, ¶¶34-36, 331 Wis. 2d 310, 795 N.W.2d 730 (citations omitted).

The trial court conducted an extensive colloquy with O.H. that spanned over nineteen pages of the transcript. The trial court addressed O.H.'s understanding of the rights she was

[4] *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

giving up, told her that it would decide at the dispositional hearing whether to terminate her parental rights or dismiss the petitions, and explained that the focus at the dispositional hearing would be the children's best interests. The trial court also established that no promises or threats were made to force O.H. to enter the no-contest pleas. In short, the transcript demonstrates that the trial court complied with the dictates of WIS. STAT. § 48.422(7), ***Brenda B.***, and ***Oneida County DSS v. Therese S.***, 2008 WI App 159, 314 Wis. 2d 493, 762 N.W.2d 122.

As part of its compliance with WIS. STAT. § 48.422(7), the trial court heard testimony from the family case worker concerning the factual basis for the stipulation. The trial court accepted the case worker's testimony, which included details about O.H.'s non-compliance with the CHIPS order, such as failing to complete the parenting program, having sporadic visitation with the children, and failing to communicate with the case worker. The trial court found that O.H. had failed to satisfy several conditions of the CHIPS order and was "not likely to meet those conditions within the next nine months." O.H.'s pleas and the case worker's testimony support these findings. There would be no merit to challenging O.H.'s no-contest pleas or the factual basis for the continuing CHIPS finding.

Finally, we turn to the issue of whether there would be any merit to challenging the trial court's decision to terminate O.H.'s parental rights. The decision to terminate a parent's rights is discretionary and the best interest of the child is the prevailing standard. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152-53, 551 N.W.2d 855 (Ct. App. 1996). The trial court considers multiple 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).

Here, there would be no merit to challenging the trial court's exercise of discretion. The trial court heard testimony from the family case manager, the children's parents, and the children's foster mother. The trial court made findings on the record and explicitly discussed each of the statutory factors, finding that each one weighed in favor of termination. For instance, considering WIS. STAT. § 48.426(3)(c), the trial court found that the children did not have substantial relationships with any family members except for O.H. The trial court found that it would not be "significantly harmful to the children to sever that relationship" with O.H. due to the children's strong relationships with each other and with the foster family. The trial court also found that the two oldest children had expressed an interest in remaining in the foster home, and the youngest child expressed a desire to remain with the child's siblings. *See* § 48.426(3)(d). Finally, the trial court found that the children would "be able to enter into a more stable and permanent family relationship" if O.H.'s parental rights were terminated, *see* § 48.426(3)(f), due to the strong bond the children had with their foster family and the fact it was unlikely the children would be reunified with O.H. "in any reasonable amount of time."

The trial court's findings on all six statutory factors are supported by the record and reflect a proper exercise of discretion. An appellate challenge to the trial court's exercise of discretion would lack arguable merit.

This court's independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing,

IT IS ORDERED that Attorney Jeffrey W. Jensen is relieved of any further representation of O.H. on appeal.

IT IS FURTHER ORDERED that the orders terminating O.H.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals