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DISTRICT III

May 2, 2017

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

2017AP190-NM Brown County Department of Human Services v. C. B.
(L. C. No. 2016TP21)

Before Hruz, J.¹

Counsel for C.B. has filed a no-merit report concluding there is no arguable basis for challenging an order terminating C.B.'s parental rights to his three-year-old daughter, A.B. C.B. was advised of his right to respond to the report and has not responded. Upon this court's independent review of the record, no issue of arguable merit appears.

¹ This appeal is 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.

The initial petition alleged abandonment as defined in WIS. STAT. § 48.415(1)(a)(2), failure to assume parental responsibility, and that A.B. was in continuing need of protection and services (CHIPS). The Department of Human Services filed an amended petition alleging an additional ground, abandonment under § 48.415(1)(a)1r., provides that ground is satisfied when a court of competent jurisdiction has found under WIS. STAT. § 48.13(2) that the child was abandoned when the child was under one year of age. The Department filed a motion for partial summary judgment on the grounds phase based on documentary evidence that, when A.B. was eleven months old, the circuit court for Wood County entered a CHIPS order under § 48.13(2) based in part on its finding of abandonment. The circuit court held a hearing on the motion for summary judgment, and C.B. did not appear for the hearing. His attorney appeared and opposed the motion for summary judgment because C.B. wished to collaterally attack the CHIPS order, alleging C.B. was not informed of his right to an attorney. Counsel asked the court to delay ruling on the summary judgment motion to allow time for counsel to get an affidavit from C.B. regarding his right to an attorney. The court denied the request to delay the proceedings and granted partial summary judgment based on the Wood County CHIPS order finding abandonment.

The circuit court then conducted a disposition hearing weeks later. C.B. again did not appear for the hearing. The court found C.B. in default and proceeded to hear testimony relating to the disposition. The court considered the factors set out in WIS. STAT. § 48.426(3) and found that termination of C.B.'s parental rights was in the child's best interest.

The record discloses no arguable basis for challenging the order granting partial summary judgment on the abandonment ground. Summary judgment may be employed in the grounds phase when there is no genuine factual dispute that would preclude finding any of the statutory

grounds by clear and convincing evidence. *Oneida Cty. DSS v. Nicole W.*, 2007 WI 30, ¶14, 299 Wis. 2d 637, 728 N.W.2d 652. Because documentary evidence conclusively establishes that the Wood County court found eleven-month-old A.B. had been abandoned, the circuit court properly found C.B. unfit based on that abandonment.

The circuit court properly rejected C.B.'s attempt to collaterally attack the Wood County CHIPS order. C.B. did not appeal that order, which had been in effect for two years. Because C.B. commenced no appeal to reverse or annul that abandonment finding, no collateral attack is allowed except for fraud in its procurement. *See id.*, ¶22. C.B. did not allege any fraud in procurement of the CHIPS order. In *Nicole W.*, the supreme court recognized the right of defendants in criminal cases to collaterally attack prior convictions based on denial of their right to counsel. *Id.*, ¶30. However, a juvenile court is not required to advise a parent of the court's authority to appoint counsel for the parent in every CHIPS case. *See State v. Tammy L. D.*, 2000 WI App 200, ¶32, 238 Wis. 2d 516, 617 N.W.2d 894. Even if that right applies to a termination of parental rights proceeding, documentary evidence presented by the Department shows C.B. was informed of his right to counsel in writing before the CHIPS proceeding. Nothing in the record supports a claim that the CHIPS court denied C.B. his right to counsel.

The record also discloses no arguable basis for challenging the circuit court's discretionary decision denying the request to delay the summary judgment hearing. The court noted C.B.'s nonappearance at the motions hearing, his failure to appeal the CHIPS order, and the need for permanency and stability in A.B.'s life. In light of the complete absence of evidence of fraud in the CHIPS proceeding and the presence of documentary evidence establishing C.B. was notified of his right to counsel, the circuit court reasonably went forward with the summary judgment hearing.

Finally, the record discloses no arguable basis for challenging the finding that termination of C.B.'s parental rights was in A.B.'s best interest. The court found terminating C.B.'s parental rights would result in more stability for A.B. based on a high likelihood of adoption. A.B. had almost no contact with C.B. for her entire life. A.B.'s mother voluntarily terminated her parental rights and the maternal grandparents, who raised A.B., indicated a desire to adopt the child, as had other approved families.

This court's independent review of the record discloses no arguable issue for appeal. Therefore,

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

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

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals