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May 23, 2017

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

2017AP334-NM
2017AP335-NM
2017AP336-NM
2017AP337-NM

Barron County Department of Health and Human Services v. K.M.
(L. C. Nos. 2016TP1; 2016TP2; 2016TP3; 2016TP4)

Before Seidl, J.[1]

Counsel for K.M. filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable basis for challenging orders terminating K.M.'s parental rights to her

[1] These appeals 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.

children, S.B., A.B., G.B. and A.D.B.[2] K.M. filed a response requesting the opportunity to be reunited with her children, but she fails to identify any specific challenge to the termination of her parental rights. Upon this court's independent review of the records as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issue of arguable merit appears. Therefore, the orders terminating K.M.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

On January 12, 2015, the children (then ages nine, seven, five and two) were placed in protective care on the bases of neglect and risk of neglect. On April 22, 2015, the children were adjudicated as children in need of protection or services (CHIPS) and placed outside of their parents' home. K.M. failed to meet the conditions necessary to have the children returned to her care. On January 27, 2016, the Barron County Department of Health and Human Services petitioned for termination of K.M.'s parental rights, alleging the continuing need for protection or services and a failure to assume parental responsibility. K.M. contested the grounds for termination and requested a jury trial. K.M. attended only approximately five minutes of the first day of a three-day trial. The jury ultimately returned verdicts against K.M. on both grounds for termination. Following a dispositional hearing at which K.M. testified, the court found K.M. unfit and concluded it was in the children's best interest to terminate K.M.'s parental rights.

Any challenge to the proceedings based on a failure to comply with statutory time limits lacks 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

[2] Although the orders also terminated the father's parental rights to the children, termination of the father's parental rights is not a subject of this appeal.

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 challenge to the jury's verdicts finding grounds for termination would lack arguable merit. When we review a jury's verdict, "we consider the evidence in the light most favorable to the [jury] verdict." ***Tammy W.-G. v. Jacob T.***, 2011 WI 30, ¶39, 333 Wis. 2d 273, 797 N.W.2d 854 (citing ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990)). If more than one reasonable inference can be drawn from the evidence, we must accept the one drawn by the jury. ***Poellinger***, 153 Wis. 2d at 504.

The continuing need for protection or services ground is established by showing four circumstances: (1) that the children were adjudged to be in need of protection and services and were placed outside the parent's home for a cumulative period of six months or longer pursuant to one or more court orders containing required termination warnings; (2) that the relevant agency made a reasonable effort to provide court-ordered services; (3) that the parent failed to meet the conditions for the children's safe return to the home; and (4) that there is a substantial likelihood that the parent will not meet the conditions within the nine-month period following the fact-finding hearing. *See* WIS. STAT. § 48.415(2)(a)1.-3. The County bears the burden of proving its case by clear and convincing evidence. *See* WIS. STAT. § 48.31(1).

Trial evidence established that the children had been placed outside K.M.'s home for a cumulative period of more than six months pursuant to court orders containing required termination warnings. The jury heard testimony about the County's efforts to provide court-

ordered services. A social worker testified that K.M. attended only four of seventeen monthly team meetings held to ensure all involved with the children's case "had the same information." K.M. failed to engage in individual therapy, and although she completed an AODA assessment, she missed 165 scheduled urinalysis screenings. Attempts by the County to determine whether K.M. had stable housing were hampered by her failure to keep the social worker apprised of her whereabouts. Further, from January 2015 to the August 2016 trial, there were approximately six months when K.M. had no contact with the children. The jury could reasonably find, based on the evidence before it, that it was substantially unlikely K.M. would meet the conditions for her children's safe return within the nine-month period following the fact-finding trial. The record supports the jury's finding that the children were in continuing need of protection or services.[3]

There is no arguable merit to any challenge related to K.M.'s absence from the jury trial. K.M. was voluntarily absent for the majority of the first day of trial and the whole of the second day. With respect to the third day of trial, K.M.'s counsel informed the court that K.M. was unavailable to appear because she had been admitted to the hospital with a foot infection. Although K.M. sent documents to the court suggesting she suffered a skin infection, there was no evidence she had been admitted to the hospital nor was there a doctor's note stating she was unable to appear either in person or by telephone. Even if she wanted to appear by phone, the court noted K.M.'s counsel had been unable to establish contact with K.M. The circuit court

[3] 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, even if there were an arguable basis for challenging the jury's verdict as to that ground.

ultimately found that K.M. had forfeited any right to appear and proceeded with the final day of the trial. Although K.M. either opted not to appear or was found to have forfeited any right to appear, K.M.'s counsel appeared at the trial on her behalf and reminded the jury during closing arguments that K.M. was not required to appear and "[e]ven if she was here for the whole thing, or not at all or only for five minutes," the County's burden of proof did not change. Any challenge to the verdicts based on K.M.'s absence would lack arguable merit.

There is no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated K.M.'s parental rights. The circuit court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Here, the circuit 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 the children's age, health and adoptability, expressing confidence that "these children can be adopted." The court acknowledged that the children had a substantial relationship with K.M., but added that the relationship was "toxic" and "harmful to these children." The court specifically noted evidence of a reverse parent-child dynamic, where the children "were concerned about mom and dad more than mom and dad were concerned about the children." The court emphasized that the children had been separated from their mother for twenty-two months and mom and/or dad had attended only thirty-five out of 127 scheduled visits. The circuit court also acknowledged that based on a "trauma bond" in which the three older siblings could "trigger" one another, the children were "thriving" in separate pre-adoptive placements. The circuit court's findings of fact, its application of the proper standard of law, and

its use of a demonstrated rational process support its discretionary decision to terminate K.M.'s parental rights.

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

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

IT IS FURTHER ORDERED that attorney Eileen T. Evans is relieved of her obligation to further represent K.M. in these matters. *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 except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals