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July 17, 2017

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

2017AP785-NM In re the termination of parental rights to A.A.N.M., a person under the age of 18: Waukesha County DH&HS v. B.J.M. (L.C. # 2016TP34)

Before Blanchard, J.[1]

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted. Pursuant to WIS. STAT. RULE 809.107, an opinion from this court was due on July 6, 2017. Conflicts in this court's calendar matter have resulted in a delay in the opinion's release. It is therefore necessary for this court to sua sponte extend the deadline for a decision in this case. *See* WIS. STAT. RULE 809.82(2)(a) ("the court upon its own motion … may enlarge or reduce the time prescribed by these rules or court order for doing any act …."); ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995). We extend our deadline accordingly.

B.J.M. appeals an order terminating his parental rights (voluntary) to his daughter, A.A.N.M. Appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32, addressing the potential issues of whether B.J.M.'s consent to termination was informed and voluntary, and if the circuit court properly exercised its discretion at disposition. B.J.M. received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent review of the record, we conclude that the order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In November 2016, the county sought to terminate B.J.M.'s parental rights to his daughter, alleging that B.J.M. would consent under WIS. STAT. § 48.41. At a December 22, 2016 hearing, B.J.M. appeared from prison by video and confirmed his desire to voluntarily consent to termination. After further questioning, the circuit court determined B.J.M.'s consent was informed and voluntary. Following a dispositional hearing, the court determined it was in the child's best interest to terminate B.J.M.'s parental rights.[2]

When a parent elects to voluntarily consent to the termination of parental rights, WIS. STAT. § 48.41(2) directs that the court may accept the consent to termination "only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary." In ***T.M.F. v. Children's Serv. Soc'y of Wis.***, 112

[2] The dispositional hearing was held on January 18, 2017, right after A.A.N.M.'s mother voluntarily consented to terminate her parental rights. At B.J.M.'s request, he did not appear for disposition.

Wis. 2d 180, 332 N.W.2d 293 (1983), the Wisconsin Supreme Court set forth basic information that the court must ascertain to determine whether the parent's consent is informed and voluntary:

> 1. [T]he extent of the parent's education and the parent's level of general comprehension;
>
> 2. [T]he parent's understanding of the nature of the proceedings and the consequences of termination, including the finality of the parent's decision and the circuit court's order;
>
> 3. [T]he parent's understanding of the role of the guardian ad litem (if the parent is a minor) and the parent's understanding of the right to retain counsel at the parent's expense;
>
> 4. [T]he extent and nature of the parent's communication with the guardian ad litem, the social worker, or any other advisor;
>
> 5. [W]hether any promises or threats have been made to the parent in connection with the termination of parental rights;
>
> 6. [W]hether the parent is aware of the significant alternatives to termination and what those are.

Id. at 196-97.

Based on our review of the record in this case, we agree with appellate counsel's conclusion that any challenge to the voluntariness of B.J.M.'s consent to terminate his parental rights would lack arguable merit. At the December 22, 2016 hearing, B.J.M. informed the court that he obtained his HSED, could read and write the English language, had never been diagnosed with a mental illness, and was coherent and able to understand the proceedings. Upon questioning by the court, B.J.M. stated that he understood the risks and disadvantages of self-representation but wanted to proceed pro se. He confirmed his understanding of the nature of the proceedings and the consequences of an order terminating his parental rights, including that the loss of his legal rights, including visitation rights, would be permanent. B.J.M. acknowledged

that once his parental rights were terminated it would be "extremely difficult to undo" his consent on appeal, and he could not simply change his mind. He answered questions about his communications with the other parties and attorneys and their respective roles, and confirmed he had given his decision "quite a bit of thought" and did not wish to further discuss his decision with anyone else. He stated that no promises or threats influenced his decision. The circuit court ascertained B.J.M.'s understanding of the alternatives to termination and found that, knowing the alternatives, B.J.M. wished to consent to voluntary termination. In addition, at the circuit court's direction, B.J.M. later completed, signed, and returned the consent to terminate parental rights and acknowledgement of rights forms. These forms further support a conclusion that B.J.M.'s consent was informed and voluntary.

Next, there is no arguable merit to a claim that the circuit court erroneously exercised its discretion in terminating B.J.M.'s parental rights. *See* ***B.L.J. v. Polk Cty. Dept. of Soc. Servs.***, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991). At disposition, the court correctly applied the best interests of the child standard, *see* WIS. STAT. § 48.426(2), and considered the factors set forth in § 48.426(3). The court acknowledged that the child had some "mental health challenges" but found that she was "an adoptable child." As to the child's relationship with her biological parents and extended family, the court determined that severing those relationships would not be substantially harmful to the child. The circuit court's discretionary decision to terminate B.J.M.'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 issue for appeal. Therefore,

IT IS ORDERED that the order terminating B.J.M.'s parental rights to A.A.N.M. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Carl. W. Chessir is relieved of further representing B.J.M. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals