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August 8, 2017

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

2017AP1122-NM	In re the termination of parental rights to N.D.A.: State of Wisconsin v. D.J.A. (L.C. # 2015TP166)
2017AP1123-NM	In re the termination of parental rights to A.D.A.: State of Wisconsin v. D.J.A. (L.C. # 2015TP167)
2017AP1124-NM	In re the termination of parental rights to A.D.A.: State of Wisconsin v. D.J.A. ((L.C. # 2015TP168)
2017AP1125-NM	In re the termination of parental rights to A.J.A. State of Wisconsin v. D.J.A. (L.C. # 2015TP169)
2017AP1126-NM	In re the termination of parental rights to N.A.G.-A. State of Wisconsin v. D.J.A. (L.C. # 2015TP170)
2017AP1127-NM	In re the termination of parental rights to N.G.-A. State of Wisconsin v. D.J.A. (L.C. # 2015TP171)

Before Brennan, P.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).

D.J.A. appeals from orders terminating his parental rights to his six children. Appellate counsel, Gregory Bates, has filed a no-merit report. *See* ***Brown Cty. v. Edward C.T.***, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam); *see also* WIS. STAT. RULES 809.107(5m) and 809.32. D.J.A. was advised of his right to file a response, but he has not responded. Based upon an independent review of the records and the no-merit report, this court concludes that appeals would lack arguable merit. Therefore, the orders terminating D.J.A.'s parental rights are summarily affirmed.

BACKGROUND

D.J.A. and J.G. are the parents of six children. D.J.A.'s five oldest children—Nora, Amanda, Adam, Andrew, and Noelle[2]—were originally removed from their parents' care due to concerns of neglect, as well as physical abuse by D.J.A., from which J.G. was either unable or unwilling to protect them. The children were originally adjudicated in need of protection or

[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.

[2] Because the children's initials are similar or identical, we have assigned pseudonyms to each child for easier reading of the opinion. The children are listed in order of age, beginning with the oldest.

services (CHIPS) in July 2012; orders placing them outside their parents' home were entered in August 2012.

Nora, Amanda, and Noelle were reunited with their parents while remaining under an order of supervision, but were re-detained on March 28, 2014, following a report that Amanda had a "profound fear of going home." Specifically, then-nine-year-old Amanda had told school officials that she was afraid D.J.A. would hit in her the head with a bat like he had done in the past. New orders placed the girls outside the parental home on April 3, 2014.

On April 4, 2014, a CHIPS petition was filed with respect to the sixth child, Nicholas, who was then two months old.[3] The petition alleged he was at risk for abuse or neglect based on his older siblings' treatment. Nicholas was adjudicated a child in need of protection or services and placed outside his parents' home by an order dated July 24, 2014.

On June 8, 2015, the State petitioned to terminate D.J.A.'s parental rights to each of the six children.[4] The State alleged that Nora, Amanda, Adam, Andrew, and Noelle were children in need of continuing protection or services. *See* WIS. STAT. § 48.415(2). With respect to Adam, Noelle, and Nicholas, the State alleged three-month abandonment. *See* WIS. STAT. § 48.415(1)(a)2. With respect to Andrew, the State alleged six-month abandonment. *See* WIS.

[3] At the time the termination petitions were filed, Nora was almost twelve years old, Amanda was almost eleven years old, Adam was nine years old, Andrew was almost eight years old, Noelle was about four and one-half years old, and Nicholas was sixteen months old.

[4] Petitions were also filed to terminate the mother J.G.'s parental rights, but her case is not before us in this matter.

STAT. § 48.415(1)(a)3. With respect to all of the children, the State alleged D.J.A. had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(6).

D.J.A. stipulated to the continuing-CHIPS ground for the five oldest children and to abandonment of Nicholas. Following the State's prove-up and a disposition hearing, the circuit court terminated D.J.A.'s parental rights to all six children. D.J.A. appeals.

DISCUSSION

A. Competency

Appellate counsel first discusses whether D.J.A.'s "statutory and constitutional rights [were] protected in these cases." Specifically, counsel discusses whether "lack of timeliness in conducting the proceeding[s]" would support an appeal. That is, counsel discusses whether there is any arguable merit to a claim that the circuit court failed to comply with mandatory time limits, thereby losing competency to proceed. *See* WIS. STAT. §§ 48.422(1)-(2), 48.424(4)(a); *see also* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927.

The statutory time limits cannot be waived, *see* ***April O.***, 233 Wis. 2d 663, ¶5, but continuances are permitted for good cause "and only for so long as is necessary[,]" *see* 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* WIS. STAT. § 48.315(3). Our review of the record satisfies us that the time limits were followed or adjourned for sufficient cause, and there were no objections to any extension, so there is no arguable merit to a challenge to the circuit court's competency.

B. Pleas to Grounds

Appellate counsel next discusses whether D.J.A.'s pleas to grounds were entered knowingly, intelligently, and voluntarily. Before accepting an admission or a no-contest plea to the facts alleged in a termination petition, the circuit court must engage the parent in a colloquy. *See* ***Oneida Cty. Dep't of Soc. Servs. v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122; WIS. STAT. § 48.422(3), (7). The statute requires the circuit court to: (1) address the parent and determine that the admission is made voluntarily, with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) establish whether any promises or threats were made to secure the admission; (3) establish whether a proposed adoptive resource for the child has been identified; (4) establish whether any person has coerced a parent to refrain from exercising his or her parental rights; and (5) determine whether there is a factual basis for the admission of facts alleged in the petition.[5] *See* WIS. STAT. § 48.422(7). The circuit court must also ensure that the parent understands the constitutional rights being given up with the admission, *see* ***Therese S.***, 314 Wis. 2d 493, ¶5, and that the admission will result in a finding of parental unfitness, *see* ***id.***, ¶10.

Our review of the record satisfies us that D.J.A.'s pleas to grounds were appropriately entered. The circuit court properly engaged D.J.A. in a colloquy in which the circuit court explained what the State would have had to prove to establish the continuing-CHIPS and

[5] Appellate counsel's citation to WIS. STAT. § 48.422(7) in the no-merit report includes only the first two of the five requirements listed in that statute.

abandonment grounds and ascertained D.J.A.'s understanding of those elements. D.J.A.'s attorney confirmed that they had reviewed the elements of both grounds. The circuit court also explained the potential dispositions and the constitutional rights D.J.A. would be giving up, and confirmed that D.J.A. understood he would be found unfit. The circuit court additionally confirmed that D.J.A. was entering his plea voluntarily; D.J.A. confirmed he had not spoken to anyone else about how to proceed and no threats or promises had been made to obtain his pleas.[6]

Although a factual basis for the pleas was not determined at the time of the colloquy, the pleas were conditionally accepted subject to later proof of the grounds. As will be explained below, a sufficient factual basis was established for both grounds. Accordingly, there is no arguable merit to a claim that the pleas were entered involuntarily or improperly accepted.

C. Factual Basis

Appellate counsel next discusses whether sufficient evidence supports the grounds for termination. *See* WIS. STAT. § 48.422(7)(c). When a termination petition alleges as grounds for termination that a child is in continuing need of protection and services, the petitioner must prove the following:

[6] The circuit court did not establish during the colloquy whether a proposed adoptive resource for the children had been identified, but there is no arguable merit to a challenge to the plea based on this omission. This component of accepting a plea to grounds does not inform on the plea's voluntariness. The record as a whole indicates that the foster families with whom the children were placed at the time of the hearing hoped to become the adoptive placements, although two of the families were working on completing adoption licensing.

> First, the child must have been placed out of the home for a cumulative total of more than six months pursuant to court orders containing the termination of parental rights notice. Second, the [applicable county department] must have made a reasonable effort to provide services ordered by the court. Third, the parent must fail to meet the conditions established in the order for the safe return of the child to the parent's home. Fourth, there must be a substantial likelihood that the parent will not meet the conditions of safe return of the child within the [nine]-month period following the conclusion of the termination hearing.

Walworth Cty. Dep't of Health & Human Servs. v. Andrea L.O., 2008 WI 46, ¶6, 309 Wis. 2d 161, 749 N.W.2d 168; *see also* WIS. STAT. § 48.415(2)(a). Three-month abandonment is established by proving the child was "placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) … and the parent has failed to visit or communicate with the child for a period of 3 months or longer." *See* WIS. STAT. § 48.415(1)(a)2. The petitioner has the burden to show that grounds for termination exist by clear and convincing evidence. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768.

Our review of the record satisfies us that the State adequately established a factual basis for D.J.A.'s pleas. The record contains a copy of the CHIPS orders, which contain the appropriate notice. The State provided testimony from social worker Bethany Matula, who testified about the Division of Milwaukee Child Protective Services' efforts to provide court-ordered services to D.J.A., including referrals to service providers and provision of bus passes for transportation. Matula further testified about D.J.A.'s failure to meet the conditions for the children's return—his visits were inconsistent, resulting in termination from the supervising agencies; he continued to use marijuana and alcohol; he was unable to cope with his mental

health issues; and he could not articulate how his aggressive behavior impacted his children. Matula also explained her belief that D.J.A. would not satisfy the conditions within the following nine months. A copy of the order placing Nicholas outside of the home, which contained the required notice, was admitted into evidence, and Matula testified that from July 24, 2014, through December 2014 or January 2015, D.J.A. had no contact with Nicholas.

Based on the testimony and exhibits, we are satisfied that sufficient evidence supports the continuing-CHIPS and abandonment grounds to which D.J.A. pled. There is no arguable merit to any appeal claiming otherwise.

D. Termination

Finally, appellate counsel discusses whether there is any arguable merit to a claim that the circuit court erroneously exercised its discretion in terminating D.J.A.'s parental rights. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Bearing in mind that the children's best interests are the primary concern, *see* WIS. STAT. § 48.426(2), the court must also consider 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).

The circuit court concluded it was likely all the children would be adopted. Although Nora and Amanda wanted to return to their mother if possible, they were also willing to be adopted. Adam and Andrew were doing better once placed together, and their foster mother wanted to adopt them. Noelle and Nicholas were "very, very likely" to be adopted as they were young and adjusted to life with their foster parents.

The circuit court noted that the children were all physically healthy, though they had some emotional and behavioral issues that appeared linked to prior abuse, mostly perpetrated by D.J.A. Noelle and Nicholas, because of their young ages, had fewer such issues. The record reveals that the children's behavior improved once they were outside of D.J.A.'s care.

The circuit court noted that the older four children had substantial relationships with their parents, but not healthy ones. At least two of the children indicated they were fearful of D.J.A. and J.G. The circuit court explained that the unhealthy bond seemed related to D.J.A.'s drug and alcohol use, along with his physical and possible sexual abuse of the children, which J.G.

enabled and concealed. The circuit court thus concluded it was not harmful to any child to sever the relationships with their parents.[7]

The circuit court considered the children's wishes. None of the children expressly desired to return to D.J.A.'s care.

The circuit court considered the duration of the children's separation from their parents. Almost all of Nicholas's life was spent outside of their care, as was a significant portion of Noelle's life. The four older children had been out of their parents' care for significant periods, the most recent of which was approximately two years long.

Finally, the circuit court concluded that all of the children would be able to enter more permanent and stable family relationships if termination was granted. Though some of the prior foster placements had been unsuccessful, the placements the children were in at the time of disposition were working for all of the children and were anticipated as adoptive homes. Each child was placed with a sibling, and the circuit court determined that termination was likely to result in healthier relationships for all of the children.

[7] The circuit court additionally commented that there was really not "any substantial relationship with any other biological family member" on either parent's side. Based on our review of the entire record, it appears the circuit court meant this to refer to extended family, like grandparents or aunts and uncles. There is no express mention of the children's relationships with each other. We note, however, that the children had been placed in pairs for both foster care and potential adoption, and a good portion of the record contains discussion about how to maintain relationships among the siblings post-termination.

The circuit court's factual findings are not clearly erroneous, and discretion appears to have been properly exercised. There is no arguable merit to a challenge to the circuit court's decision to order termination of D.J.A.'s parental rights to his six children.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the orders terminating D.J.A.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of D.J.A. in these matters. *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