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DISTRICT I

August 16, 2017

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

2016AP2508-NM	In re the termination of parental rights to A.R.G.: Racine County Human Services Department v. J.G. (L.C. # 2015TP26)
2016AP2509-NM	In re the termination of parental rights to C.G.: Racine County Human Services Department v. J.G. (L.C. # 2015TP27)

Before Brash, 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.

J.G. appeals orders terminating his parental rights to his children, A.R.G. and C.G.[2] Attorney Donald Crawford Dudley was appointed to represent J.G. and filed a no-merit report. *See* ***Brown Cty. v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998); *see also* WIS. STAT. RULES 809.107(5m), 809.32. J.G. was informed of his right to respond to the no-merit report, but he has not done so. After reviewing the no-merit report and conducting an independent review of the record, we conclude that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the orders terminating J.G.'s parental rights. *See* WIS. STAT. RULE 809.21.

A.R.G. was born on December 31, 2003, and C.G. was born on December 5, 2005. The children were removed from J.G.'s home in 2010 and found to be in need of protection and services. J.G. was convicted of second-degree sexual assault of a child on June 6, 2013.[3] The State petitioned to terminate J.G's parental rights on August 31, 2015, on the grounds of child abuse. *See* WIS. STAT. § 48.415(5). During the grounds phase of the proceedings, J.G. entered a no-contest plea. After a contested disposition hearing, the circuit court concluded that termination would be in the children's best interests. Accordingly, the circuit court entered orders terminating J.G.'s parental rights to A.R.G. and C.G.

The no-merit report first addresses whether there would be arguable merit to a claim that J.G.'s no-contest plea was invalidly entered. Prior to accepting a no-contest plea regarding the grounds contained within a termination petition, the circuit court must personally question the

[2] The children's mother agreed to voluntary termination of her parental rights.

[3] A.R.G. and C.G. were not victims in the case.

parent to ensure that the parent is voluntarily admitting that grounds for termination exist. *See* WIS. STAT. § 48.422(7); ***Oneida Cty. DSS v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The court must: (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 disposition; (2) establish whether any promises or threats were made to elicit an admission to the facts; (3) establish whether any person has coerced the parent to refrain from exercising parental rights; and (4) make such inquiries as satisfactorily establish a factual basis for the parent's admission. WIS. STAT. § 48.422(7).

The circuit court conducted a thorough colloquy with J.G. before it accepted his no-contest pleas to the grounds alleged in the petitions. *See* WIS. STAT. § 48.415(5). That statute provides that child abuse is grounds for termination of parental rights and is established if "the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child who is the subject of the petition" and "the parent has caused … injury to a child or children resulting in a felony conviction" or "a child has previously been removed from the parent's home … after an adjudication that the child is in need of protection or services" because the child is "at substantial risk of becoming the victim of abuse." ***Id.***; *see* WIS. STAT. § 48.13(3m).

To gauge J.G.'s ability to understand, the court asked him his age, the amount of schooling he had, and whether he could read and write the English language. The circuit court explained the ramifications of entering the pleas and detailed the rights J.G was giving up by entering his pleas. J.G. said that he wanted to plead no contest to the grounds alleged in the petitions and understood that the court would find that grounds had been proven based on his no-contest pleas. The circuit court asked J.G. whether any threats or promises had been made to

coerce him into entering the pleas. J.G. informed the court that no one was forcing him to enter the pleas. The guardian ad litem noted that the plea questionnaire listed the elements the State would need to prove to establish that grounds existed to terminate J.G.'s parental rights; specifically, that J.G. caused injury to a child resulting in a felony conviction and the children had been removed from J.G.'s home under a CHIPS petition. J.G. said that he understood. The court ascertained that J.G. had reviewed the plea questionnaire/waiver of rights form with his lawyer and had signed the form.[4] The record established that J.G. had a felony conviction for causing injury to a child and C.G. had been previously found to be in need of protection or services because the child was at substantial risk of becoming a victim of abuse. Based on the established facts and the court's colloquy with J.G. prior to accepting his no-contest plea, we conclude that there would be no arguable merit to a claim that J.G.'s no-contest plea was not knowingly, intelligently, and voluntarily entered.

The no-merit report next addresses whether the circuit court properly exercised its discretion at the disposition hearing in deciding that it was in the children's best interests to terminate J.G.'s parental rights. The ultimate decision whether to terminate parental rights is committed to the circuit court's discretion. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The best interests of the child is the prevailing factor. WIS. STAT. § 48.426(2). In considering the best interests of the child, the circuit court shall consider: (1) the likelihood of adoption after termination; (2) the age and health of the child; (3) whether the child has substantial relationships with the parent or other family members, and whether it would be

[4] We note, however, that the form is not contained in the appellate records of these consolidated appeals.

harmful to the child to sever those relationships; (4) the wishes of the child; (5) the duration of the separation of the parent from the child; and (6) 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. *See* § 48.426(3).

At the dispositional hearing, Kim Serpe testified that she is the case manager for the Racine County Human Services Department, for whom she has worked for seventeen years. Serpe testified that she has been the case manager for A.R.G. and C.G. for five years. Serpe testified that C.G. was four-years-old and A.R.G. was six-years-old when they were removed from their father's care.[5] Serpe testified that C.G. is now ten years old and A.R.G. is twelve years old. Serpe testified that after the children were removed from their father's home, A.R.G.'s caregivers realized that the child had been sexually assaulted because the child tested positive for chlamydia, a sexually transmitted disease. Serpe testified that the perpetrator was not identified; therefore, the Department did not place A.R.G. with a paternal relative for the child's safety because the child was living with the father and his family when the assault occurred. Serpe testified that both children were extremely likely to be adopted by their current foster mother and that neither child had a substantial relationship with either one of their biological parents. Serpe testified that the children's age and health were not barriers to adoption and that the foster mother was an adoptive resource.

[5] The children's mother was no longer living with the family.

The children's maternal grandmother testified that she has been closely involved in the children's lives since birth, that they lived with her for two years after they were removed from J.G.'s home, and that she has continued to see them on a regular weekly basis since they started living with their foster mother, who is one of her best friends. She testified that A.R.G. was very far behind in school when the child was removed from the father's home, but had since made huge strides academically and emotionally. She testified that the children are very bonded to their foster mother and that they call her "mom." She also testified that when they lived with their father, they were very afraid of him, and she saw physical marks from where their father had hit them.

Kathleen Moeller testified that she is a treatment foster care therapist for Racine County. She testified that both children experienced trauma as a result of physical abuse and, in A.R.G.'s case, sexual abuse, while they were living with their father. Moeller testified that she worked with both children helping them to figure out coping skills for dealing with past trauma in their lives. She testified that they were bonded to their foster mother and told her that they wanted to remain with their foster mother.

After considering the testimony, the circuit court found that the children had been in a long-term parent/child relationship with their foster mother and were extremely likely to be adopted if J.G.'s parental rights were terminated. The court found that the children had suffered abuse when they were living with their father, who was subsequently incarcerated for second-degree sexual assault of a different child. The circuit court also found that A.R.G. was sexually abused while in the father's care and had contracted a sexually transmitted disease.

The circuit court found that the children were now thriving in terms of their education, physical health, and their mental health. The circuit court found that the children were very bonded with their foster mother and called her "mom." The circuit court found that they had a minimal relationship with their paternal grandmother, and it would not harm the children to sever the relationship. The court also found that the children would have an ongoing relationship with their maternal grandmother if the petition were granted. The circuit court found that the children had been living apart from J.G. for six years, who had been incarcerated for part of that time. The court found that the children would be able to enter into more stable and permanent family relationships if J.G.'s parental rights were terminated.

A 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." *See* ***Gerald O.***, 203 Wis. 2d at 152. The circuit court made the factual findings required by WIS. STAT. § 48.426(3). Based on those findings, the court concluded that it would be in the children's best interests to terminate J.G's parental rights. The circuit court's decision was both reasoned and reasonable. Therefore, we conclude that there would be no arguable merit to an appellate challenge to the circuit court's determination that termination was in the children's best interests.

Our independent review of the record reveals no other potential issues. We therefore conclude that there is no arguable basis for reversing the orders terminating J.G.'s parental rights. Any further proceedings would be without arguable merit.

IT IS ORDERED that the orders terminating the parental rights of J.G. to A.R.G. and C.G. are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Donald Crawford Dudley is relieved of any further representation of J.G. on appeal.

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

Diane M. Fremgen
Clerk of Court of Appeals