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September 13, 2017

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

2017AP1312-NM In re the termination of parental rights to M.J.C., a person under the age of 17: State of Wisconsin v. T.M.H. (L.C. # 2016TP209)

Before Neubauer, C.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) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

T.M.H. appeals from a circuit court order terminating her parental rights to M.J.C. T.M.H.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m). T.M.H. received a copy of the report and has not filed a response to it. Upon consideration of the report and an independent review of the record, we summarily affirm the order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The State of Wisconsin petitioned to terminate T.M.H.'s parental rights on the grounds that M.J.C. was in need of continuing protection and services and T.M.H. had failed to assume parental responsibility for M.J.C. WIS. STAT. § 48.415(2) and (6). After a court trial, the circuit court found the aforementioned grounds to terminate T.M.H.'s parental rights. After a dispositional hearing, the circuit court terminated T.M.H.'s parental rights.

The no-merit report addresses: (1) whether there were any procedural defects in the proceeding and whether statutory time limits were observed, (2) whether the petition to terminate T.M.H.'s parental rights satisfied the requirements of WIS. STAT. § 48.42, (3) whether there was sufficient evidence to support the circuit court's findings of fact that there were grounds to terminate T.M.H.'s parental rights, and (4) whether the circuit court properly exercised its discretion in determining that it was in the child's best interest to terminate T.M.H.'s parental rights. The no-merit report contains a correct statement of the law governing these issues and properly applies the law to the facts. We agree with appellate counsel that these issues would not have arguable merit for appeal.

We have considered whether there would be any arguable merit to a claim that the court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to

proceed. ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Continuances are permitted "upon a showing of good cause in open court … and only for so long as is necessary." WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. Sec. 48.315(3). The record shows that the circuit court found good cause to toll the time limits, and T.M.H. did not object. There would be no arguable merit to a challenge to the circuit court's competency to proceed based on a failure to comply with statutory time limits.

At the grounds trial, T.M.H., the child welfare case manager and a foster parent testified. The circuit court considered additional evidence relating to the history of the child's need for protection and services and T.M.H.'s failure to assume parental responsibility. Each finding the circuit court had to make about the grounds to terminate T.M.H.'s parental rights is supported in the record and is not clearly erroneous. WIS. STAT. § 805.17(2). The circuit court did not err in concluding that the State met its burden to establish the grounds to terminate T.M.H.'s parental rights.[2] We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence of the grounds to terminate T.M.H.'s parental rights.

[2] WISCONSIN STAT. § 48.415 requires a finding on only one ground to terminate parental rights. The circuit court expressed concern that there were certain proof problems with the continuing CHIPS ground. In particular, the circuit court was concerned that the child welfare professionals should have been more thorough in making reasonable efforts to provide court-ordered services to T.M.H., who has cognitive and other challenges. Notwithstanding this concern, the court found credible the child welfare case manager's testimony that she sufficiently explained the court-ordered services to T.M.H. so that T.M.H. could understand her responsibilities relating to meeting the conditions of return. Because we have affirmed the failure to assume parental responsibility ground, we need not address whether the continuing CHIPS ground was also satisfied. *See* ***State v. Jipson***, 2003 WI App 222, ¶17 n.5, 267 Wis. 2d 467, 671 N.W.2d 18 ("As one sufficient ground for support of the judgment has been declared, there is no need to discuss the others urged" (citation omitted)).

The decision to terminate parental rights is within the circuit court's discretion. ***B.L.J. v. Polk Cty. Dep't of Soc. Servs.***, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991). The circuit court must consider the statutory factors to determine if termination is in the child's best interests. WIS. STAT. § 48.426(3). The record in this case indicates that the court considered the appropriate factors: the likelihood of the child's adoption after termination, the child's age and health, the child's substantial family relationships and whether it would be harmful to sever those relationships, the duration of the parent-child separation, and future stability for the child as a result of the termination. The court's findings in support of termination were not clearly erroneous, WIS. STAT. § 805.17(2), and the factors weighed in favor of a determination that it was in the child's best interests to terminate T.M.H.'s parental rights. We agree with counsel's conclusion that an appellate challenge on this basis would lack arguable merit.

We normally decline to address claims of ineffective assistance of trial counsel if the issue was not raised by a postconviction motion in the circuit court. ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether the record[3] indicates that an ineffective assistance claim would have sufficient merit to require appointed counsel to file a postconviction motion and request a ***Machner*** hearing. ***State v. Allen***, 2010 WI 89, ¶88, 328 Wis. 2d 1, 786 N.W.2d 124 (broad scope of no-merit review suggests that we "should identify issues of arguable merit even if those issues were not preserved in the circuit court, especially where the ineffective assistance of postconviction counsel was the reason those

[3] The no-merit report does not cite a specific basis for an ineffective assistance of counsel claim. T.M.H. did not file a response to the no-merit report. Only the record is before us on this question.

issues were not preserved for appeal"). Our review of the record does not support an ineffective assistance of trial counsel claim.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any issues with arguable merit for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we affirm the order terminating T.M.H.'s parental rights and relieve Attorney Melinda Swartz of further representation of T.M.H. in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Melinda Swartz is relieved of further representation of T.M.H. in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals