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October 11, 2017

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

2017AP1591-NM In re the termination of parental rights to J.P., a person under the age of 18: J.K. v. J.C. (L.C. #2017TP14)

Before Gundrum, 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).

J.C. appeals from an order involuntarily terminating his parental rights to J.P. Appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32,

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[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.

Anders v. California, 386 U.S. 738 (1967), and ***Brown Cty. v. Edward C.T.***, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). J.C. 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.

J.C. is the adjudicated father of eight-year-old J.P. J.K., the mother of J.P., filed a petition seeking to terminate J.C.'s parental rights on the ground of child abuse under WIS. STAT. § 48.415(5)(a). In support, the petition alleged that J.C. was convicted in Minnesota of three counts of sexual assault against J.P. Attached to the petition were three documents from the criminal case: (1) the complaint, including a statement of probable cause; (2) verdicts, showing the jury returned guilty verdicts on all three counts; and (3) an order committing J.C. to a Minnesota correctional facility for 172 months. Along with the petition J.K. filed a motion for summary judgment and supporting affidavit. J.C., who was represented by counsel, filed a motion seeking to dismiss the petition, alleging that it failed to establish probable cause because the victim's name had been redacted and therefore, the documents did not establish that the victim was J.P.

At a hearing on May 17, 2017, J.K. submitted a decision from the Minnesota Court of Appeals affirming J.C.'s convictions and an affidavit from the Minnesota prosecutor identifying J.P. as the victim in the criminal case. The circuit court denied J.C.'s motion to dismiss. J.C. neither filed a written response nor made an oral argument opposing summary judgment. The circuit court granted summary judgment and found J.C. unfit. Without objection, the court proceeded to disposition and ultimately terminated J.C.'s parental rights.

The no-merit report addresses whether the circuit court erred in granting summary judgment on the child abuse ground and if the circuit court erroneously exercised its discretion in terminating J.C.'s parental rights. Our review of the record confirms appellate counsel's conclusion that these potential issues lack arguable merit.

The legislature has created a two-step procedure for termination of parental rights (TPR) cases. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768. The first step involves grounds for the termination, and the petitioner must prove by clear and convincing evidence that one of the statutory grounds for termination exists. *See* ***Steven V. v. Kelley H.***, 2004 WI 47, ¶24, 271 Wis. 2d 1, 678 N.W.2d 856. If grounds are proven, the court must find the parent unfit and the case proceeds to disposition, the second phase. *See* WIS. STAT. § 48.424(4); ***Steven V.***, 271 Wis. 2d 1, ¶25.

Summary judgment is available at the fact-finding stage. ***Id.***, ¶¶5-6. Summary judgment may be employed "when there is no genuine factual dispute that would preclude finding one or more of the statutory grounds by clear and convincing evidence." ***Oneida Cty. Dep't of Soc. Servs. v. Nicole W.***, 2007 WI 30, ¶14, 299 Wis. 2d 637, 728 N.W.2d 652.

J.K's petition alleged child abuse under WIS. STAT. § 48.415(5)(a). In pertinent part, this ground is established by proving that a parent has (1) caused injury to a child, as a result of which the parent was convicted of a felony, and (2) exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child. *See* ***id.***; WIS JI—CHILDREN 340 (2015). Here, the pleadings establish that J.C. was convicted of sexually assaulting J.P. for acts that included anal intercourse when the child was age four or five. The probable cause section of the complaint quoted J.P. as stating that the acts "really hurt" and the

Minnesota Court of Appeals' decision noted that J.P. testified at trial that J.C.'s acts "hurt the 'inside' of J.P.'s butt." Additionally, the convictions were final for purposes of establishing fitness. *See* ***Monroe Cty. v. Jennifer V.***, 200 Wis. 2d 678, 690-91, 548 N.W.2d 837 (Ct. App. 1996) (a conviction is considered final and may be used to establish unfitness under the child abuse ground once the right to appeal to the court of appeals has been exhausted). Finally, each count of sexual assault alleged sexual penetration occurring over a two-year period; the documents thus establish a pattern of sexually abusive behavior which is a substantial threat to J.P.'s health. *See* WIS JI—CHILDREN 340. We agree with appellate counsel's analysis and conclusion that there exists no arguably meritorious challenge to the circuit court's unfitness finding.

We also conclude that there is no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated J.C.'s parental rights. 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 considered that J.P. did not want contact with J.C. and determined that given "the strong possibility" of J.P. being adopted by his stepfather, termination would enable him "to enter into a more stable family relationship." The circuit court rejected J.C.'s contention that because he was incarcerated and given that the child would continue to live with J.K., termination was unnecessary. The court explained that instability and "a tremendous amount of anxiety for this child" could occur if something were to happen to his mother. The court's discretionary decision to terminate J.C.'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).

In addition to the potential issues discussed by counsel, we note that it appears from the record that all of the statutory deadlines were met or properly extended for good cause and that required notices were given. We have discovered no other arguably meritorious grounds for an appeal. Accordingly, we accept the no-merit report, affirm the order terminating J.C.'s parental rights, and discharge appellate counsel of the obligation to represent J.C. further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the order terminating J.C.'s parental rights to J.P. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Suzanne L. Hagopian is relieved from further representing J.C. 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