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October 24, 2017

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

2017AP1687-NM State v. S. N. T. (L. C. No. 2016TP299)

Before Stark, 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).

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.

Counsel for S.N.T. filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable basis for challenging the order terminating S.N.T.'s parental rights to S.T.² S.N.T. was advised of her right to respond to the report and has not responded. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issue of arguable merit appears. Therefore, the order terminating S.N.T.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

S.T. was removed from S.N.T.'s care on August 20, 2015—two days after her birth—based, in substantial part, on S.N.T.'s pervasive mental health issues, including untreated paranoid schizophrenia. On March 3, 2016, S.T. was found to be in need of protection or services and placed outside her parental home. S.N.T. failed to meet the conditions necessary to have S.T. returned to her care. On September 9, 2016, the State petitioned for termination of S.N.T.'s parental rights, alleging the continuing need for protection or services and a failure to assume parental responsibility. Both a guardian ad litem and an attorney were appointed for S.N.T., who contested the grounds for termination and requested a trial to the court. After a bench trial, the circuit court found that grounds existed to terminate S.N.T.'s parental rights and ultimately concluded it was in the child's best interest to terminate S.N.T.'s parental rights.

Any challenge to the proceedings based on a failure to comply with statutory time limits would lack arguable merit. All of the mandatory time limits were either complied with or properly extended for good cause, without objection, to accommodate the parties' varying schedules. The failure to object to a delay waives any challenge to the court's competency on

² The order also terminated the parental rights of the child's father. Termination of the father's parental rights is not the subject of this appeal.

these grounds. *See* WIS. STAT. § 48.315(3). Moreover, scheduling difficulties constitute good cause for tolling time limits. *See State v. Quinsanna D.*, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

Any challenge to the circuit court's findings would lack arguable merit. The standard of review following a bench trial is whether the circuit court's findings of fact are clearly erroneous. WIS. STAT. § 805.17(2); *Ozaukee Cty. v. Flessas*, 140 Wis. 2d 122, 130-31, 409 N.W.2d 408 (Ct. App. 1987). Where there are a number of reasonable inferences that might be drawn as to a particular situation, the reviewing court must accept the one drawn by the trier of fact. *State v. Poellinger*, 153 Wis. 2d 493, 506-07, 451 N.W.2d 752 (1990).

Failure to assume parental responsibility is established “by proving that the parent ... of the child [has] not had a substantial parental relationship with the child.” WIS. STAT. § 48.415(6)(a). A “substantial parental relationship’ means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” WIS. STAT. § 48.415(6)(b). A fact-finder is allowed to consider several factors and apply a totality-of-the-circumstances test. *See Tammy W.-G. v. Jacob T.*, 2011 WI 30, ¶3, 333 Wis. 2d 273, 797 N.W.2d 854. These factors include, but are not limited to, whether the parent has expressed concern for, or interest in, the support, care, or well-being of the child, and whether the parent has neglected or refused to provide care or support for the child. *See id.*; *see also* WIS. STAT. § 48.415(6)(b). The State must make its case by clear and convincing evidence. WIS. STAT. § 48.31(1).

There is sufficient evidence from which a fact-finder could conclude that S.N.T. failed to assume parental responsibility for her child. Trial evidence showed that although S.N.T.

attended one medical appointment with S.T., she otherwise failed to accept and exercise significant responsibility for the daily supervision, education, protection and care of S.T. for the majority of the child's life. The circuit court reasonably found that the totality of the circumstances showed S.N.T.'s failure to assume responsibility.

The continuing need for protection or services ground is established by showing: (1) that the child was adjudged to be in need of protection and services and was placed outside the parent's home for a cumulative period of six months or longer pursuant to one or more court orders containing required termination warnings; (2) that the relevant agency made a reasonable effort to provide court-ordered services; (3) that the parent failed to meet the conditions for the child's safe return to the home; and (4) that there is a substantial likelihood that the parent will not meet the conditions within the nine-month period following the fact-finding hearing. *See* WIS. STAT. § 48.415(2)(a)1.-3. As with failure to assume parental responsibility, the State bears the burden of making its case by clear and convincing evidence. *See* WIS. STAT. § 48.31(1).

Trial evidence established that the child had been placed outside S.N.T.'s home for more than six months—in fact, S.T. had never returned to S.N.T.'s home after she was initially removed from S.N.T.'s care. A case worker with the Division of Milwaukee Child Protective Services testified about the Division's efforts to provide court-ordered services, including multiple referrals for therapy, psychiatric services, visitation services, and parenting services available for those with significant mental health struggles. S.N.T. did not follow through on the therapy referrals, psychiatric services or parenting services, and was inconsistent in her efforts to attend scheduled visitations. S.N.T.'s last contact with her child was six months before the petition for termination of her parental rights was filed. A psychologist who evaluated S.N.T. opined that, given S.N.T.'s mental illness and cognitive disability, she would be unable to parent

independently, even if she took advantage of offered services. Based on evidence of a continued lack of engagement with services and with her child, the circuit court reasonably found it was substantially unlikely S.N.T. would meet the conditions for her child's safe return within the nine-month period following the fact-finding hearing. The record supports the circuit court's finding that the child was in continuing need of protection or services.

There is no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated S.N.T.'s parental rights. The court correctly applied the best interests of the child standard and considered the factors set out in WIS. STAT. § 48.426(3). The court considered the child's adoptability, age and health, noting the likelihood of adoption by the child's foster parents. The court also emphasized the child's need for a stable and permanent family relationship, noting the child did not have a substantial relationship with S.N.T. or other family members and would not be harmed if those relationships were severed. The court's discretionary decision to terminate S.N.T.'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 that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Leonard D. Kachinsky is relieved of his obligation to further represent S.N.T. 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