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November 21, 2017

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

2017AP1901-NM	In re the termination of parental rights to J. B., a person under the age of 18: State of Wisconsin v. J. M. (L.C. # 2015TP162)
2017AP1902-NM	In re the termination of parental rights to C. E., Jr., a person under the age of 17: State of Wisconsin v. J. M. (L.C. # 2015TP163)

Before Fitzpatrick, J.

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.M. appeals orders terminating her parental rights to J.B. and C.E., Jr. Attorney Carl Chesshir has filed a no-merit report. *See* WIS. STAT. RULES 809.107(5m) and 809.32(1) (2015-16).[1] The no-merit report addresses the validity of J.M.'s no contest plea during the grounds phase of the proceedings, whether the circuit court erroneously exercised its discretion during the dispositional phase, and whether J.M.'s trial counsel was ineffective for failing to call J.M.'s relatives to testify at the dispositional hearing. J.M. was sent a copy of the report but has not filed a response. I have considered the no-merit report and independently reviewed the record, and conclude that further appellate proceedings would lack arguable merit. Accordingly, the orders of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

On June 1, 2015, the State of Wisconsin filed petitions to terminate J.M.'s parental rights as to J.B. and C.E., Jr. As grounds for termination, the State alleged that J.B. and C.E., Jr. were in continuing need of protection or services (CHIPs) under WIS. STAT. § 48.415(2) and that J.M. had failed to assume parental responsibility under § 48.415(6). At a June 29, 2016, hearing scheduled to resolve pretrial motions, J.M. informed the court that she wished to enter a plea of no contest to the ground of continuing CHIPs. I agree with counsel's conclusion that any challenge to J.M.'s no contest plea would lack arguable merit.

Before accepting J.M.'s plea, the court engaged her in a colloquy and confirmed her understanding of the rights she was waiving by entering a no contest plea. The court confirmed that the medications J.M. was currently taking did not interfere with her ability to understand the proceedings. *See* WIS. STAT. § 48.422(7). J.M. assured the circuit court that she had not been

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

threatened, coerced, or promised anything to induce the no-contest plea. J.M. also acknowledged her understanding that the circuit court would find her an unfit parent if it accepted her plea and that, at the dispositional phase of the proceedings, the circuit court would hear evidence and decide whether termination of her parental rights was in J.B. and C.E., Jr.'s best interests. *See* ***Oneida Cty. DSS v. Therese S.***, 2008 WI App 159, ¶¶10, 16, 314 Wis. 2d 493, 762 N.W.2d 122. Further, the court informed J.M. that the best interests of the children would be the prevailing factor considered by the court in determining the disposition. *See* ***id.***, ¶16. Based on the testimony of Amanda Szymkowiak, a case manager assigned to J.B. and C.E., Jr., the circuit court found that a factual basis existed for the plea. Based on all of the above, and upon my independent review of the record, I conclude that there would be no arguable merit to a claim that J.M.'s plea was not knowingly and voluntarily entered.

There likewise would be no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated J.M.'s parental rights. The decision to terminate parental rights lies within the circuit court's discretion. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). Here, 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 heard testimony at the dispositional hearing from Kaitlyn Hibelink, the ongoing case manager, that there are separate adoptive resources for J.B. and C.E., Jr., and that the adoptive resources are willing to facilitate continued contact between J.B. and C.E., Jr. Hibelink testified that both children have expressed that they feel safe in the homes of their adoptive resources and wish to remain in those homes. Hibelink further testified that J.B. and C.E., Jr. have been separated from J.M. for a substantial period of time, during which J.M. had supervised visitation with the children. However, J.M. was inconsistent in attending supervised visits. Hibelink testified that

J.M. had displayed a "cycle of instability in housing and income in order to provide for her children" and had showed an unwillingness to address her mental health issues. I am satisfied, based on the no-merit report and record, that there would be no arguable merit to challenging the court's discretionary decision to terminate J.M.'s parental rights.

Turning next to the issue of whether trial counsel was ineffective for failing to call J.M.'s relatives as witnesses at the dispositional hearing, I conclude that the issue is without arguable merit on appeal. To establish ineffective assistance of counsel, J.M. would have to show both that her counsel's performance was deficient and that she was prejudiced by the deficient performance. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The no-merit report states that appellate counsel conferred with J.M.'s trial counsel about the issue of calling relatives as witnesses, and that trial counsel reported that J.M. did not identify any information that her relatives could have provided that would have been material at the dispositional hearing. The no-merit report further states that, despite efforts by trial counsel and his investigator, trial counsel was not able to contact any relatives. Hibelink testified that a past attempt to place the children with a relative had resulted in the relative withdrawing from the licensing process. Based on all of the above, and in light of the circuit court's finding at the dispositional hearing that J.B. and C.E., Jr. did not have a substantial relationship with their extended family members, I agree with the conclusion in the no-merit report that J.M. would be unable to bring an arguably meritorious claim that her trial counsel was ineffective for failing to call the relatives as witnesses.

An independent review of the record discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Carl Chesshir is relieved of any further representation of J.M. on appeal. *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