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December 12, 2017

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

2017AP1927-NM State of Wisconsin v. A. J.-T. (L.C. # 2015TP262)

Before Sherman, 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).

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[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.

Attorney Gregory Bates, appointed counsel for A.J.-T., has filed a no-merit report in this appeal of an order terminating A.J.-T.'s parental rights to S.C. *See* WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a claim of a constitutional or statutory violation during the TPR proceedings, a claim of insufficiency of the evidence to support the jury findings as to grounds, or a challenge to the circuit court's decision that termination of A.J.-T.'s parental rights was in S.C.'s best interest. A.J.-T. was sent a copy of the report, and has filed a response. Upon our independent review of the entire record, as well as the no-merit report and response, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

On September 4, 2015, the State petitioned to terminate A.J.-T.'s parental rights to S.C.,[2] alleging grounds of abandonment and failure to assume parental responsibility. *See* WIS. STAT. §§ 48.415(1)(a)(2) and (6). A.J.-T. contested the petition and exercised her right to a jury trial. At the conclusion of the trial, the jury found that grounds existed to terminate A.J.-T.'s parental rights as to both grounds alleged in the petition. At the conclusion of the dispositional hearing, the circuit court found that termination of A.J.-T.'s parental rights was in S.C.'s best interest. On May 12, 2017, the circuit court entered an order terminating A.J.-T.'s parental rights to S.C.

The no-merit report addresses whether there would be arguable merit to a claim of a violation of A.J.-T.'s statutory or constitutional rights during the TPR proceedings. We agree with counsel that a claim that A.J.-T.'s statutory or constitutional rights were violated would lack arguable merit.

[2] The State also petitioned to terminate the parental rights of S.C.'s father.

The TPR petition was filed on September 4, 2015, and A.J.-T. appeared without counsel for her initial appearance on the petition on September 30, 2015. The court tolled time limits for good cause on the record, and A.J.-T. appeared with counsel at an adjourned initial appearance on October 29, 2015. At the adjourned initial appearance, the court advised A.J.-T. as to the allegations in the petition and A.J.-T.'s rights during the TPR process. A.J.-T. entered her contested position and requested a jury trial. The court tolled time limits for good cause at the conclusion of the adjourned initial appearance, and again at subsequent hearings leading to the trial as to grounds on June 7, 2016. After the jury found grounds to terminate A.J.T.'s parental rights, the court entered a finding of unfitness and tolled time limits as to disposition to allow for resolution of the petition to terminate the father's parental rights. On May 12, 2017, the court held a dispositional hearing, during which A.J.-T. appeared with counsel and was given the opportunity to testify and present evidence bearing on disposition. We discern no arguable merit to any claim that A.J.-T.'s statutory or constitutional rights were violated. *See* WIS. STAT. §§ 48.42, 48.422, 48.424, 48.426, 48.427 and 48.315(2) (statutory requirements during TPR process); ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶¶20-23, 246 Wis. 2d 1, 629 N.W.2d 768 (recognizing that a parent has constitutional due process rights during TPR proceedings).

The no-merit report also addresses whether there would be arguable merit to a claim that there was insufficient evidence to support the jury's finding of grounds for termination. We agree with counsel's assessment that an argument that the evidence was insufficient to support the jury's findings would lack arguable merit.

Grounds for termination must be established by clear and convincing evidence. *See* WIS. STAT. §§ 48.424(2) and 48.31(1). A jury's determination that grounds exist for termination will be upheld so long as there is any credible evidence to support that determination. *See* ***State v.***

Quinsanna D., 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. "When reviewing a jury's verdict, we consider the evidence in the light most favorable to the verdict." ***Tammy W–G. v. Jacob T.***, 2011 WI 30, ¶39, 333 Wis. 2d. 273, 797 N.W.2d 854. The credibility of the witnesses and the weight to give their testimony is a matter left to the jury. ***State v. Wilson***, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989).

The jury returned a verdict finding grounds to terminate A.J.-T.'s parental rights based on A.J.-T. having failed to assume parental responsibility for S.C. There was credible evidence presented at trial to support the jury's finding of grounds based on failure to assume parental responsibility.

Failure to assume parental responsibility is established by proof that the parent has not had a substantial parental relationship with the child. WIS. STAT. § 48.415(6)(a); ***State v. Bobby G.***, 2007 WI 77, ¶45, 301 Wis. 2d 531, 734 N.W.2d 81. A "substantial parental relationship" is "the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child." WIS. STAT. § 48.415(6)(b). Factors relevant to the "substantial parental relationship" inquiry include "whether the person has expressed concern for or interest in the support, care or well-being of the child," and "whether the person has neglected or refused to provide care or support for the child." ***Id***. Moreover, "a fact-finder must look to the totality-of-the-circumstances to determine if a parent has assumed parental responsibility." ***Tammy W–G.***, 333 Wis. 2d 273, ¶22. "When applying [the totality-of-the-circumstances] test, the fact-finder should consider any support or care, or lack thereof, the parent provided the child throughout the child's entire life." ***Id.***, ¶73.

The State offered testimony as to the following to support grounds as to failure to assume. A younger sibling of S.C., born to A.J.-T. in May 2014, was born positive for methadone and remained hospitalized for six weeks. After the baby was discharged home, A.J.-T. failed to remain in contact with treatment providers as recommended and failed to respond to requests for contact from Child Protective Services. In July 2014, several weeks after the baby was discharged from the hospital, it was reported that the baby had died. The baby had extensive injuries to his body consistent with child abuse, and the medical examiner ruled the baby's death a homicide caused by a fractured skull. A.J.-T. had no explanation for any of the baby's injuries or why there was a delay of several hours in reporting the baby's death.[3] Both parents were arrested and S.C. was taken into the custody of the department. A.J.-T. was substantiated for child abuse and child neglect as to the baby, and she was ultimately convicted of failure to report the death of a child.

After S.C. was taken into the custody of the department, A.J.-T. was able to have only a few contacts with S.C. due to concerns as to the effect of those contacts on S.C.'s emotional wellbeing. A.J.-T. had minimal contacts with the foster parents and S.C.'s school and therapist, and no contact with any of S.C.'s other treatment providers. That evidence was sufficient to support the jury's finding that A.J.-T. had failed to assume parental responsibility for S.C. as that term is defined by statute. We therefore agree that a challenge to the jury's verdict would lack arguable merit.

[3] At the time that Child Protective Services made contact with A.J.-T. as to the cause of the baby's death, A.J.-T.'s mother took S.C. into a room and then emerged, at which time S.C. volunteered that the death was her fault because she had dropped the baby. A.J.-T. then indicated that S.C. had

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The jury also returned a special verdict finding grounds to terminate A.J.-T.'s parental rights based on A.J.-T. having abandoned S.C. The first question of the special verdict—whether S.C. had been placed outside the home pursuant to a court order containing the termination of parental rights notice required by law—was answered affirmatively by the circuit court on undisputed evidence. The jury found that: (1) A.J.-T. failed to visit or communicate with S.C. for a period of three months or longer; and (2) A.J.-T. had good cause for failing to visit S.C., but did not have good cause for failing to communicate with S.C. during that time period. There was credible evidence presented at trial to support the jury's findings as to grounds based on abandonment. *See* WIS. STAT. §§ 48.415(1)(a)2., (1)(a)3., and (1)(c) (abandonment established by proof that the child was placed outside the home by court order and the parent failed to visit or communicate with the child for three months or longer, or that the parent left the child with another person and failed to communicate with the child for a period of six months or longer, without good cause).

The jury heard testimony from the case managers that A.J.-T. was sentenced to prison on March 4, 2015. From the time when S.C. was taken into custody in July 2014 until March 4, 2015, A.J.-T. sent letters for S.C. to the case manager's office. Because A.J.-T. was under a court order to have no contact with S.C. at that time, the case manager kept the letters at the office. When A.J.-T. was sentenced on March 4, 2015, the no-contact provision was lifted, and the case manager forwarded the letters from A.J.-T. to S.C.'s therapist. The case manager received no letters from A.J.-T. between March 4, 2015 and June 22, 2015. Because the record

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dropped the baby. However, the medical examiner determined that S.C. dropping the baby was not possibly the cause of the baby's death.

contains sufficient evidence to support the jury's affirmative answer to each of the questions on the special verdict, we agree that a challenge to the sufficiency of the evidence would lack arguable merit.

Finally, the no-merit report addresses whether the circuit court properly exercised its discretion by determining that termination of A.J.-T.'s parental rights was in S.C.'s best interest. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996) (court's decision that termination of parental rights is in child's best interest is reviewed for an erroneous exercise of discretion). The evidence at the dispositional hearing established that S.C. had been in the same foster home for three years, since she was first taken into the custody of the department. S.C. was thriving in her current placement, and was very bonded with her foster parents and siblings. S.C. was likely to be adopted if A.J.T.'s parental rights were terminated. S.C. would likely remain in foster care if A.J.-T.'s parental rights were not terminated. The case manager did not believe that A.J.-T. and S.C. had a healthy, substantial relationship, and believed that contact with A.J.-T. was traumatizing for S.C. The court considered the factors set forth in WIS. STAT. § 48.426(3) and determined that termination of A.J.-T.'s parental rights was in S.C.'s best interest. We agree with counsel's assessment that an argument that the circuit court erroneously exercised its discretion would lack arguable merit.

A.J.-T. has filed a no-merit response asserting that she never abandoned or failed to take care of S.C. A.J.-T. asserts that she and S.C. have a bond and that they need each other, that A.J.-T. complied with the department's requests as to participating in services and classes, and that A.J.-T. was denied a fair chance to regain custody of her daughter. However, nothing in A.J.-T.'s response provides a basis for a non-frivolous appeal of the order terminating A.J.-T.'s parental rights.

Upon our independent review of the record, we have found no other arguable basis for reversing the order terminating A.J.-T.'s parental rights. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Upon the foregoing,

IT IS ORDERED that the order terminating A.J.-T.'s parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of A.J.-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