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December 27, 2017

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

2017AP2093-NM	In re the termination of parental rights to M. S., a person under the age of 18: J. S. v. H. S. (L.C. # 2016TP69)
2017AP2094-NM	In re the termination of parental rights to A. S., a person under the age of 18: J. S. v. H. S. (L.C. # 2016TP70)
2017AP2095-NM	In re the termination of parental rights to H. S., a person under the age of 18: J. S. v. H. S. (L.C. # 2016TP71)
2017AP2096-NM	In re the termination of parental rights to D. S., a person under the age of 18: J. S. v. H. S. (L.C. # 2016TP72)

Before Kessler, 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).

H.S. appeals from trial court orders terminating her parental rights to her four children. H.S.'s appointed attorney, Steven W. Zaleski, has filed a no-merit report. *See* ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (per curiam); *see also* WIS. STAT. RULES 809.107(5m) and 809.32 (2015-16).[1] H.S. has not filed a response. This court has considered counsel's report and has independently reviewed the record. We agree with counsel's conclusion that appeals in these cases would lack arguable merit. Therefore, the orders terminating H.S.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

H.S. and J.S., who were never married, are the parents of four children. After H.S. and J.S. ended their relationship, their respective time with the children was governed by placement schedules established in a paternity case. By 2013, the children were living primarily with J.S. Although H.S. was granted periods of physical placement, she did not regularly see the children.

In 2016, J.S. petitioned to terminate H.S.'s parental rights, explaining that he wanted his wife to be able to adopt the children. The amended petition alleged two grounds for termination: WIS. STAT. § 48.415(1)(a)3. (abandonment where "[t]he child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has

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

failed to visit or communicate with the child for a period of 6 months or longer"); and § 48.415(6) (failure to assume parental responsibility).

The parties engaged in discovery that included depositions of both H.S. and J.S. The case proceeded to a four-day jury trial in April 2017. The parties narrowed the issues at trial by stipulating to certain facts concerning the abandonment allegation. Specifically, they stipulated that H.S. voluntarily left the children with J.S. in May 2013 and had not visited or communicated with the children since March 2015. The issue presented to the jury concerning abandonment was whether H.S. had good cause for failing to visit or communicate with the children. *See* WIS. STAT. § 48.415(1)(c) (explaining that "[a]bandonment is not established" if the parent proves certain facts constituting good cause, by a preponderance of the evidence); *see also* WIS JI—CHILDREN 314 (2015). H.S. presented evidence that medical issues and a lack of cooperation from J.S. were good cause. J.S., the guardian ad litem, and advocacy counsel for the oldest child all argued that H.S. had not established good cause.

The jury found that H.S. had not proven good cause for failing to visit each of her children since March 2015. The jury did not reach a verdict on the ground of failure to assume parental responsibility with respect to two of the children, and J.S. withdrew that allegation with respect to all four children. Based on the abandonment verdicts, the trial court found H.S. unfit. *See* WIS. STAT. § 48.424(4).

The case proceeded to a dispositional hearing. The trial court found that termination was in the best interest of each child and terminated H.S.'s parental rights. *See* WIS. STAT. §§ 48.426 and 48.427. These appeals follow.

The no-merit report addresses six issues, including: (1) whether the trial court should have granted H.S.'s motion to dismiss the original petition, which alleged only abandonment; (2) whether the trial court adhered to the statutory time deadlines; (3) whether H.S.'s decision to stipulate to facts supporting abandonment was knowing, intelligent, and voluntary; (4) whether there was sufficient evidence to support the jury's verdict on abandonment; (5) whether there is any basis to challenge the trial court's finding that termination of H.S.'s parental rights was in the children's best interest; and (6) whether there is any basis to argue that trial counsel provided ineffective assistance. We agree with appellate counsel's thorough analysis of each of those issues. For example, it is clear from the record that the trial court acted within statutory time limits or found good cause on the record to schedule proceedings outside the time limits. We independently conclude that there would be no merit to further proceedings or appeals based on the issues identified in the no-merit report. We briefly discuss three of the issues below.

First, we have carefully reviewed the record concerning H.S.'s decision to stipulate that she left the children with J.S., knew their whereabouts, and failed to visit or communicate with them for at least six months.[2] The parties told the trial court at a pretrial conference that they had reached several stipulations, including a stipulation concerning the elements of abandonment under WIS. STAT. § 48.415(1)(a)3. H.S. personally told the trial court that she agreed with the stipulations. When the trial court asked H.S. follow-up questions, she indicated that she had discussed the stipulations with trial counsel and had decided "if that's what my lawyer thinks is

[2] The record indicates that those facts were established during pretrial discovery, including through the depositions of J.S. and H.S.

the right thing, I'm going to go with what he says." She also said that she "[a]bsolutely" understood that "no lawyer can make a guarantee about the outcome of a trial."

On the first day of the trial, before jury selection, the trial court again confirmed with H.S. that she wanted to stipulate to those facts. The trial court reminded H.S. that as a result of the stipulation, the jury would not be determining those facts. H.S. said that she understood and that she planned to explain during her testimony the reasons she had not visited or communicated with her children (thereby attempting to show good cause). H.S. confirmed that she had not been forced to give up her right to have a jury determine the facts in the stipulation and that she understood her decision. Trial counsel also indicated that he believed H.S.'s waiver of the right to have the jury determine those facts was "knowing, intelligent, and voluntary." In light of those colloquies, this court, like appellate counsel, discerns no basis to challenge H.S.'s stipulation to the elements of abandonment.

The next issue we briefly address is the sufficiency of the evidence supporting the jury's finding that H.S. did not have good cause for failing to visit her children. We have reviewed the entire trial transcript. While H.S. presented numerous reasons in support of her claim that she had good cause for not visiting or communicating with her children since March 2015 (e.g., medical issues), there was ample evidence suggesting that H.S. could have visited her children, which supports the jury's verdict. We agree with appellate counsel that there would be no arguable merit to challenge the jury's finding.

Finally, we turn to the issue of whether there would be any merit to challenging the trial court's decision to terminate H.S.'s parental rights. The decision to terminate a parent's rights is

discretionary and the best interest of the child is the prevailing standard. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152-53, 551 N.W.2d 855 (Ct. App. 1996). The trial court considers multiple factors, including, but not limited to:

> (a) The likelihood of the child's adoption after termination.
>
> (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
>
> (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
>
> (d) The wishes of the child.
>
> (e) The duration of the separation of the parent from the child.
>
> (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

WIS. STAT. § 48.426(3).

Here, there would be no merit to challenging the trial court's exercise of discretion. The trial court heard testimony from the following: a social worker who evaluated J.S.'s wife as a potential adoptive parent, J.S., J.S.'s wife, H.S., and H.S.'s fiancé. The trial court made findings on the record and explicitly discussed each of the statutory factors, finding that each one weighed in favor of termination. For instance, considering WIS. STAT. § 48.426(3)(c), the trial court found that as of the date of the dispositional hearing, none of the children had substantial relationships with H.S. or her family members except for H.S.'s mother, who had been making arrangements with J.S. to regularly visit with the children. The trial court found, based on

testimony from J.S. and his wife, that "[t]here's no reason to believe that that relationship will not continue to be facilitated if, in fact, it continues to be positive."

The trial court's comments explain its determination that the statutory factors weighed in favor of terminating H.S.'s parental rights to all four children. The trial court's findings are supported by the record and reflect a proper exercise of discretion. An appellate challenge to the trial court's exercise of discretion would lack arguable merit.

This court's independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing,

IT IS ORDERED that the orders terminating H.S.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven W. Zaleski is relieved of further representation of H.S. in these matters. *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