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February 14, 2018

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

2018AP16-NM	In re the termination of parental rights to A.L.B.-D., a person under the age of 18: Langlade County Department of Social Services v. A.D. (L.C. #2016TP5)
2018AP17-NM	In re the termination of parental rights to A.L.B.-D., a person under the age of 18: Langlade County Department of Social Services v. A.D. (L.C. #2016TP6)

Before Reilly, P.J.¹

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.

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).

In these consolidated cases, A.D. appeals from orders terminating his parental rights to his children, A.L.B-D and A.L.B-D.² A.D.'s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. A.D. received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the orders. *See* WIS. STAT. RULE 809.21.

A.L.B-D and A.L.B-D were removed from their mother's home on June 9, 2014 due to neglect and domestic violence.³ At that time, they were nearly eighteen months old. They were subsequently found to be in need of protection or services. The children have never met A.D., as he committed a crime shortly before their birth and has been incarcerated ever since.⁴

On December 28, 2016, Langlade County Department of Social Services (the County) petitioned to terminate A.D.'s parental rights. The petition alleged that A.D. had abandoned A.L.B-D and A.L.B-D by failing to visit or communicate with them for a period of three months or longer, which occurred from approximately May 2015 to the date of the petition. *See* WIS. STAT. § 48.415(1)(a)2. It also alleged that A.D. had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(6)(a).

² The children are twins who share the same initials.

³ The mother later consented to the termination of her parental rights.

⁴ A.D. committed the offense of robbery with use of force as a party to a crime.

The County moved for summary judgment on the abandonment allegation, which the circuit court effectively granted in part. The court found that there were no genuine issues of material fact as to the elements of abandonment, i.e., (1) whether the children were placed outside of the parent's home pursuant to a court order containing the termination of parental rights notice required by law; and (2) whether A.D. failed to visit or communicate with the children for a period of three months or longer. *See* WIS JI-CHILDREN 313. However, the court found that genuine issues of material fact existed as to whether A.D. had good cause for failing to visit or communicate with the children, which is a defense to abandonment. *See* WIS. STAT. § 48.415(1)(c).

The matter proceeded to trial where the circuit court answered the two verdict questions for abandonment where there were no genuine issues of material fact. However, it permitted the jury to answer the questions regarding the good cause defense and the separate allegation of failure to assume parental responsibility. Ultimately, the jury rejected the good cause defense and found that A.D. had failed to assume parental responsibility. The circuit court made the requisite finding of unfitness. It then terminated A.D.'s parental rights after a dispositional hearing. These no-merit appeals follow.

The no-merit report addresses whether the evidence presented at trial was sufficient to sustain the circuit court's finding of unfitness. In reviewing this issue, we must consider the evidence in a light most favorable to the jury's verdicts. *Tammy W.-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d 273, 797 N.W.2d 854. Our review of the trial transcripts persuades us that the County produced ample evidence to support the jury's findings. Once an allegation was proven, the circuit court was required to find A.D. unfit. *See* WIS. STAT. § 48.424(4).

The no-merit report also addresses whether the circuit court properly exercised its discretion at the dispositional hearing in terminating A.D.'s parental rights. The court's determination of whether to terminate parental rights is discretionary. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the "best interests of the child" is the prevailing standard, and the court is required to consider the factors delineated in § 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Here, the court's remarks reflect that it considered the appropriate factors. Those factors weighed in favor of a determination that it was in the best interests of A.L.B-D and A.L.B-D to terminate A.D.'s parental rights.

Finally, the no-merit report addresses several other issues, including (1) whether there were procedural defects in the proceedings; (2) whether the circuit court properly granted partial summary judgment on the abandonment allegation; and (3) whether the court properly ruled on pretrial motions/evidentiary objections. We agree with appellate counsel that these issues do not have arguable merit for appeal, and we will not discuss them further.

In addition to the above issues, we have reviewed other potential issues that arise in cases tried to a jury (e.g., jury selection and jury instructions). We see no issues with arguable merit for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Leonard Kachinsky of further representation in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the orders terminating A.D.'s parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard Kachinsky is relieved of any further representation of A.D. 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
Acting Clerk of Court of Appeals