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March 23, 2018

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

2017AP2333-NM	In re the termination of parental rights to D.S.E.: State of Wisconsin v. R.D.P. (L.C. # 2016TP204)
2017AP2334-NM	In re the termination of parental rights to D.J.E., Jr.: State of Wisconsin v. R.D.P. (L.C. # 2016TP205)
2017AP2335-NM	In re the termination of parental rights to D.T.D.: State of Wisconsin v. R.D.P. (L.C. # 2016TP206)
2017AP2336-NM	In re the termination of parental rights to K.A.M.D.: State of Wisconsin v. R.D.P. (L.C. # 2016TP207)

Before Kessler, J.¹

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16).

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).

R.D.P. appeals orders terminating her parental rights to D.S.E., D.J.E., Jr., D.T.D. and K.A.M.D. Attorney Gregory Bates was appointed to represent R.D.P. and filed a no-merit report. *See Brown Cty. v. Edward C.T.*, 218 Wis.2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998); *see also* WIS. STAT. RULES 809.107(5m) (2015-16),² 809.32. R.D.P. responded to the no-merit report.³ After reviewing the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the orders terminating R.D.P.'s parental rights. *See* WIS. STAT. RULE 809.21.

On June 22, 2016, the State petitioned to terminate R.D.P.'s parental rights to her four children, D.S.E., who was born March 19, 2005, D.J.E., Jr., who was born on February 1, 2006, D.T.D., who was born December 2, 2010, and K.A.M.D., who was born on January 22, 2016. On February 6, 2017, R.D.P. pled no-contest on the grounds that she had failed to assume parental responsibility for K.A.M.D., and the three older children continued to be in need of protection and services. *See* WIS. STAT. § 48.415(2), (6). After a dispositional hearing, the circuit court decided that termination was in the children's best interests and entered orders terminating R.D.P.'s parental rights.

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

³ R.D.P.'s response was belatedly filed February 1, 2018. We extend the deadline for filing the response to that date.

The no-merit report first addresses whether there would be any arguable merit to a claim that the circuit court lost competency to proceed by failing to comply with statutory deadlines. The statutes provide mandatory time frames for holding initial, fact-finding, and disposition hearings. *See* WIS. STAT. §§ 48.422(1)-(2), 48.424(4)(a). Although the time limits are mandatory, the statutes also provide that “[f]ailure by the court ... to act within any time period specified in [ch. 48] does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction.” WIS. STAT. § 48.315(3). Moreover, the circuit court either found good cause when the statutory time limits were not met or set dates with the participation of the parties. Therefore, there would be no arguable merit to a claim that the court lost competency to proceed for failure to comply with the mandatory statutory time limits.

The no-merit report next addresses whether there would be arguable merit to a claim that R.D.P.’s no-contest pleas during the grounds phase of the proceedings were invalidly entered. Prior to accepting a no-contest plea regarding the grounds contained within a termination petition, the circuit court must engage in a colloquy with the parent to assure that the parent is knowingly and voluntarily admitting that grounds for termination exist. *See* WIS. STAT. § 48.422(7); *Oneida Cty. DSS v. Therese S.*, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122.

The circuit court conducted a thorough colloquy with R.D.P. before it accepted her no-contest pleas. The circuit court explained to R.D.P. what the State would have to prove to establish that she failed to assume responsibility for the youngest child, K.A.M.D., and that her three older children were in continuing need of protection and services. The circuit court explained to R.D.P. the constitutional rights she was waiving by entering pleas, including her

right to trial either before a jury or to the court, and asked R.D.P. whether any threats or promises had been made to coerce her into entering her pleas. To gauge her ability to understand, the court asked R.D.P. her age and questioned her about the amount of schooling she had. The circuit court also ascertained that R.D.P. was not under the influence of alcohol or other drugs, and asked her whether she was taking medication that would influence her ability to understand the proceedings. The court asked R.D.P. whether she had enough time to talk to her lawyer and gave her ample opportunity to ask questions. The circuit court also ascertained whether proposed adoptive parents had been identified for the children as required by WIS. STAT. § 48.422(7)(bm). Based on the court's thorough colloquy with R.D.P. prior to accepting her no-contest pleas, there would be no arguable merit to a claim that R.D.P.'s no-contest pleas were not knowingly, intelligently, and voluntarily entered.

The no-merit report next addresses whether there was a sufficient factual basis for R.D.P.'s no-contest pleas. After accepting R.D.P.'s no-contest pleas, the circuit court heard testimony from Kelly Davis, the case manager for the family. Davis testified that R.D.P. has not met the conditions for return of her three older children as set forth in the orders finding them to be in need of protection and services. For example, R.D.P. did not have a safe place to care for her children, she attended only a few of their many medical appointments, she continued to use cocaine, marijuana and alcohol, and she has been under the influence of drugs or alcohol during times established to visit the children. Davis also testified that she did not believe that R.D.P. was likely to be able to meet the conditions established for the return of the children in the next nine months, despite the efforts of the Department to help her do so, due to her long-term and on-going addiction problem. With regard to the youngest child, Davis testified that R.D.P. had not

accepted nor exercised any responsibility for the daily supervision, education, protection and care of K.A.M.D. Based on Davis's testimony, we conclude that there would be no arguable merit to a claim that there was an insufficient factual basis for R.D.P.'s no-contest pleas.

The no-merit report next addresses whether the circuit court properly exercised its discretion in deciding that it was in the children's best interests to terminate R.D.P.'s parental rights. The ultimate decision whether to terminate parental rights is committed to the circuit court's discretion. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The best interests of the children is the prevailing factor. *See* WIS. STAT. § 48.426(2). In considering the best interests of the children, the circuit court shall consider: (1) the likelihood of adoption after termination; (2) the age and health of the children; (3) whether the children have substantial relationships with the parent or other family members, and whether it would be harmful to the children to sever those relationships; (4) the wishes of the children; (5) the duration of the separation of the parent from the children; and (6) whether the children 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 children's current placements, the likelihood of future placements and the results of prior placements. *See* § 48.426(3).

At the disposition hearing, K.A.M.D.'s foster mother testified that she has been caring for K.A.M.D. since his birth, with the exception of two or three weeks when he was placed with R.D.P. She testified that he is thriving in her home and she has been addressing his many health issues with regular visits to his doctor and various specialists. She testified that she would like to adopt him and is willing to help him build relationships with his siblings.

The foster mother for D.J.E., Jr., and D.T.D. testified that the boys began living with her on February 11, 2015. She explained that they had significant behavioral problems and would fight, curse, and act out inappropriately, both at home and in public places. She testified that they were now doing much better both in school and at home. She said that their ongoing intensive therapy was a “game changer” in helping them learn to control their behavior and come to terms with their problems. She testified that the children had bonded with her and she would like to adopt them, despite the fact that they were likely to need long term therapeutic intervention to address their problems. The foster mother also testified that she was open to allowing them to have contact with their siblings.

Sandra Crafton-Jones, the treatment foster care worker for D.J.E., Jr., D.T.D. and D.S.E., testified about the behavioral and mental health problems the three older children faced and the therapy and other interventions they were receiving. Kimberly Christenson, D.S.E.’s treatment foster care worker, testified that D.S.E. has an excellent relationship with her current foster mother. Christenson testified that D.S.E.’s foster mother was open to being an adoptive resource for her but wanted to see how their relationship developed before making a decision because D.S.E. had stayed with her for only six months at that time.

The circuit court concluded in a written decision that termination of R.D.P.’s parental rights was in the children’s best interests. The circuit court explained that R.D.P.’s substance abuse problem and related neglect had seriously endangered the welfare of her children and devastated them emotionally. The circuit court pointed out that the three older children had been out of her home for nearly three years, yet they clung to the unrealistic hope that they would go

safely home, which caused them extreme turmoil and devastation as R.D.P. was repeatedly unable to master her addictions.

The circuit court reasoned that the three younger children were likely to be adopted and would have safe and caring homes. The circuit court noted that whether D.S.E., the oldest child, would be eventually adopted was more worrisome due to the fact that multiple placements had failed due to her emotional and mental health issues. However, the circuit court also noted that much of her “challenging behavior is driven by her understandable but now wholly unsupported expectation that her mother will address her issues and safely reunify her family.” The court noted that because R.D.P. had clearly regressed in her progress, “while there is risk in termination for [D.S.E.], there is greater risk in foregoing this opportunity.” The court also explained that D.S.E.’s recovery would be a much longer process, but it believed she *would* recover with the assistance of her foster mother.

The circuit court considered the appropriate statutory factors under WIS. STAT. § 48.426(3) and reached a reasoned and reasonable conclusion. Therefore, there would be no arguable merit to a challenge to the circuit court’s decision that termination was in the children’s best interests. *See Gerald O.*, 203 Wis. 2d at 152 (A circuit court “properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach.”).

In her response, R.D.P. explains that she loves her children and would like another opportunity to reunite with them. While R.D.P.’s affection for her children and desire to reunite with them is apparent, at this point, the paramount factor is what is in the children’s best

interests. Because R.D.P. has been unable to master her addictions and provide a safe and stable environment, termination of her parental rights is in the children's best interests. Our independent review of the record reveals no other potential issues. We therefore conclude that there is no arguable basis for reversing the order terminating R.D.P.'s parental rights. Any further proceedings would be without arguable merit.⁴

IT IS ORDERED that the orders terminating the parental rights of R.D.P. to her children are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of R.D.P. on appeal.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

⁴ This court *sua sponte* extends by seven days the deadline pursuant to WIS. STAT. RULE 809.107(6)(e) to release its decision due to a calendaring error. *See Rhonda R.D. v. Franklin R.D.*, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995).