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September 19, 2018

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

2018AP1394-NM

State of Wisconsin v. W.T., Jr. (L.C. #2017TP55)

Before Gundrum, 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).

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.

W.T., Jr., appeals from an order terminating his parental rights to his daughter, S.E. W.T.'s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. W.T. 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 order. WIS. STAT. RULE 809.21.

S.E. was taken into physical custody in April 2016. At that time, she was two years old and homeless. A circuit court found her to be a child in need of protection or services. W.T. is S.E.'s adjudicated father through genetic testing. He has never lived with S.E. and has only seen her on a handful of occasions.

In March 2017, the State of Wisconsin petitioned to terminate W.T.'s parental rights to S.E. W.T. pled no contest to the ground of failure to assume parental responsibility. The circuit court accepted the plea and found W.T. unfit. After a dispositional hearing, the court terminated his parental rights. This no-merit appeal follows.

The no-merit report addresses the following issues: (1) whether W.T.'s plea was knowingly, voluntarily, and intelligently entered; (2) whether the circuit court properly exercised its discretion at the dispositional hearing to terminate W.T.'s parental rights; and (3) whether error occurred by not placing S.E. with a family member. We agree with appellate counsel that these issues would not have arguable merit for appeal.

With respect to W.T.'s plea, the record confirms that it was knowingly, voluntarily, and intelligently entered. Before accepting a plea to a ground for termination, the circuit court is required to engage the parent in a personal colloquy in accordance with WIS. STAT. § 48.422(7).

Additionally, the record must establish that the parent understands the constitutional rights given up by the plea. See *Kenosha Cty. DHS v. Jodie W.*, 2006 WI 93, ¶25, 293 Wis. 2d 530, 716 N.W.2d 845. The parent must also understand the direct consequences of the plea. See *Oneida Cty. DSS v. Therese S.*, 2008 WI App 159, ¶¶10-11, 314 Wis. 2d 493, 762 N.W.2d 122. Here, the circuit court’s colloquy prior to the acceptance of W.T.’s plea reflects that it satisfied these requirements.

With respect to the circuit court’s decision at the dispositional hearing to terminate W.T.’s parental rights, the record demonstrates that the court properly exercised its discretion. 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 circuit 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 S.E. to terminate W.T.’s parental rights.

Finally, with respect to S.E.’s placement, there was no error in not placing S.E. with a family member. At disposition, S.E.’s paternal grandmother expressed interest in obtaining placement of S.E. However, she was not a licensed foster parent and had barriers to obtaining licensing. Moreover, she had no relationship with S.E. and had only learned of her existence in July 2017. By then, S.E. had already spent a year with her foster family—a family that was committed to adopting her. The State is required to give placement consideration to a family member and did so in this case. However, it is not required to place a child with a family member when that placement is unreasonable.

Our independent review of the record does not disclose any potentially meritorious issue 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 Carl W. Chesshir of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of any further representation of W.T. in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals