



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

September 26, 2018

To:

Hon. Wynne P. Laufenberg
Circuit Court Judge
730 Wisconsin Ave.
Racine, WI 53403

Theresa Fallon Villar
Racine County District Attorney's Office
730 Wisconsin Ave.
Racine, WI 53403-1238

Samuel A. Christensen
Juvenile Clerk
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Mark Lukoff
Law Office of Mark Lukoff, S.C.
500 College Ave.
Racine, WI 53403-1058

R.L.S.

Leonard D. Kachinsky
Kachinsky Law Offices
832 Neff Ct.
Neenah, WI 54956-0310

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

2018AP1289-NM

In re the termination of parental rights to P.H., a person under the age of 18: Racine County HSD v. R.L.S. (L.C. #2017TP33)

Before Neubauer, C.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).

R.L.S. appeals from an order granting an involuntary termination of parental rights (TPR) to her child, P.H. R.L.S.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32, *Anders v. California*, 386 U.S. 738 (1967), and *Brown Cty. v.*

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.

Edward C.T., 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). R.L.S. received a copy of the report and was advised of her right to file a response but has not done so. After considering the no-merit report and independently reviewing the record, we conclude there are no issues with arguable merit for appeal. Accordingly, we summarily affirm the order. *See* WIS. STAT. RULE 809.21.

The Racine County Human Services Department (the County) took P.H. into temporary physical custody at his birth. He had been exposed to drugs in utero, and there was a concern of continued drug exposure if he were to remain in the care of R.L.S., a single parent who has struggled with drug addiction for years. P.H. was found to be a child in need of protection or services (CHIPS) when he was four months old. Despite being given notice, R.L.S. did not appear at the CHIPS hearing. Her attorney had no explanation for her absence, and she was found in default. The TPR warnings were mailed to her.

When P.H. was about nine months old, the County filed a petition for the TPR of R.L.S., alleging abandonment and failure to assume parental responsibility,² *see* WIS. STAT. § 48.415(1)(a)2. and (6), and later moved for partial summary judgment on the abandonment ground. The court granted the motion and the matter proceeded to a contested disposition. There, the court found that granting the TPR was in the best interests of fifteen-month-old P.H., who had been in the same foster home—the adoptive resource—since he was three days old. This no-merit appeal followed.

² The petition also alleged that “any/all unknown and alleged fathers” to P.H. failed to assume parental responsibility. Genetic testing showed that the man R.L.S. thought could be the father was not; no other man came forward.

TPR cases are civil in nature. *See M.W. v. Monroe Cty. DHS*, 116 Wis. 2d 432, 442, 342 N.W.2d 410 (1984). The right to a jury trial is entirely statutory and therefore generally is subject to the civil procedure code, including the summary judgment statute. *Steven V. v. Kelley H.*, 2004 WI 47, ¶4, 271 Wis. 2d 1, 678 N.W.2d 856. The TPR statutes do not provide otherwise. *Id.* A parent may, pursuant to WIS. STAT. § 48.422(4), request a jury for the fact-finding hearing, at which the jury makes findings of fact on the unfitness grounds alleged in the TPR petition pursuant to WIS. STAT. § 48.31(2). The circuit court, however, remains responsible for conclusions of law. *See* § 48.31(4). If a motion for summary judgment is made and is supported as prescribed by WIS. STAT. § 802.08, the circuit court may conclude at the fact-finding hearing that there is no genuine issue of material fact in dispute and the moving party is entitled to partial summary judgment on parental unfitness as a matter of law. *See id.*

The no-merit report considers whether (1) there were procedural defects in the proceedings, (2) the trial court properly granted summary judgment in the grounds phase because R.L.S. abandoned P.H. to the County, and (3) the trial court erroneously exercised its discretion in terminating R.L.S.'s parental rights to P.H. The no-merit report capably discusses these potential issues to support the no-merit conclusion, and R.L.S. does not challenge them. As our review of the record confirms counsel's conclusion that these potential issues lack arguable merit, we need not address them further.

Our review of the record discloses no other potential issues for appeal. We therefore accept the no-merit report, affirm the order terminating R.L.S.'s parental rights to P.H, and discharge appellate counsel of the obligation to represent R.L.S. further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of any further representation of R.L.S. 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