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October 3, 2018

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

2018AP1374-NM	In re the termination of parental rights to J.D.C.W.: Winnebago County Department of Human Services v. M.D.E. (L.C. # 2017TP50)
2018AP1375-NM	In re the termination of parental rights to K.J.W.: Winnebago County Department of Human Services v. M.D.E. (L.C. # 2017TP51)
2018AP1376-NM	In re the termination of parental rights to D.G.W.: Winnebago County Department of Human Services v. M.D.E. (L.C. # 2017TP52)
2018AP1377-NM	In re the termination of parental rights to K.L.W.: Winnebago County Department of Human Services v. M.D.E. (L.C. # 2017TP53)
2017AP1378-NM	In re the termination of parental rights to D.J.W.: Winnebago County Department of Human Services v. M.D.E. (L.C. # 2017TP54)

Before Dugan, 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).

M.E. appeals orders terminating her parental rights to J.D.C.W., K.J.W., D.G.W., K.L.W., and D.J.W. Attorney Carl W. Chesshir was appointed to represent M.E. 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] and 809.32. M.E. was advised of her right to respond to the no-merit report, but she has not done so. After reviewing the no-merit report and conducting an independent review of the record, we conclude that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the orders terminating M.E.'s parental rights. *See* WIS. STAT. RULE 809.21.

On October 2, 2017, J.W. petitioned to terminate the parental rights of M.E., his former wife, to their five children: J.D.C.W., who was born April 1, 2006; K.J.W., who was born June 3, 2007; D.G.W., who was born May 12, 2008; K.L.W., who was born May 12, 2008; and D.J.W., who was born August 25, 2010. A jury trial was held on March 6 and 7, 2018. The jury found that grounds existed to terminate M.E.'s parental rights as to each child. After a dispositional hearing, the circuit court decided that termination was in the children's best interests and entered orders terminating M.E.'s parental rights.

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

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

The no-merit report first addresses whether there was sufficient evidence presented at trial to support the jury's verdict finding that grounds existed for termination of M.E.'s parental rights on the basis of abandonment. The statutes provide that a parent abandons a child when "[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 failed to visit or communicate with the child for a period of 6 months or longer" without good cause. *See* WIS. STAT. § 48.415(1)(a)3. We "will sustain a jury verdict if there is any credible evidence to support it." *See* ***Morden v. Continental AG***, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659. "In applying this narrow standard of review, this court considers the evidence in a light most favorable to the jury's determination." ***Id.***, ¶39. "We do so because it is the role of the jury, not an appellate court, to balance the credibility of witnesses and the weight given to the testimony of those witnesses." ***Id.*** The allegations in the petition must be proven by clear and convincing evidence. WIS. STAT. § 48.31(1).

At the trial held on March 6 and 7, 2018, J.W., the children's father, testified that he married M.E. on September 15, 2006 and was divorced from her in Illinois on August 25, 2014, when he was awarded sole custody of the children. J.W. testified that M.E. has not seen the children since April 20, 2014, when the youngest child was three years old and the oldest child was eight years old. J.W. testified that M.E. last spoke to the children on the telephone in May 2014, when she told them she was seeking money from her mother in Oregon to come visit them in Illinois, where they were living with J.W. at the time. J.W. said that M.E. never came to visit, and that was the last time she spoke with the children.

J.W. testified that since that time, M.E. has not seen the children, has not communicated with the children, has not sent any letters or gifts to the children, has not provided support for the children, has not contacted him regarding the children, and has not attempted to contact the children through any third parties. J.W. testified that he moved to Menasha in the summer of 2016 to be closer to M.E.'s father, and the children regularly see him because he lives only four blocks away. J.W. said that M.E.'s father, from whom M.E. is estranged, coaches the basketball team on which several of the children play. J.W. also testified that the children regularly visit with other maternal relatives.

L.W., J.W.'s wife, testified that she had been caring for the children with J.W. since April 20, 2014. She testified that since May 2014, M.E. has not seen the children, spoken with the children by phone, or sent them any texts, letters, cards or gifts. She further testified that J.W. has had the same phone number since 2013.

Linda Moskal, a child support specialist for Winnebago County, testified that M.E. has been ordered to pay child support, but she has not paid any child support.

M.E. testified that J.W. refused to return the children to her after he took them for spring break in April 2014, saying that they were not living in a safe and stable environment. M.E. testified that she attempted to reach the children by phone in 2014 and sent them texts during 2014. M.E. testified that she also sent some gifts and cards in 2014, but they were returned to her. She admitted that she has not seen the children, communicated with them, provided them with support, or sent any letters or gifts since May 2014, with one exception—she had brief contact with the oldest child, J.D.C.W., in 2017 through social media. She also testified that she

tried calling J.W.'s phone in 2015. Based on this testimony, we conclude that there was sufficient evidence for the jury to conclude that M.E. abandoned her children, as that term is defined in WIS. STAT. § 48.415(1)(a)3. There would be no arguable merit to an appellate challenge to the verdict.[3]

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 M.E.'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).

[3] The petitions to terminate M.E.'s parental rights also alleged that she had failed to assume parental responsibility for the children. The jury concluded that grounds did *not* exist to terminate M.E.'s parental rights based on this allegation.

After hearing testimony from J.W., L.W., M.E., M.E.'s father, and others, the circuit court considered the statutory factors at length in its oral decision. The circuit court found that it was very likely that the children would be adopted, noting that L.W. previously filed an adoption petition. As for the health and age of the children, the circuit court stated that the children were in good health, although one of them had a significant health problem that was being treated, and noted that the children were now seven years old to twelve years old.

Turning to the children's relationships, the circuit court noted that the children had a substantial relationship with their mother in the first years of their life, and now had a close relationship with M.E.'s family, particularly their maternal grandfather and step-grandmother, who lived only four blocks from their home and visited regularly, as well as other maternal relatives. The court noted that J.W. testified that the children would continue to have relationships with M.E.'s family members regardless of whether M.E.'s parental rights were terminated.

As for the wishes of the children, at the direction of the court the guardian *ad litem* spoke with the children to determine their wishes. The oldest child said that he wanted to continue to live with his father and step-mother, and that he views his step-mother as his mother. He does not miss M.E. and expressed frustration that living with her had been very difficult. The other children either had very little or no memory of M.E. The guardian *ad litem* recommended that M.E.'s parental rights be terminated because J.W. and L.W. have provided a safe and stable home for the children and the children's lives would be substantially disrupted by M.E.'s presence.

The circuit court found that terminating M.E.'s parental rights would provide more stability for the children because the children would continue to live in the home that they had been living in for the last four years. The court noted that if it did not grant the termination petition, there would most likely be upheaval in the children's lives because the issue of placement with M.E. would be a possibility, even though she had no relationship with the children over the last four years, and three of the five children had no memory of her. Finally, the circuit court explained that it also considered M.E.'s efforts to reintegrate herself into the children's lives, and said that she had not made any significant effort to see or connect with the children even after the petition for termination of parental rights had been filed. Based on these circumstances, the circuit court concluded that terminating M.E.'s parental rights was in the children's best interests.

The circuit court considered the appropriate statutory factors under WIS. STAT. § 48.426(3) and reached a reasoned and reasonable conclusion. Therefore, we conclude that there would be no arguable merit to a challenge to the circuit court's decision that termination is 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."). Our independent review of the record reveals no other potential issues. We, therefore, conclude that there is no arguable basis for reversing the orders terminating M.E.'s parental rights. Any further proceedings would be without arguable merit.

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

IT IS FURTHER ORDERED that Attorney Carl W. Chessir is relieved of any further representation of M.E. on appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals