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February 12, 2019

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

2018AP2358-NM	In re the termination of parental rights to J.C., a person under the age of 18: State of Wisconsin v. J.C. (L.C. # 2017TP111)
2018AP2359-NM	In re the termination of parental rights to K.R.M., a person under the age of 18: State of Wisconsin v. J.C. (L.C. # 2017TP112)

Before Brash, 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).

J.C. appeals from trial court orders terminating his parental rights to his two children, J.C. and K.R.M.[2] J.C.'s appointed attorney, Gregory Bates, has filed a no-merit report. *See* ***Brown Cty v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (per curiam); *see also* WIS. STAT. RULES 809.107(5m) and 809.32. J.C. has not filed a response. This court has considered counsel's report and has independently reviewed the record. This court agrees with counsel's conclusion that an appeal in each case would lack arguable merit. Therefore, the orders terminating J.C.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

J.C.'s children lived with J.C., their mother, and their mother's other child. In July 2015, J.C. was arrested and charged with felony child abuse and misdemeanor battery. He ultimately pled guilty to those charges and one other misdemeanor charge. He was sentenced to prison, where he remained until November 2016.

In March 2016, while J.C. was incarcerated, the children were removed from their mother's home. In June 2016, they were found to be in need of protection or services. *See* WIS. STAT. § 48.13 (governing "CHIPS" cases). The children were placed in foster care and have not returned to the home of J.C. or their mother.

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[1] These appeals, which were consolidated by order of this court, are decided by one judge pursuant to WIS. STAT. § 752.31(2) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

[2] J.C. has the same initials as one of his children. All subsequent references to J.C. are to the Respondent-Appellant, rather than the child.

The parental rights of the mother of J.C. and K.R.M. were also terminated and are not at issue in these appeals.

In June 2017, the State petitioned to terminate J.C.'s parental rights to both of his children based on WIS. STAT. § 48.415(1)(a)2. (abandonment), § 48.415(2) (continuing CHIPS), and § 48.415(6) (failure to assume parental responsibility). After counsel was appointed, J.C. indicated that he was contesting the allegations in each petition, and the cases were scheduled for a jury trial. However, in January 2018, J.C. reached an agreement with the State to enter a no-contest plea to the abandonment ground in each case. The State agreed to join J.C.'s request that the dispositional hearing be delayed for two to four months.

The trial court conducted a thorough plea colloquy with J.C. and ultimately accepted his no-contest pleas and his waiver of the right to a jury trial on grounds for termination. The trial court also heard testimony from a family case manager that allowed the trial court to find a factual basis for the abandonment claim alleged in each petition. The trial court made the mandated unfitness finding in each case, *see* WIS. STAT. § 48.424(4), and scheduled the dispositional hearing.

In June 2018, the trial court conducted the dispositional hearing. The guardian ad litem joined the State in arguing for termination of J.C.'s parental rights. The trial court found that it was in each child's best interest that J.C.'s parental rights be terminated and issued orders to that effect. These appeals follow.

The no-merit report addresses four issues:

> 1. Were the father's statutory and constitutional rights respected in these cases?
>
> 2. [Were] the no-contest plea[s] to the unfitness grounds done using a procedure that was in compliance with statutory and mandated case law requirements?

> 3. Was there [] sufficient evidence to find the father to be an unfit parent?
>
> 4. Was there [] sufficient evidence to determine that termination of the father's parental rights was in the children's best interest?

We agree with appellate counsel that there would be no merit to further proceedings or an appeal based on those issues, as we will briefly explain below.

We begin our analysis with the statutory time limits. The fact-finding hearing must "be held within 45 days after the hearing on the petition" *see* WIS. STAT. § 48.422(2), and the dispositional hearing must be held immediately after the fact-finding hearing, or within forty-five days under certain circumstances (including if the parties agree), *see* WIS. STAT. § 48.424(4). These statutory time limits cannot be waived. ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Continuances, however, are permitted "upon a showing of good cause in open court … and only for so long as is necessary[.]" WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. *See* § 48.315(3).

We have carefully examined the record. We agree with the no-merit report that at each hearing, the time limits were observed or tolled for good cause on the record after the parties either consented or did not state an objection. There would be no merit to alleging that the trial court lost competency during the pendency of the cases.

Next, we consider J.C.'s no-contest plea to the abandonment ground in each case. In ***Brown County DHS v. Brenda B.***, our supreme court summarized the applicable legal standards:

> A parent who chooses to enter a no contest plea during th[e grounds] phase is giving up valuable protections and must have knowledge of the rights being waived by making the plea.

> The principles and analysis of [***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986)] apply. The [trial] court must engage the parent in a colloquy to ensure that the plea is knowing, voluntary, and intelligent. This colloquy is governed by the requirements of [WIS. STAT.] § 48.422(7) and notions of due process.
>
> If the parent can later show that the colloquy was deficient and also alleges that he or she did not know or understand the information that should have been provided, that parent has made a prima facie case that the plea was not knowing, voluntary, and intelligent. At that point, the burden shifts to the petitioner to demonstrate by clear and convincing evidence that the parent knowingly, voluntarily, and intelligently pled no contest.

Brenda B., 2011 WI 6, ¶¶34-36, 331 Wis. 2d 310, 795 N.W.2d 730 (citations omitted).

The trial court conducted an extensive colloquy with J.C. that spanned over twelve pages of the transcript. The trial court addressed J.C.'s understanding of the rights he was giving up, such as the right to have a jury decide the claim of abandonment in each case. The trial court told J.C. that it would decide at the dispositional hearing whether to terminate his parental rights or dismiss the petitions, and it explained that the focus at the dispositional hearing would be the children's best interest. The trial court also established that no promises or threats were made to force J.C. to enter a no-contest plea in each case. In short, the transcript demonstrates that the trial court complied with the dictates of WIS. STAT. § 48.422(7), ***Brenda B.***, and ***Oneida County DSS v. Therese S.***, 2008 WI App 159, 314 Wis. 2d 493, 762 N.W.2d 122.

As part of its compliance with WIS. STAT. § 48.422(7)(c), the trial court heard testimony from the family case worker concerning the factual basis for abandonment in each case. The trial court accepted the case worker's testimony, which included details about J.C.'s lack of contact with the children and the lack of good cause for the abandonment. J.C.'s no-contest pleas and the case worker's testimony support the finding that J.C. abandoned his children as defined in WIS. STAT. § 48.415(1)(a)2. There would be no merit to challenging the trial court's

finding that J.C. was "unfit" based on his abandonment of his children. *See* WIS. STAT. § 48.424(4) ("If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit.").

Finally, we turn to the issue of whether there would be any merit to challenging the trial court's decision to terminate J.C.'s parental rights to each child. The decision to terminate a parent's rights is discretionary and the best interest of the child is the prevailing standard. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152-53, 551 N.W.2d 855 (Ct. App. 1996). The trial court considers multiple factors, including, but not limited to:

> (a) The likelihood of the child's adoption after termination.
>
> (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
>
> (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
>
> (d) The wishes of the child.
>
> (e) The duration of the separation of the parent from the child.
>
> (f) Whether the child 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 child's current placement, the likelihood of future placements and the results of prior placements.

WIS. STAT. § 48.426(3).

Here, there would be no merit to challenging the trial court's exercise of discretion with respect to either child. The trial court heard testimony from the family case manager, therapists, the children's parents, J.C.'s parole agent, the prospective adoptive parents, and others. The trial court made findings in a written decision that discussed each of the statutory factors as they

relate to the children. For instance, considering WIS. STAT. § 48.426(3)(f), the trial court implicitly found that the children would have "a more stable and permanent family relationship as a result of the termination." *See* ***id.*** The trial court explained:

> I acknowledge [the parents] have made some progress of late…. That said, given the long-entrenched dysfunction in their personal and interpersonal lives, I have no reasonable expectation either of them can presently, or in the reasonably foreseeable future, provide the safe, nurturing, protective environment these children so desperately need due to their long term exposure to the chaos and danger they endured in the care of their parents. Only adoption can meet that need.

The trial court's findings on all six statutory factors outlined in WIS. STAT. § 48.426(3) are supported by the record and reflect a proper exercise of discretion. An appellate challenge to the trial court's exercise of discretion would lack arguable merit.

This court's independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing,

IT IS ORDERED that the orders terminating J.C.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of J.C. on appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals