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DISTRICT IV

February 28, 2019

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

2019AP30-NM

Columbia County DH&HS v. J.E.M., Jr. (L.C. # 2017TP7)

Before Fitzpatrick, 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).

Attorney Eileen T. Evans, appointed counsel for J.E.M., Jr., has filed a no-merit report in this appeal of an order terminating J.E.M.'s parental rights to R.A.D.M. *See* WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a claim of insufficiency of the evidence to support the summary judgment as to grounds or a challenge to the circuit court's decision that termination of J.E.M.'s parental rights was in R.A.D.M.'s best interest. J.E.M. was sent a copy of the report, but has not filed a response. Upon my independent review of the entire record, as well as the no-merit report, I agree with counsel's assessment that there are no arguably meritorious appellate issues. I affirm.

On May 15, 2017, the County petitioned to terminate J.E.M.'s parental rights to R.A.D.M.,² alleging grounds of abandonment, continuing child in need of protective services (CHIPS), and failure to assume parental responsibility. See WIS. STAT. § 48.415(1), (2) and (6). J.E.M. contested the petition. The County then moved for summary judgment, and J.E.M. did not submit any opposition to the summary judgment motion. At the summary judgment hearing, J.E.M. conceded that grounds existed to terminate his parental rights. After a dispositional hearing, the circuit court found that termination of J.E.M.'s parental rights was in R.A.D.M.'s best interest. The court entered an order terminating J.E.M.'s parental rights.

The no-merit report addresses whether there would be arguable merit to a claim that there was insufficient evidence to support summary judgment as to grounds for termination. I agree with counsel's assessment that an argument that the evidence was insufficient to support the summary judgment would lack arguable merit.

² The County also petitioned to terminate the parental rights of R.A.D.M.'s mother.

Partial summary judgment may be granted as to grounds when there is no genuine issue of material fact in dispute and the County is entitled to judgment as a matter of law. *Steven V. v. Kelley H.*, 2004 WI 47, ¶6, 271 Wis. 2d 1, 678 N.W.2d 856; WIS. STAT. § 802.08(2). Here, I agree with counsel that it would be wholly frivolous to argue that the court erred by granting summary judgment because, at a minimum, the County was entitled to summary judgment on the continuing CHIPS ground.³ See WIS. STAT. §§ 48.415(2) (continuing CHIPS must be established by proof that: (1) the child has been adjudged to be in need of protection or services and placed outside the home for a cumulative period of six months or longer pursuant to one or more court orders containing the termination of parental rights notice required by law; (2) the department has made a reasonable effort to provide the services ordered by the court; (3) the parent has failed to meet the conditions for the child's safe return; and (4) there is a substantial likelihood that the parent will not meet the conditions of return within the nine-month period following the hearing) and 48.31(1) (grounds for termination must be proved by clear and convincing evidence).

The no-merit report also addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion by determining that termination of J.E.M.'s parental rights was in R.A.D.M.'s best interest. See *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996) (court's decision that termination of parental rights is in child's best interest is reviewed for an erroneous exercise of discretion). The evidence at the dispositional hearing established that R.A.D.M. had been in the same foster home for four years, since he was first taken into the custody of the department. R.A.D.M. was very bonded with his

³ Because the County need only establish one statutory ground for termination, any challenge to the other grounds would be wholly frivolous as well.

foster parents, siblings, and extended family. R.A.D.M. was extremely likely to be adopted by his foster parents if J.E.M.'s parental rights were terminated. R.A.D.M. had never had any contact with J.E.M. and did not know him in any respect. The court considered the factors set forth in WIS. STAT. § 48.426(3) and determined that termination of J.E.M.'s parental rights was in R.A.D.M.'s best interest. I agree with counsel's assessment that an argument that the circuit court erroneously exercised its discretion would lack arguable merit.

Upon my independent review of the record, I have found no other arguable basis for reversing the order terminating J.E.M.'s parental rights. I conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Upon the foregoing,

IT IS ORDERED that the order terminating J.E.M.'s parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Eileen T. Evans is relieved of any further representation of J.E.M. 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