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March 1, 2019

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

2018AP2199-NM State of Wisconsin v. R. A. (L. C. No. 2017TP186)

Before Seidl, 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)(g) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Counsel for R.A. has filed a no-merit report concluding there is no arguable basis to challenge an order concerning termination of R.A.'s parental rights. R.A. was advised of his right to respond, and no response has been filed.[2] Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issues of arguable merit appear. Accordingly, the order is summarily affirmed. WIS. STAT. RULE 809.21.

The child's mother had substantial substance abuse and mental health issues, and was homeless and living under a bridge in a car. The child was found to be a child in need of protection and services. The mother had contacted Amy W., and asked her if she would take

[2] By order dated December 27, 2018, we granted R.A.'s motion to extend the time for filing a response to counsel's no-merit report. We extended the deadline for the response to January 25, 2019. After the time for the response had expired, R.A. filed a second motion to expand the time to file a response to the no-merit report. In the second motion for an extension, R.A. claimed he did not receive a copy of the transcripts and record in this matter until January 25, 2019. R.A. further contended that he was in prison segregation when he received the transcripts and record. However, R.A. also stated that he was released from segregation on January 17, 2019.

We noted that at the time R.A. was released from segregation, he knew that his response to the no-merit report was due on January 25, 2019. He also knew or should have known that he had not received the transcript and record from counsel. Nevertheless, R.A.'s second request for an extension was dated seventeen days beyond the date his response to the no-merit was due following this court's initial extension of time.

In our prior order dated December 27, 2018, we advised R.A. that "[b]ecause an appeal arising from the termination of parental rights has expedited time limits, R.A. should anticipate no further extensions." We also advised R.A. that the response to the no-merit report

> is not a brief, and did not require citations to the record or citation to authority. It merely directs this court's attention to issues R.A. believes should be raised on appeal. This is particularly significant if the issue would not be reflected in the court records. This court independently reviews the record to determine whether there is arguable merit to any issue that could be raised on appeal.

We therefore denied the second motion to expand the time to respond to the no-merit report.

care of her children. Amy W. and her husband had previously adopted one of the mother's older children.

R.A. was adjudicated the father of the child at issue in this matter after DNA testing. In regards to R.A., a petition for termination of parental rights alleged abandonment and failure to assume parental responsibility.[3] R.A. pleaded no contest to failure to assume parental responsibility, and the circuit court found a factual basis existed to support that ground. A dispositional hearing was subsequently held. The court heard testimony from Amy W., who testified that the child had been placed in her home for almost two years, and that Amy had previously adopted the child's half-sibling. Amy also testified that the child referred to Amy and her husband as mom and dad, and that the child had formed a sister-like relationship with her half-sibling.

The circuit court also heard testimony from the ongoing case manager, who testified that the foster parents had been approved for adoption. She further testified the child interacted with the other children in the family like typical siblings, and that the child had no substantial relationship with her biological parents. She also testified the child knew her mother, but not as someone who takes care of her on a daily basis. As far as R.A., the child did not know her father by name. When shown a picture of R.A., the child recognized him as her father. The case manager testified the child had no relationships with the biological extended families except for the other adopted half-sibling. She opined that termination of parental rights would allow the

[3] The termination of the mother's parental rights is not at issue in this appeal.

child to be in a more stable and permanent living situation and prevent the child from remaining in foster care.

The circuit court then heard testimony from R.A., who conceded under cross-examination that he had ten criminal convictions and was in criminal custody when the child was born. R.A. also conceded at the hearing that he was currently in custody for felony theft and felon in possession of a firearm.

After considering arguments from the State, the guardian ad litem, and R.A.'s counsel as to disposition, the circuit court applied the factors enumerated in WIS. STAT. § 48.426(3). The court found the child was adoptable and that the child was "virtually guaranteed" to be adopted by Amy W. and her husband, in whose home the child had lived for nearly a third of her life. The court indicated that age and health considerations "bode only in favor of adoption." The court also noted the child had no substantial relationship with any birth relative except the half-sibling. The court stated the foundational relationships in the child's life was with the half-sibling, whom Amy W. and her husband had adopted, and with Amy W., her husband and their other children. The court noted the child had "vague recollections of her father, creating a 'curiosity' about him," but that for "a large period of her life [the child believed the half-sibling's father] was her father as well." The court stated that R.A. "implicitly, if not explicitly, acknowledges the inevitability" that adoption was the "only available path to loving safety and permanence." The court further stated:

> The conclusion is inevitable–only because the consideration of the statutory factors can lead only to that conclusion. [R.A.] lived with [the child] for a very brief period of her life and, in all likelihood, actively parented her during that time. However, since that time, he has persistently made bad decisions–increasingly dangerous

> decisions–by which he has removed himself from the community and from his child's life.

The circuit court continued:

> There is a note of sadness in this decision. [R.A.] sincerely loves his daughter and is devastated by her loss. He speaks eloquently of his love and wishes for her best interests. He is an intelligent person and if his best intentions had guided his behavioral choices, it would be an entirely different picture. It has not and those negative choices have left him largely a non or negative factor in [the child's] life and created the void [Amy W. and her husband] have lovingly and courageously filled. Reiterating, it would be unconscionable not to give permanent legal recognition to the only committed and continual safe and loving parental relationship [the child] knows.

(Footnote omitted.) The court's written decision found it was in the child's best interest to terminate R.A.'s parental rights.

The no-merit report addresses whether R.A.'s no-contest plea to the grounds of failure to assume parental responsibility was made knowingly, voluntarily, and intelligently; and whether the circuit court properly exercised its discretion by terminating R.A.'s parental rights. This court is satisfied that the no-merit report properly analyzes the issues raised, and we will not further address them, other than to specifically note the circuit court's exemplary handling of this matter and its well-reasoned decision.[4] Our independent review of the record discloses no other potential issues for appeal.

[4] The no-merit report also discusses mandatory time limits, which were either complied with, properly extended for good cause, or otherwise acquiesced to by the parties. The failure to object to a period of delay or continuance waives any challenge to the court's competency to proceed on those grounds. *See* WIS. STAT. § 48.315(3). Moreover, scheduling difficulties constitute good cause for tolling time limits. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Carl Chesshir is relieved of representing R.A. further in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals