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April 3, 2019

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

2019AP58-NM	State of Wisconsin v. R.C.K. (L.C. # 2018TP115)
2019AP59-NM	State of Wisconsin v. R.C.K. (L.C. # 2018TP116)
2019AP60-NM	State of Wisconsin v. R.C.K. (L.C. # 2018TP117)

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

R.C.K. appeals from orders terminating her parental rights to her three children. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. R.C.K. was served with a copy of the report and advised of her right to file a response. No response has been received. Based upon an independent review of the no-merit report and circuit court records, the orders are summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In 2016 and 2017, R.C.K.'s children were removed from R.C.K.'s care. When removed the oldest child was nine years old, the second was four months old, and the third was a new born baby. As ground for termination of parental rights, the petitions alleged that the children were in continuing need of protection and services (CHIPS) and that R.C.K. had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2) and (6) (2015-16).²

At hearings held June 28 and July 10, 2018, R.C.K. was warned by the circuit court that her failure to attend subsequent court hearings, failure to keep in contact with her attorney, or failure to cooperate with the discovery process, including attendance at any deposition, would result in the court entering a default judgment against her and the termination of her parental rights. R.C.K. failed to appear for a scheduled deposition on August 27, 2018, and she also failed to appear at the rescheduled deposition on September 14, 2018. The State moved for a default judgment. R.C.K. failed to appear at the final pretrial hearing on September 18, 2018.

² During CHIPS proceedings, R.C.K. received parental warnings under WIS. STAT. § 48.415(2) (2015-16), that termination on the continuing CHIPS ground would require proof that there is a substantial likelihood that she would not meet the conditions for return of the children within the nine-month period following the fact-finding hearing. Section 48.415(2) was subsequently amended and the amended statute is not applicable here.

The State's motion for default was granted. After testimony from the family case manager, the court found that the continuing CHIPS and failure to assume parental responsibility grounds were proven. The court then heard testimony as to the proper disposition. It determined that it was in the best interests of the children to terminate R.C.K.'s parental rights.

After the filing of a petition for termination of parental rights and the completion of preliminary matters, a contested termination proceeding involves a two-step procedure. *Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. The first step is a fact-finding hearing which determines whether grounds exist to terminate the parent's rights. *Id.* If grounds for termination are found to exist, the circuit court must find that the parent is unfit. *Id.*, ¶26. The second phase is the dispositional phase. *Id.*, ¶28. The court must determine whether the parent's rights should be terminated. *Id.* The best interest of the child is the prevailing factor considered by the circuit court in making this decision. WIS. STAT. § 48.426(2). In determining the best interests of the children, the circuit court is required to consider the agency report and the factors enumerated in § 48.426(3). *Julie A.B.*, 255 Wis. 2d 170, ¶4. It is also entitled to consider other factors, including factors favorable to the parent. *Id.*

Counsel's no-merit report addresses as potential appellate issues whether the default finding against R.C.K. on the grounds for termination was a proper exercise of the circuit court's discretion and whether the default finding was proper even though R.C.K.'s attorney appeared on her behalf. The no-merit report sets forth an adequate discussion of these potential issues to support the no-merit conclusion and we need not address them further.

Two other potential appellate issues exist that are not discussed by the no-merit report: whether there was sufficient evidence to support the findings that grounds existed to terminate

R.C.K.'s parental rights and whether the circuit court properly exercised its discretion in determining that termination was in the children's best interest. Review of the record confirms these potential issues lack arguable merit. The evidence produced at the hearing established by clear and convincing evidence that grounds existed. *See Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶24, 246 Wis. 2d 1, 629 N.W.2d 768 (prior to entry of a default judgment on the grounds, clear and convincing evidence must be presented that grounds exist). In determining that termination was in the children's best interest, the circuit court considered the proper factors set forth in WIS. STAT. § 48.426(3).

The records disclose no other potential issues for appeal.³ Accordingly, the no-merit report is accepted, the orders terminating R.C.K.'s parental rights are affirmed, and appellate counsel is discharged of the obligation to represent R.C.K. further in these appeals.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Theresa J. Schmieder is relieved of any further representation of R.C.K. in these matters. *See* WIS. STAT. RULE 809.32(3).

³ The time limits set forth in WIS. STAT. ch. 48 for termination proceedings were not met. However, continuances "upon a showing of good cause in open court" are allowed. WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. Sec. 48.315(3). Each time a hearing was continued or set beyond the statutory time limit, the circuit court found cause to extend the time limit and no objection was made. There is no arguable merit to any claim related to the failure to comply with the statutory time limits.

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

Sheila T. Reiff
Clerk of Court of Appeals