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May 17, 2019

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

2019AP594-NM	State of Wisconsin v. K.L.D. (L.C. # 2016TP307)
2019AP595-NM	State of Wisconsin v. K.L.D. (L.C. # 2016TP308)
2019AP596-NM	State of Wisconsin v. K.L.D. (L.C. # 2017AP249)

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

K.L.D. appeals orders terminating her parental rights to D.A.D.-W., R.L.D.-W., and M.L.D.-W. Attorney Eileen T. Evans was appointed to represent K.L.D. and she 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), and 809.32. K.L.D. was informed 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 K.L.D.'s parental rights. *See* WIS. STAT. RULE 809.21.

On September 19, 2016, the State filed petitions to terminate K.L.D.'s parental rights to D.A.D.-W., who was born January 7, 2014, and R.L.D.-W., who was born on February 1, 2015. The petitions alleged that the children continued to be in need of protection and services and K.L.D. had failed to assume parental responsibility. *See* WIS. STAT. § 48.415 (2) and (6). On March 27, 2017, K.L.D. pled no-contest on the ground she failed to assume parental responsibility. On November 30, 2017, the State petitioned to terminate K.L.D.'s parental rights to her child M.L.D.-W., born on October 12, 2016, after the prior two petitions were filed. The petition alleged that M.L.D.-W., who was detained on October 16, 2016, directly from the hospital, continued to be in need of protection and services. On December 13, 2017, K.L.D. pled no-contest to the petition. After multiple consolidated dispositional hearings involving all three children, the circuit court decided that termination was in the children's best interests and entered orders terminating K.L.D.'s parental rights.

The no-merit report addresses whether there would be arguable merit to a claim that K.L.D.'s no-contest pleas during the grounds phase of the proceedings were invalidly entered.

Prior to accepting a no-contest plea regarding the grounds contained within a termination petition, the circuit court must engage in a colloquy with the parent to assure that the parent is knowingly and voluntarily admitting that grounds for termination exist. *See* WIS. STAT. § 48.422(7); *Oneida Cty. DSS v. Therese S.*, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122.

The circuit court conducted thorough colloquies with K.L.D. before it accepted her no-contest pleas. The circuit court explained to K.L.D. what the State would have to prove to establish that she failed to assume parental responsibility for the children and explained to K.L.D. the constitutional rights she was waiving by entering pleas, including her right to trial either before a jury or to the court. The circuit court ensured that no threats or promises had been made to K.L.D. to coerce her into entering her pleas. To gauge her ability to understand, the court asked K.L.D. her age and questioned her about the amount of schooling she had. The circuit court also ascertained that K.L.D. was not mentally ill, was not under the influence of alcohol or other drugs, and had taken no medication that would influence her ability to understand the proceedings. The court asked K.L.D. whether she had enough time to talk to her lawyers. Based on the court's thorough colloquies with K.L.D. prior to accepting her no-contest pleas, there would be no arguable merit to a claim that K.L.D.'s no-contest pleas were not knowingly, intelligently, and voluntarily entered.

The no-merit report next addresses whether there was a sufficient factual basis for K.L.D.'s no-contest pleas. After accepting K.L.D.'s no-contest pleas, the circuit court heard testimony from Jessica George, a case manager who had previously worked with K.L.D. and her children. The circuit court also heard testimony from Andrea Dexter, another case manager

working with K.L.D. and her children. Their testimony established that grounds existed for K.L.D.'s no-contest pleas. Based on the testimony of the George and Dexter, we conclude that there would be no arguable merit to a claim that there was an insufficient factual basis for K.L.D.'s no-contest pleas.

The no-merit report next addresses whether the circuit court properly exercised its discretion when it decided that it was in the children's best interests to terminate K.L.D.'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).

After hearing extensive testimony at the disposition hearing, the circuit court concluded that termination of K.L.D.'s parental rights was in the children's best interests. The circuit court explained in its written decision that it was beyond question that the children could not return safely to K.L.D.'s home. The circuit court stated that the children had been forced to live in squalid living conditions where they were physically and sexually abused and had been exposed

to their parents' domestic violence and substance abuse as well as to adult sexual activity. The circuit court said that because the children could not safely return to their parents, it needed to address whether all five of K.L.D.'s children, the three youngest of whom are the subjects of this appeal, could safely reside together at the home of their maternal grandmother. Noting that the grandmother wanted to keep the children together under her care, the circuit court said that the two older children were extremely traumatized and one of the manifestations of that trauma was that they consistently victimized their siblings, foster siblings, and classmates physically, sexually, and emotionally. As a result, the court concluded that placement of all the children together would be contrary to the safety and the well-being of the three younger children. The court said that the three younger children would likely be adopted by their foster mother and they had no substantial relationship with either parent, but they have a significant relationship with each other. The record shows that the circuit court considered all of the statutory factors under WIS. STAT. § 48.426(3) and reached a reasoned and reasonable conclusion. Therefore, there would be no arguable merit to a challenge to the circuit court's decision that termination was 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 K.L.D.'s parental rights. Any further proceedings would be without arguable merit.

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

IT IS FURTHER ORDERED that Attorney Eileen T. Evans is relieved of any further representation of K.L.D. on appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals