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June 4, 2019

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

2019AP227-NM State of Wisconsin v. C.J. (L.C. # 2017TP116)
2019AP228-NM State of Wisconsin v. C.J. (L.C. # 2017TP117)

Before Kessler, 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] 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.

C.J. appeals from trial court orders terminating her parental rights to her two children, M.W. and V.W.[2] C.J.'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); *see also* WIS. STAT. RULES 809.107(5m) & 809.32. C.J. filed a response. This court has considered counsel's report, C.J.'s response, and has independently reviewed the record. This court agrees with counsel's conclusion that further proceedings would lack arguable merit. Therefore, the orders terminating C.J.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

In May 2016, four-year-old M.W. and one-year-old V.W. were removed from C.J.'s home. Their removal was based on allegations that C.J.'s then-seventeen-year-old son had hit and choked M.W. Documentation relating to the children's removal further alleged that C.J.'s seventeen-year-old son was allowed to "discipline" M.W. because he was the only one in the family who could "keep [M.W.] in check." C.J. allegedly recognized that her older son was "too aggressive" with M.W. and "hit[] him too hard," yet permitted it to happen.

In August 2016, the children were found to be in need of protection or services. *See* WIS. STAT. § 48.13 (2015-16) (governing "CHIPS" cases). Following their removal, the children remained continuously placed outside C.J.'s home.

In June 2017, the State petitioned to terminate C.J.'s parental rights to both children based on WIS. STAT. § 48.415(2) (continuing CHIPS) and § 48.415(6) (failure to assume parental responsibility).

[2] The parental rights of the father of M.W. and V.W. were also terminated and are not at issue in these appeals.

The cases proceeded to a jury trial on grounds. At the trial, the jury heard testimony from the following individuals: the initial assessment supervisor with the Division of Milwaukee Child Protective Services (DMCPS) who was involved in the removal of M.W. and V.W.; two case managers and the family support specialist who were involved with the family; V.W.'s foster parent; a psychologist who evaluated C.J.; and C.J. The jury found that the State had proved both grounds alleged in the petitions. The trial court found C.J. unfit.

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

The no-merit report addresses three issues: (1) whether the trial court complied with the statutory time limits; (2) whether there was credible evidence to support the jury verdicts; and (3) whether the trial court properly exercised its discretion when it found that terminating C.J.'s parental rights was in M.W. and V.W.'s best interests. 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.

In her response to the no-merit report, C.J. writes that she is in the process of relocating, claims the police department discriminated against her family, and submits, among other things, documentation to substantiate her completion of various programs. Her claims do not amount to issues of arguable merit for further proceedings. Instead, C.J.'s claims relate to her dissatisfaction with how the facts were presented and found by the factfinders below and her desire that this court view the facts in a different light. However, only the trier of fact may

weigh evidence, determine credibility, or find facts; this court cannot. *See* ***Wurtz v. Fleischman***, 97 Wis. 2d 100, 107-08, 293 N.W.2d 155 (1980).

The first potential issue counsel raises is whether there is any arguable merit to a claim the court failed to comply with mandatory time limits, thereby losing competency to proceed. *See* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. After a petition to terminate parental rights is filed, the trial court has thirty days to hold an initial hearing and ascertain whether any party wishes to contest the petition. WIS. STAT. § 48.422(1). If a party contests the petition, the court must set a fact-finding hearing to begin within forty-five days of the initial hearing. § 48.422(2). If grounds for termination are established, the court is to proceed with an immediate disposition hearing, although that may be delayed up to "no later than [forty-five] days after the fact-finding hearing" if all the parties agree. *See* WIS. STAT. § 48.424(4)(a).

These statutory time limits cannot be waived. ***April O.***, 233 Wis. 2d 663, ¶5. 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).

This court has carefully examined the record and agrees with the no-merit report that at each hearing, the time limits were observed or tolled for good cause 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, this court addresses whether the evidence was sufficient for the jury to find that grounds existed to terminate C.J.'s parental rights. "Grounds for termination must be prove[d]

by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). This court gives significant deference to the jury's verdict and may not overturn it if any credible evidence supports what the jury has found. *See* ***Deannia D. v. Lamont D.***, 2005 WI App 264, ¶9, 288 Wis. 2d 485, 709 N.W.2d 879.

To prove continuing CHIPS, the State had to establish that M.W. and V.W. were adjudged children in need of protection or services and placed outside the home for a cumulative total period of at least six months pursuant to one or more court orders containing the required TPR notice,[3] the Bureau of Milwaukee Child Welfare, now known as the Division of Milwaukee Child Protective Services (DMCPS), made a reasonable effort to provide court-ordered services, C.J. failed to meet the conditions established for the safe return of M.W. and V.W. to her home, and it was substantially likely that C.J. would not meet the conditions of return within nine months after the grounds-phase trial. *See* WIS. STAT. § 48.415(2)(a) (2015-16).[4] To establish a failure to assume parental responsibility, the State had to prove that C.J. did not have a substantial parental relationship with M.W. or V.W., i.e., that C.J. had not accepted and exercised significant responsibility for either child's daily supervision, education, protection, and care. *See* § 48.415(6).

Two case managers who worked with the family testified to the various conditions of return that C.J. had to meet, the services that were offered to her, and C.J.'s failure to not only

[3] Because there was no dispute in the evidence as to this element, the trial court answered it affirmatively for the jury.

[4] Effective April 6, 2018, which was after the jury trial in this case, there no longer needs to be proof that there is a substantial likelihood that the parent will not meet the conditions for return within a nine-month period. *See* 2017 Wis. Act 256, § 1.

meet all of the conditions of return, but her failure to make all of the requisite behavioral changes. One case manager testified that each month, she attempted to go over the conditions required for C.J. to have M.W. and V.W. returned; however, over the ten months that the case manager was involved, C.J. had not made any progress. The family support specialist testified that following the children's removal, C.J.'s visits never progressed to the point where they were unsupervised due to C.J.'s inability to control M.W.'s behaviors.

In his no-merit report, counsel correctly determines that any challenge to the sufficiency of the evidence would be without arguable merit.

Finally, we turn to the issue of whether there would be any merit to challenging the trial court's decision to terminate C.J.'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 V.W.'s foster parent, a maternal aunt, the family case manager, and C.J. The trial court made findings in a written decision that contemplated the statutory factors as they related to the children. For instance, as to V.W., the trial court found that "[g]iven the trauma history of the children and the remediating impact [V.W.]'s relationship with [his foster parents] has occasioned, it would be directly contrary to his best interests to end that foundational relationship after this prolonged period[.]" At the time, V.W. had been with his foster parents for more than half of his life.

As to M.W., however, the trial court noted that he was not similarly situated to V.W. in that he did not have a committed long-term caregiver. The trial court explained that "efforts to achieve and maintain a common sibling placement created an overtly dangerous circumstance for [V.W.] due to [M.W.]'s abuse and aggression." As a result, M.W. required a placement where he was the only child in the residence. The trial court directed DMCPS to consider M.W.'s maternal aunt who had surfaced as someone who was interested in M.W.'s placement fourteen months after M.W. was removed from C.J.'s home. Although M.W. did not have an identified adoptive resource, the trial court found that he was adoptable. The trial court went on to conclude that "[o]nly adoption offers these children physical and emotional safety and, hopefully, an environment in which they can heal and flourish."

The trial court's findings as to the 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 C.J.'s parental rights to M.W. and V.W. are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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

Sheila T. Reiff
Clerk of Court of Appeals