



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 3, 2019

To:

Hon. David M. Reddy
Circuit Court Judge
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121

Ashley Keough
Juvenile Clerk
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Estee Elizabeth Scholtz
Assistant Corporation Counsel
Walworth County Judicial Center
P.O. Box 1001
Elkhorn, WI 53121-1001

Steven Zaleski
The Zaleski Law Firm
10 E. Doty St., Ste. 800
Madison, WI 53703

Michael J. Fitzsimmons
Fitzsimmons Law Office LLC
P. O. Box 744
Elkhorn, WI 53121-0744

J.D.S.
1620 53rd St., No. 3
Kenosha, WI 53140

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

2019AP865-NM

In re the termination of parental rights to A.L.S., a person under the age of 18: Walworth County Department of Health & Human Services v. J.D.S. (L.C. #2018TP6)

Before Reilly, P.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.

J.D.S. appeals from an order terminating his parental rights to his daughter, A.L.S. J.D.S.'s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. J.D.S. received a copy of the report and has not filed a response. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the order. WIS. STAT. RULE 809.21.

A.L.S. was taken into physical custody in June 2016, after she had been admitted to Children's Hospital of Wisconsin for ingesting lithium. At the time, she was fifteen months old, and there was concern regarding neglect or the level of supervision which allowed for her to access the lithium. She was subsequently found to be a child in need of protection or services. J.D.S. was incarcerated for most of the period that A.L.S. was in out-of-home care.

In March 2018, the Walworth County Department of Health and Human Services (the Department) petitioned to terminate J.D.S.'s parental rights on grounds that (1) he failed to assume parental responsibility; and (2) A.L.S. was a child in continuing need of protection or services. *See* WIS. STAT. § 48.415(2) and (6). After a bench trial, the circuit court found that both grounds were proven and made the requisite finding of unfitness. It then terminated J.D.S.'s parental rights after a dispositional hearing. This no-merit appeal follows.

The no-merit report addresses whether the evidence presented at trial was sufficient to sustain the circuit court's finding of unfitness. In reviewing this issue, we must consider the evidence in a light most favorable to the determination made by the court. *See Tang v. C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶19, 301 Wis. 2d 752, 734 N.W.2d 169. Our review of the trial transcripts persuades us that the Department produced ample evidence to prove both grounds for termination, i.e., that J.D.S. failed to assume parental responsibility and that A.L.S.

was a child in continuing need of protection or services. Once the court found that these grounds were proven, it was required to find J.D.S. unfit. *See* WIS. STAT. § 48.424(4).

The no-merit report also addresses whether the circuit court properly exercised its discretion at the dispositional hearing in terminating J.D.S.'s parental rights. The court's determination of whether to terminate parental rights is discretionary. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the "best interests of the child" is the prevailing standard, and the court is required to consider the factors delineated in sec. 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Here, the circuit court's remarks reflect that it considered the appropriate factors. Those factors weighed in favor of a determination that it was in the best interests of A.L.S. to terminate J.D.S.'s parental rights.

Finally, the no-merit report addresses several other issues, including (1) whether the circuit court adhered to statutory deadlines; (2) whether J.D.S. properly waived his right to a jury trial; and (3) whether J.D.S. received effective assistance of trial counsel. We agree with appellate counsel that these issues do not have arguable merit for appeal, and we will not discuss them further.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Steven Zaleski of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of further representation of J.D.S. 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