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DISTRICT I

Amended November 21, 2019 as to second paragraph

November 14, 2019

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

2019AP1869	State of Wisconsin v. V.T. (L.C. # 2017TP73)
2019AP1870	State of Wisconsin v. V.T. (L.C. # 2017TP74)
2019AP1871	State of Wisconsin v. V.T. (L.C. # 2017TP75)

Before Dugan, J.¹

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.

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).

V.T. 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 (2017-18). V.T. was served with a copy of the report and advised of her right to file a response. She has not filed a response. Based on our review of the no-merit report and our independent review of the circuit court record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes that no issue of arguable merit could be raised on appeal and affirms the orders.

V.T.'s children were removed from V.T.'s care in May 2014, when they were approximately nine, five, and three years old. Except for a near six-week trial reunification period between June and July 2016, the children were continuously out of V.T.'s care since May 2014. The petitions for the termination of V.T.'s parental rights was filed May 4, 2017, and alleged that the children were in continuing need of protection and services (CHIPS) and that V.T. had failed to assume parental responsibility. See WIS. STAT. § 48.415(2) and (6).

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. Here, on the morning of the second day of the jury trial, May 8, 2018, V.T. pled no contest to the continuing CHIPS ground for termination.²

The second phase is the dispositional phase. *Id.*, ¶28. The **circuit** 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 interest of the child, 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.*

Here, the disposition hearing was held on two dates and the circuit court heard testimony from the children’s foster mother, their Treatment Foster Care Specialist, their case supervisor, V.T., the children’s father, the oldest child, and the children’s maternal grandmother. The circuit court determined that the children could not be returned to their parents. It found that the foster mother was an adoptive resource for all three children. However, the oldest child, nearly fourteen years old, testified that her preference was to live with her maternal grandmother. The circuit court found that the grandmother could not parent all three of the children. Faced with the possibility that the younger children would be separated from the oldest child, the circuit court wanted the foster mother, grandmother, and oldest child to engage in family therapy in attempt to reconcile their relationships and achieve a viable plan to allow the children to maintain a

² In determining the factual basis for V.T.’s plea, the circuit court used the standard that “there is a substantial likelihood that the parent will not meet these conditions [of return] within the 9-month period following the fact-finding hearing” WIS. STAT. § 48.415(2)(a)3. (2015-16). The court did not apply the arguably less burdensome standard adopted by 2017 Wis Act 256, effective April 6, 2018, that does not require any proof that the parent will not meet conditions for return unless the child has been outside the home for less than fifteen of the most recent twenty-two months.

connection with their grandmother in the event all three children were placed with the foster mother. The circuit court reopened the dispositional phase hearing for a third day of evidence and subsequently heard from the family therapist who had three sessions with the foster mother, grandmother, and oldest child regarding visitation with the grandmother.³ The circuit court also heard from the case manager and the children's father.

The court issued a written decision concluding that termination of parental rights was in the children's best interests. It found again that the children's grandmother could not be a full-time caregiver for all three children. It did not allow for the oldest child to live with the grandmother and have the other two children adopted by the foster mother because it found that the children's relationship to each other is the primary relationship in their lives. It recognized that the foster mother was willing and able to allow the children to maintain their relationship with the grandmother.

Counsel's no-merit report addresses as potential appellate issues whether any statutory time limit impermissibly lapsed, whether the circuit court met its obligations under WIS. STAT. § 48.422(7) in accepting V.T.'s no-contest plea to the continuing CHIPs ground, whether it properly accepted her plea, including whether adequate proof of the ground was made, and whether the dispositional decision was an erroneous exercise of discretion or otherwise failed to consider the best interests of the children. Our review of the record confirms counsel's conclusion that these potential issues lack arguable merit. The no-merit report sets forth an

³ The first family therapy session involved only the foster mother and grandmother. The oldest child participated in the second and third sessions.

adequate discussion of the potential issues to support the no-merit conclusion and we need not address them further.

We have also considered whether the circuit court properly denied V.T.'s request for new counsel at the start of the third day of the disposition hearing. *See State v. Jones*, 2010 WI 72, ¶23, 326 Wis. 2d 380, 797 N.W.2d 378 (whether trial counsel should be relieved and a new attorney appointed is a matter within the circuit court's discretion). The court recognized that V.T. had already been appointed substitute counsel and had been told at that time that she was not going to be afforded a new attorney in the future. The court properly exercised its discretion in refusing to delay the proceeding further by granting V.T.'s request for a new attorney.

Our review of the records discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the orders terminating V.T.'s parental rights, and discharge appellate counsel of the obligation to represent V.T. further in these appeals.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of any further representation of V.T. in these matters. *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