



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 I

December 6, 2019

To:

Hon. Gwendolyn G. Connolly
Circuit Court Judge
Children's Court, Room 1530
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226-3532

Josh Steib
Juvenile Clerk
Children's Court Center
10201 W. Watertown Plank Rd.
Milwaukee, WI 53226

Lauren Jane Breckenfelder
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202

Molly J. Jasmer
Grady, Hayes & Neary LLC
N14W23777 Stone Ridge Dr. - Ste. 20
Waukesha, WI 53188-1140

Leon W. Todd III
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202-4116

Christie A. Christie
Legal Aid Society of Milwaukee
10201 Watertown Plank Rd.
Milwaukee, WI 53226-3532

K. J. S.

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

2019AP1941-NM In re the termination of parental rights to K.R.S., a person under the
age of 18: D.L.S. v. K.J.S. (L.C. # 2018TP260)

Before Dugan, 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).

K.J.S. appeals from an order terminating his parental rights to his daughter. His appellate attorneys have filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and

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.

809.32. K.J.S. was served with a copy of the report and advised of his right to file a response. He 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 summarily affirms the order. *See* WIS. STAT. RULE 809.21.

After K.J.S.'s wife learned that K.J.S. was the subject of an investigation by an Internet Crimes Against Children Task Force, K.J.S. moved out the home that he shared with his wife and their daughter. That was in November 2011, and his daughter was two years old at the time. The child lived solely with her mother while her mother sought a divorce from K.J.S. By March 2012, K.J.S.'s supervised visitation with the child was suspended as he faced a charge of possession of child pornography. In July 2012, the child was found in need of protection and services and K.J.S. was prohibited from having any contact with her except for cards, letters, and gifts. The child's parents were divorced in December 2012 and the mother was awarded sole custody and primary physical placement. K.J.S. was denied periods of physical placement.

In June 2013, K.J.S. was sentenced to serve three years of initial confinement and ten years of extended supervision. A condition of K.J.S.'s extended supervision was that he have no contact with any child under the age of eighteen without approval of his supervising agent.

The child's mother petitioned for the termination of K.J.S.'s parental rights in November 2018. At that time, it had been more than seven years since K.J.S. had contact with his daughter. The petition for termination of parental rights alleged as grounds that K.J.S. had been denied periods of physical placement or visitation for more than one year and that he had failed to assume parental responsibility. *See* WIS. STAT. §§ 48.415(4) 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.

The second step 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.*

As to grounds, summary judgment was granted on the ground that K.J.S. had been denied periods of physical placement with his daughter. At the disposition phase, the circuit court heard testimony from the child’s therapist, an agent with the Internet Crimes Against Children Task Force, a psychologist who had worked with the child’s mother and paternal grandmother on their relationship and the grandmother’s visitation with the child, the child’s violin teacher, both the maternal and paternal grandmothers, the child’s mother, and K.J.S.’s supervising agent who specializes in supervising sex offenders. In determining that the termination of K.J.S.’s parental rights was in the child’s best interest, the circuit court addressed the relevant factors and found that the child would enter into more stable relationships if K.J.S.’s parental rights were terminated.

The no-merit report addresses whether summary judgment was proper and whether the circuit court erroneously exercised its discretion at the disposition phase by ordering the termination of K.J.S.'s parental rights. The report also observes that the circuit court misspoke when it indicated that a video K.J.S. surreptitiously took of his sister-in-law in a bathroom had been posted by K.J.S. on an internet porn site when in fact K.J.S. posted pictures of his sister-in-law, not the video, on the site. The report concludes that any claim that the circuit court's ultimate decision was affected by the mistake regarding the nature of the posted content is without arguable legal merit. Our review of the record confirms the no-merit report's conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion and we need not address them further.

Our review of the records discloses no other potential issues for appeal.² Accordingly, we accept the no-merit report, affirm the order terminating K.J.S.'s parental rights, and discharge the appellate attorneys of the obligation to represent K.J.S. further in this appeal.

Therefore,

IT IS ORDERED that the order terminating parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

² Although time limits set forth in WIS. STAT. ch. 48 for termination proceedings were not met, continuances "upon a showing of good cause in open court" are allowed. WIS. STAT. § 48.315(2). The record confirms that time limits were tolled for good cause.

IT IS FURTHER ORDERED that Attorneys Lauren J. Breckenfelder and Leon W. Todd are relieved of further representation of K.J.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