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DISTRICT I

December 16, 2019

To:

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

2018AP2281-NM	In re the termination of parental rights to S.A.D.T., a person under the age of 18: State of Wisconsin v. M.D.L. (L.C. # 2017TP145)
2018AP2282-NM	In re the termination of parental rights to S.L., a person under the age of 18: State of Wisconsin v. M.D.L. (L.C. # 2017TP146)
2018AP2283-NM	In re the termination of parental rights to S.R.L., a person under the age of 18: State of Wisconsin v. M.D.L. (L.C. # 2017TP147)

Before Brash, 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).

M.D.L. appeals from orders terminating his parental rights to his three children. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. M.D.L. was served with a copy of the no-merit report and advised of his right to file a response, and he has not done so. Based on our review of the no-merit report and our independent review of the circuit court records 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 orders. *See* WIS. STAT. RULE 809.21.

The oldest of M.D.L.'s three children was first removed from her mother's care in October 2013, when she was three months old. She was found to be a child in need of protection and services (CHIPS) and except for a trial reunification period of placement with her mother for the period between April 2015 and May 2016, she remained placed outside a parent's home and in foster care. M.D.L.'s other two children were removed from their mother's care in May 2016, when they were approximately seventeen months and six months old. In November 2016, CHIPS orders placed the children outside a parent's home and in foster care. The children never lived with M.D.L. Petitions to terminate M.D.L.'s parental rights were filed in July 2017, 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.

alleged as grounds that the children were continuing CHIPS and that M.D.L. had failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (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 County D.H.S.S. 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 trial 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.* Whether termination is in the children's best interests involves the exercise of discretion by the circuit court. *See id.*

At the grounds phase, M.D.L. entered no contest pleas to the allegations of failure to assume parental responsibility as to all three children. The circuit court heard the testimony of the children's case manager as proof of M.D.L.'s failure to assume parental responsibility. It then found M.D.L. to be an unfit parent, as the circuit court was required to do.

At the disposition phase, the circuit court heard testimony from the children's case manager, their foster mother, the supervisor with regards to visits the children had with their

mother, their maternal grandmother, their mother, and M.D.L. In determining that the termination of M.D.L.'s parental rights was in the children's best interest, the circuit court addressed the relevant factors and found that there would be no harm in severing M.D.L.'s relationship with the children and that termination would allow the children to enter into more permanent and stable relationships.²

After an appeal was filed, and on remand from this court, *see* WIS. STAT. RULE 809.107(6)(am), M.D.L. moved to withdraw his no contest pleas on the grounds that they were not knowingly, intelligently, and voluntarily made because he lacked an understanding that he was forfeiting his defenses to the continuing CHIPS grounds, the proof of which would have demonstrated he was in fact a fit parent meeting the conditions of return, that he had a viable defense to the failure to assume parental responsibility ground because the children had been removed as a result of conduct of the mother, and that he had a claim that WIS. STAT. § 48.415(6) was unconstitutional as applied to him because the CHIPS orders prevented him from assuming responsibility for the daily care of the children. M.D.L. made a related motion for the circuit court to take judicial notice of a psychological report concerning M.D.L. which had been filed in the CHIPS cases. *See* WIS. STAT. § 902.01. M.D.L. argued that the report would give the circuit court insight into M.D.L.'s cognitive functioning when he entered his no contest pleas. The circuit court denied the motion for judicial notice because the report contained facts that could be subject to reasonable dispute. On the motion for postdisposition relief, the circuit court heard M.D.L.'s

² The parental rights of the children's mother were also terminated. The termination orders as to the mother were affirmed on appeal. *See State v. S.M.T.*, Nos. 2018AP2113, 2018AP2114, 2018AP2115, unpublished slip op. (WI App Jan. 29, 2019).

testimony and that of M.D.L.'s trial counsel. It denied the postdisposition motion. The circuit court concluded that the plea-taking court³ had conducted an adequate colloquy with M.D.L. which firmly established M.D.L.'s understanding of the no contest plea and that M.D.L.'s testimony that he had misunderstandings about the no contest pleas was not credible.

Counsel's no-merit report addresses whether there were any procedural defects in the proceedings, including whether the circuit court's ruling on the motion for judicial notice was an erroneous exercise of discretion,⁴ whether M.D.L.'s no contest pleas were properly accepted, whether the circuit court properly denied the postdisposition motion to withdraw M.D.L.'s no contest pleas, and whether the circuit court properly exercised its discretion in determining that termination of M.D.L.'s parental rights was in the best interest of the children. Our review of the records confirms counsel'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. Accordingly, we accept the no-merit report, affirm the orders terminating M.D.L.'s parental rights, and discharge appellate counsel of the obligation to represent M.D.L. further in these appeals.

Upon the foregoing reasons,

³ The no contest pleas were taken by Judge David Feiss, who also presided over the disposition hearing. Judge Gwen Connolly heard and decided the postdisposition motion.

⁴ See *Schmiedeck v. Gerard*, 42 Wis. 2d 135, 142, 166 N.W.2d 136 (1969) (the taking of judicial notice is within in the circuit court's discretion).

IT IS ORDERED that the orders terminating M.D.L.'s parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of any further representation of M.D.L. 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