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DISTRICT III

February 4, 2020

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

2019AP2353-NM Burnett County Department of Human Services v. D. M. S.
(L. C. No. 2019TP1)

Before Hruz, 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).

Counsel for D.M.S. has filed a no-merit report concluding there is no basis to challenge an order concerning the termination of her parental rights to her son.² D.M.S. has been advised

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.

of her right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there are no issues of arguable merit that could be raised on appeal and summarily affirm.

D.M.S.'s son was found to be a child in continuing need of protection and/or services (CHIPS), and a dispositional order was entered. A petition to terminate parental rights was filed, based on the grounds of CHIPS and failure to assume parental responsibility. WIS. STAT. § 48.415(2), (6). D.M.S. appeared with counsel at an initial hearing to contest the termination proceedings, and she was provided with a written order, which D.M.S. signed, requiring her to appear at future hearings in the case. D.M.S. appeared at the pretrial hearing, but she failed to appear for the final hearing.

At the final hearing, D.M.S.'s trial attorney advised the circuit court that he had been in contact with her via text messages. D.M.S. told her attorney that she would not be attending due to a "family emergency." When the attorney asked what the emergency was, D.M.S. failed to further respond. A social worker testified that D.M.S. told the Family Resource Center that she "was not going to appear in court this week." The social worker attempted to contact D.M.S. by text and voicemail but received no response. A motion for default was made. The guardian ad litem (GAL) agreed D.M.S. should be held in default. The court granted the default, and it found D.M.S.'s conduct was intentional, deliberate and egregious.

² The circuit court indicated that the only individual who could potentially be the father of the child had passed away prior to the final hearing, and he was cremated, so there was no ability to get a DNA sample for purposes of a paternity test. In any event, we shall not further address any issue regarding the termination of parental rights regarding the child's father.

Testimony was provided to prove that grounds existed to terminate D.M.S.'s parental rights. The child's social worker testified that the child had been removed from D.M.S.'s care—as a result of a temporary physical custody order—since his birth over three years prior. The child had been placed into a licensed foster home, where the child's two siblings had been previously placed. The child had remained in the foster home since that time. The social worker further testified that D.M.S. continued to be in noncompliance with the conditions for the return of her son as set forth in the dispositional order, and that she had not completed any of the conditions. D.M.S. was living with a man and “it was not a safe place for her to be.” Housing options were offered, but the social worker did not hear back from D.M.S. Prior to that time, D.M.S. was homeless and living with another man in a garage with no ventilation, no water, and no heat other than a propane heater.

The social worker also testified that D.M.S. had been provided three years of services,

and that's just with [this child] so the Department has tried several types of housing, AODA services because there [were] indications at times possibly that there was drug use going on, mental health services which means any service provider within Burnett County, Polk County or surrounding areas, case management services, transportation, gas cards, family interaction. I have laid it out in the Dispositional Order of all the services the Department has provided and over a five-year time frame that I have been working with [D.M.S] she's been provided every service to her through Burnett County.

The social worker further testified that D.M.S. had no substantial relationship with her son, and that parental rights had recently been terminated regarding another son. There had been no improvement in D.M.S.'s follow-up since that time, and she had made no attempts to comply with the conditions ordered by the circuit court. D.M.S. never exercised any concern for her son's supervision, education, protection or care. The social worker also testified that D.M.S. had

been involved with the County since 2006 and “never completed a [dispositional] order with all five of her children so there is a long history of her not being able to complete a CHIPS order.”

The circuit court found that grounds existed for termination of D.M.S.’s parental rights based on CHIPS and failure to assume parental responsibility. The court also found her to be an unfit parent.

At the dispositional phase of the case, the foster mother testified that the child had been in her and her husband’s care for almost three and one-half years, since two days after his birth. They also had placement of D.M.S.’s two other children, whom they had recently adopted. She testified they were willing and able to adopt this child as well.

At the conclusion of the testimony, the GAL argued that it was in the child’s best interest to grant the termination of rights. The GAL emphasized that the child had been with the foster parents

for three years, since he was two days old so the [foster parents], their home is his home, and they are his family and he is with his siblings. So I believe it’s consistent with [the child’s] best interest to grant the TPR so that he can be adopted by the [foster family] and just formalize that family relationship that they created over the last three years.

After considering the statutory factors under WIS. STAT. § 48.426, the circuit court found it was in the child’s best interest to terminate D.M.S.’s parental rights. The court therefore granted the termination of parental rights.

The no-merit report addresses potential issues regarding whether the circuit court complied with statutory time limits; whether the court properly exercised its discretion by finding D.M.S. in default on the grounds phase; whether sufficient evidence supported the

finding that D.M.S. was an unfit parent; and whether sufficient evidence supported the determination that termination of D.M.S.'s parental rights was in her son's best interest. Upon our independent review of the record, we agree with counsel's description, analysis and conclusion that any challenge to these issues would lack arguable merit.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the order is affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Gregory Bates is relieved of further representing D.M.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