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DISTRICT IV

March 10, 2020

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

2020AP169-NM In re the termination of parental rights to J.H., a person under The age of 18: Rock County DHS v. T.M. (L.C. # 2018TP58)

Before Kloppenburg, 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).

T.M. appeals the circuit court order terminating her parental rights to J.H. Attorney Karen Lueschow, appointed counsel for T.M., has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m). T.M. was sent a copy of the report and has not filed a response. Upon

[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.

consideration of the report and an independent review of the record, I conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, I summarily affirm the circuit court's order. *See* WIS. STAT. RULE 809.21.

The Rock County Human Services Department petitioned for the termination of T.M.'s parental rights, alleging as the ground a continuing need of protection or services. T.M. initially contested the petition but later decided to consent to the termination of her parental rights. Based on T.M.'s consent, the circuit court proceeded to the dispositional phase of proceedings. After taking evidence at a dispositional hearing, the court terminated T.M.'s parental rights.

The no-merit report addresses whether T.M.'s consent to the termination of her parental rights was knowing and voluntary. For the reasons that follow, I agree with counsel that there is no arguable merit to this issue.

Under WIS. STAT. § 48.41(2) and ***T.M.F. v. Children's Serv. Soc'y***, 112 Wis. 2d 180, 332 N.W.2d 293 (1983), the circuit court may accept a parent's consent to termination of parental rights only after ascertaining that the consent is informed and voluntary. As relevant here, the statute provides:

> The court may accept a voluntary consent to termination of parental rights only as follows:
>
> (a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary.

Section 48.41(2). In ***T.M.F.***, the court further explained the court's obligation as follows:

> We do not and cannot set forth precisely what information must be given to the parent in each termination hearing or what questions must be asked or what responses must be elicited on the record to ensure that a sufficient judicial inquiry is made to determine that the consent is voluntary and informed. Each parent and each family will be different. In this nonadversarial setting, the circuit court has a unique opportunity and a special obligation to be vigilant in protecting the interests of all parties. We do set forth the basic information the circuit court must ascertain to determine on the record whether consent is voluntary and informed:
>
> 1. the extent of the parent's education and the parent's level of general comprehension;
>
> 2. the parent's understanding of the nature of the proceedings and the consequences of termination, including the finality of the parent's decision and the circuit court's order;
>
> 3. the parent's understanding of the role of the guardian ad litem (if the parent is a minor) and the parent's understanding of the right to … counsel…;
>
> 4. the extent and nature of the parent's communication with the guardian ad litem, the social worker, or any other adviser;
>
> 5. whether any promises or threats have been made to the parent in connection with the termination of parental rights; [and]
>
> 6. whether the parent is aware of the significant alternatives to termination and what those are.

T.M.F., 112 Wis. 2d at 196-97.

Here, during the hearing at which the circuit court accepted T.M.'s consent to the termination of her parental rights, T.M. submitted a detailed sworn written statement that T.M. had signed in which T.M. indicated that she understood the information the court was required to ascertain at the hearing, including the consequences of terminating her parental rights. As part of the written statement, T.M. stated that she was consenting to the termination of her parental rights, and that her consent was informed and voluntary.

Through her counsel, T.M. requested that the circuit court accept the written statement that she had signed in lieu of a full-length colloquy. The court agreed to accept the written statement, supplemented by questioning of T.M. by counsel and a truncated colloquy by the court.

T.M. was sworn in and examined first by counsel. T.M. affirmed that she reviewed the entire written statement with counsel, that she understood everything in the statement, that counsel answered any questions she had, and that she had no further questions. T.M. acknowledged that she had reviewed her constitutional rights with counsel, and that she understood those rights. In addition, T.M. affirmed that, as set forth in the written statement, she believed that the termination of her parental rights was in J.H.'s best interest. T.M. agreed that she felt "very comfortable" with her decision to consent.

In her colloquy with the circuit court, T.M. stated that she had sufficient time to consult with counsel and to think about her decision. She reaffirmed that she understood the written statement that she had signed, and that she was able to ask counsel questions about it. T.M. further affirmed that no one had threatened her or made any promises in exchange for her agreement to terminate her parental rights. Based on T.M.'s sworn written statement, counsel's questioning, and the circuit court's colloquy with T.M., the court determined that T.M.'s consent to the termination of her parental rights was knowing and voluntary.

I agree with no-merit counsel that, under these circumstances, there is no arguable basis to challenge whether T.M.'s consent was knowing and voluntary. A truncated colloquy that omits necessary information would ordinarily not be sufficient by itself to comply with WIS. STAT. § 48.41(2)(a) and ***T.M.F.*** However, when the circuit court's colloquy here is considered

along with T.M.'s sworn written statement, T.M.'s request to proceed based on the statement, and counsel's questioning, the record demonstrates that the court ascertained that T.M. understood the necessary information so that the court could properly "determine on the record whether consent is voluntary and informed." *See* ***T.M.F.***, 112 Wis. 2d at 196.

The no-merit report next addresses whether there is arguable merit to challenging the circuit court's decision at the dispositional phase of proceedings. I agree with counsel that there is no arguable merit to this issue.

"The ultimate decision whether to terminate parental rights is discretionary." ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The circuit court must consider the factors set forth in WIS. STAT. § 48.426, giving paramount consideration to the best interest of the child. *See* ***Gerald O.***, 203 Wis. 2d at 153-54.

Apart from the prevailing factor of the child's best interest, the other statutory factors are: (1) the likelihood of the child's adoption after termination; (2) the age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home; (3) whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships; (4) the wishes of the child; (5) the duration of the separation of the parent from the child; and (6) whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements. *See* WIS. STAT. § 48.426(3).

Here, the record shows that the circuit court expressly considered each of these factors in light of the evidence, which included testimony by T.M.'s case manager and a written report. Based on the evidence, the court made extensive factual findings and reasonably determined that the termination of T.M.'s parental rights to J.H. was in J.H.'s best interest. Although it is unnecessary to restate all of the court's findings and evidence, I will summarize some of the findings and evidence that were most significant.

J.H. was removed from T.M.'s home in February 2017, when J.H. was about five months old. By the time of the dispositional hearing, in October 2019, J.H. had been placed with the same foster parents since July 2017. J.H. was then three years old and in good health, without any physical or psychological issues. She was bonded to her foster parents, and referred to them as "Mommy" and "Daddy." The foster parents expressed interest in adopting her. Based on these and other circumstances, the circuit court found that there was a high likelihood of adoption if T.M.'s parental rights were terminated.

The circuit court also found that J.H. did not have a substantial relationship with T.M. or other family members and, consequently, that it would not be harmful to J.H. to sever those relationships. T.M.'s case manager described T.M.'s contact with J.H. as "sporadic[]." There was evidence that, during T.M.'s visits with J.H., T.M. was "not very engaged" and not "attentive" to J.H., and that J.H. would seek comfort from an adult other than T.M.

J.H. did not express her wishes one way or the other with respect to adoption by her foster parents, but the circuit court reasonably determined that J.H.'s wishes were not a significant factor given J.H.'s young age. The court noted that J.H.'s guardian ad litem determined that the termination of T.M.'s parental rights was in J.H.'s best interest.

The circuit court carefully considered T.M.'s contention that a viable alternative disposition was to place J.H. in a guardianship with T.M.'s cousin. The court rejected that alternative after considering several relevant factors, including the likelihood that J.H. would have a more stable and permanent family relationship if adopted by her foster parents. The court acknowledged T.M.'s cousin's willingness to accept placement, but found that T.M's cousin's relationship with J.H. was "minimal at best." This finding was supported by T.M.'s cousin's testimony. She testified that the last time she saw J.H. face-to-face was in the summer of 2018, more than a year before the hearing, and that the last time before that was prior to J.H.'s removal from T.M.'s home in February 2017. The court found that placing J.H. with T.M.'s cousin "would require [J.H.] to basically start off a new relationship with a person who is going to take care of her." The court acknowledged that there would be benefits to placing J.H. in a guardianship with a family member, but found that those benefits were outweighed by other factors, including that J.H. had spent the majority of her life with her foster parents. There is no arguable merit to contending that the circuit court erroneously exercised its discretion to reject the alternative of placing J.H. in a guardianship with T.M.'s cousin.

This court's review of the record discloses no other arguably meritorious issue for appeal.

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Karen Lueschow is relieved of any further representation of T.M. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals