



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

June 9, 2020

To:

Hon. Mark A. Sanders
Safety Building, Rm. 620
821 W. State St.
Milwaukee, WI 53233-1427

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

Gregory Bates
Bates Law Offices
P.O. Box 70
Kenosha, WI 53141-0070

Katie L. Gutowski
Vel R. Phillips Justice Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226-3532

Tawny R. Brooks
Brooks Law LLC
P.O. Box 170074
Milwaukee, WI 53217-8000

Division of Milwaukee Child Protective
Services
Dr. Robin Joseph
635 North 26th Street
Milwaukee, WI 53233-1803

Linnea J. Matthiesen
Legal Aid Society of Milwaukee, Inc.
10201 Watertown Plank Road
Milwaukee, WI 53226

M.S. Sr.

Steven Zaleski
The Zaleski Law Firm
10 E. Doty St., Ste. 800
Madison, WI 53703

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

2020AP797-NM

In re the termination of parental rights to M.S., Jr., a person under
the age of 18: State of Wisconsin v. M.S., Sr. (L.C. # 2018TP213)

Before Brash, P.J.¹

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.

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.S., Sr. appeals from an order terminating his parental rights to his son, M.S., Jr. M.S., Sr.'s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. M.S., Sr. received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the order. WIS. STAT. RULE 809.21.

M.S., Jr. was taken into protective custody in April 2017 over concern about his failure to thrive. At the time, he was one year old and not residing with M.S., Sr. He was subsequently found to be a child in need of protection or services.

In September 2018, the State petitioned to terminate M.S., Sr.'s parental rights. M.S., Sr. pled no contest to the ground of failure to assume parental responsibility. The circuit court accepted the plea and found M.S., Sr. unfit. After a dispositional hearing, the court terminated his parental rights. This no-merit appeal follows.

The no-merit report addresses whether M.S., Sr.'s plea was knowingly, voluntarily, and intelligently made and had a factual basis. Before accepting a plea to a ground for termination, the circuit court is required to engage the parent in a personal colloquy in accordance with WIS. STAT. § 48.422(7). Additionally, the record must establish that the parent understands the constitutional rights given up by the plea. *Kenosha Cty. DHS v. Jodie W.*, 2006 WI 93, ¶¶25, 293 Wis. 2d 530, 716 N.W.2d 845. The parent must also understand that acceptance of the plea will result in a finding of unfitness. *Oneida Cty. DSS v. Therese S.*, 2008 WI App 159, ¶¶10-11, 314

Wis. 2d 493, 762 N.W.2d 122. Here, the circuit court’s colloquy prior to the acceptance of M.S., Sr.’s plea reflects that it satisfied these requirements. The court correctly determined that a factual basis existed based upon the evidence presented by the State.

The no-merit report also addresses whether the circuit court properly exercised its discretion at the dispositional hearing in terminating M.S., Sr.’s parental rights. The court’s determination of whether to terminate parental rights is discretionary. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the “best interests of the child” is the prevailing standard, and the court is required to consider the factors delineated in § 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Again, the circuit court’s remarks reflect that it considered the appropriate factors. Those factors weighed in favor of a determination that it was in the best interests of M.S., Jr. to terminate M.S., Sr.’s parental rights.

Finally, the no-merit report addresses other issues, including (1) whether the circuit court complied with statutory time limits; and (2) whether M.S., Sr. was denied his right to meaningfully participate in the prove-up portion of the case.² We agree with appellate counsel that these issues do not have arguable merit for appeal, and accordingly, we will not discuss them further.

² During the prove-up portion of the case, M.S., Sr. appeared late. The circuit court began the hearing without him, noting that he “was invited to be here.” Eventually, when M.S., Sr., showed up, the court paused the hearing and allowed M.S., Sr.’s counsel to confer with M.S., Sr. about what had occurred in his absence.

Our independent review of the record does not disclose any other potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Gregory Bates of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order terminating M.S., Sr.'s parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of M.S., Sr. 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