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July 7, 2020

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

2020AP601-NM In the interest of J.N., a person under the age of 18: State of Wisconsin v. R.N. (L.C. # 2019TP49)

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).

[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.

R.N. appeals from a trial court order terminating her parental rights to her son, J.N.[2] R.N.'s appointed attorney, Eileen T. Evans, has filed a no-merit report. *See* ***Brown Cty. v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998); *see also* WIS. STAT. RULES 809.107(5m) and 809.32. R.N. filed a response. This court has considered appellate counsel's report and R.N.'s response, and this court has independently reviewed the record. This court agrees with appellate counsel's conclusion that an appeal or postdisposition motion would lack arguable merit. Therefore, the order terminating R.N.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

J.N. was removed from R.N.'s home in November 2017, when he was four years old, and he has not been returned to R.N.'s care.[3] J.N. was found to be in need of protection or services after a dispositional hearing in March 2018.[4] *See* WIS. STAT. § 48.13 (governing "CHIPS" cases). J.N. was placed in several foster homes between November 2017 and August 2018. He began a new foster care placement in August 2018 that was later identified as a potential adoptive home.

[2] The parental rights of J.N.'s alleged father were also terminated and are not at issue in this appeal.

[3] J.N.'s brother was also removed from R.N.'s care. The parental rights of that child are not at issue in this appeal. This court refers to J.N.'s brother only because he has been placed in the same potential adoptive home as J.N. and the trial court considered the brothers' continuing relationship during the dispositional hearing.

[4] The record indicates that R.N. had an affiliation with the Menominee Indian Tribe and that during the CHIPS proceeding, the Tribe provided a letter indicating that J.N. was not eligible for enrollment in the Tribe. Consistent with that letter, the trial court presiding over the CHIPS proceeding found that the Indian Child Welfare Act ("ICWA") did not apply to J.N. The trial court in these termination-of-parental-rights proceedings likewise found that the ICWA did not apply.

In March 2019, the State petitioned to terminate R.N.'s parental rights based on WIS. STAT. § 48.415(2) (continuing CHIPS) and § 48.415(6) (failure to assume parental responsibility). After counsel was appointed, R.N. indicated that she was contesting the allegations in the petition, and the case was scheduled for a jury trial.[5] However, at the final pretrial, R.N. decided to enter a no-contest plea to the continuing CHIPS ground. She also indicated that she planned to argue against termination of her parental rights at the dispositional hearing. The State said that it would move to dismiss the second ground for termination: failure to assume parental responsibility.

The trial court conducted a thorough plea colloquy with R.N. At the end of the colloquy, the trial court asked whether R.N. would like additional time to talk with trial counsel. After R.N. indicated that she would like more time, the trial court continued the hearing for six days. When the parties returned, R.N. said that she wanted to proceed with her no-contest plea, and the trial court conducted the plea colloquy again. The trial court accepted R.N.'s no-contest plea and later conducted a "prove up" hearing where a family case manager offered testimony that the trial court relied on to support its finding that there was a factual basis for the continuing CHIPS allegation in the petition.

At the dispositional hearing, the trial court again heard testimony from the family case manager. In addition, R.N. testified about her relationship with her son and her desire to be reunited with him. At the conclusion of the hearing, the trial court found that it was in J.N.'s

[5] The guardian ad litem did not contest the petition and ultimately argued in favor of terminating R.N.'s parental rights.

best interest that R.N.'s parental rights be terminated, for reasons stated on the record. This appeal follows.

The no-merit report addresses whether there would be any arguable merit to challenging R.N.'s no-contest plea or the trial court's exercise of discretion terminating R.N.'s parental rights. We agree with appellate counsel that there would be no arguable merit to pursuing a post-disposition motion or a merit appeal based on those issues, as we will briefly explain below. We also address whether there would be any arguable merit to asserting that the trial court failed to follow the statutory rules regarding time limits. Finally, we will discuss the issues raised in R.N.'s response.

We begin our analysis with the statutory time limits. The fact-finding hearing must be held "within 45 days after the hearing on the petition" *see* WIS. STAT. § 48.422(2), and the dispositional hearing must be held immediately after the fact-finding hearing, or within forty-five days under certain circumstances (including if the parties agree), *see* WIS. STAT. § 48.424(4). These statutory time limits cannot be waived. ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Continuances, however, are permitted "upon a showing of good cause in open court … and only for so long as is necessary[.]" WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. *See* § 48.315(3).

We have carefully examined the record. At each hearing, the time limits were observed or tolled for good cause on the record after the parties either consented or did not state an objection. After accepting R.N.'s no-contest plea, the trial court held the dispositional hearing

about five weeks later, with the agreement of the parties. There would be no merit to alleging that the trial court lost competency during the pendency of this case.

Next, we consider R.N.'s no-contest plea to the continuing CHIPS ground. In ***Brown County DHS v. Brenda B.***, our supreme court summarized the applicable legal standards:

> A parent who chooses to enter a no[-]contest plea during th[e grounds] phase is giving up valuable protections and must have knowledge of the rights being waived by making the plea.
>
> The principles and analysis of ***Bangert*** apply.[6] The [trial] court must engage the parent in a colloquy to ensure that the plea is knowing, voluntary, and intelligent. This colloquy is governed by the requirements of WIS. STAT. § 48.422(7) and notions of due process.
>
> If the parent can later show that the colloquy was deficient and also alleges that he or she did not know or understand the information that should have been provided, that parent has made a prima facie case that the plea was not knowing, voluntary, and intelligent. At that point, the burden shifts to the petitioner to demonstrate by clear and convincing evidence that the parent knowingly, voluntarily, and intelligently pled no contest.

Brenda B., 2011 WI 6, ¶¶34-36, 331 Wis. 2d 310, 795 N.W.2d 730 (citations omitted).

We agree with appellate counsel's analysis of R.N.'s no-contest plea. The trial court conducted an extensive colloquy with R.N. that addressed R.N.'s understanding of the rights she was giving up. The trial court also explained that it would decide at the dispositional hearing whether to terminate R.N.'s parental rights, continue the CHIPS order, or pursue other options such as guardianship. The trial court also established that no promises or threats were made to force R.N. to enter the no-contest plea. In short, the transcript demonstrates that the trial court

[6] *See* ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

complied with the dictates of WIS. STAT. § 48.422(7), ***Brenda B.***, and ***Oneida County DSS v. Therese S.***, 2008 WI App 159, 314 Wis. 2d 493, 762 N.W.2d 122.

As part of its compliance with WIS. STAT. § 48.422(7), the trial court heard testimony from the family case worker concerning the factual basis for the no-contest plea. The trial court accepted the case worker's testimony, which included details about R.N.'s non-compliance with the CHIPS order, such as inconsistency with visitation and failing to complete a psychological examination. The trial court found that R.N. had failed to satisfy two conditions of the CHIPS order and was not likely to meet those conditions within the next nine months. R.N.'s plea and the case worker's testimony support these findings. There would be no merit to challenging R.N.'s no-contest plea or the factual basis for the continuing CHIPS finding.

Next, we turn to the issue of whether there would be any merit to challenging the trial court's decision to terminate R.N.'s parental rights. The decision to terminate a parent's rights is discretionary and the best interest of the child is the prevailing standard. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152-53, 551 N.W.2d 855 (Ct. App. 1996). The trial court considers multiple factors, including, but not limited to:

> (a) The likelihood of the child's adoption after termination.
>
> (b) 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.
>
> (c) 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.
>
> (d) The wishes of the child.
>
> (e) The duration of the separation of the parent from the child.

> (f) 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.

WIS. STAT. § 48.426(3).

Here, there would be no merit to challenging the trial court's exercise of discretion. The trial court made findings on the record and explicitly discussed each of the statutory factors, as the no-merit report explains. For instance, the trial court found that J.N. would "be able to enter into a more stable and permanent family relationship" if R.N.'s parental rights were terminated, *see* WIS. STAT. § 48.426(3)(f), due to the fact that J.N.'s current foster placement was stable and was "contributing to the progress that he has made."

The trial court's findings on all six statutory factors are supported by the record and reflect a proper exercise of discretion. We conclude that an appellate challenge to the trial court's exercise of discretion would lack arguable merit.

Finally, we turn to R.N.'s response to the no-merit report, which included letters of support from three individuals and a report from the Social Security Administration indicating that R.N. is now receiving disability benefits. R.N. expresses regret about her decision to enter the no-contest plea, and she asserts that she did not know what pleading no contest meant. This court is not persuaded that R.N. has identified an issue of arguable merit. As discussed above, the trial court conducted an extensive plea colloquy with R.N., gave her additional time to talk with trial counsel, and then went through the no-contest plea with R.N. again. R.N. said that she wanted to enter a no-contest plea, and she told the trial court, "I can understand everything we are talking about." R.N.'s bald assertion that she did not understand her no-contest plea—which

is belied by the record—and her regret about entering the no-contest plea do not provide a basis to pursue a post-disposition motion or a merit appeal.

R.N. also asserts that she is able to care for her son and that the family case worker's testimony was inaccurate with respect to several issues. For instance, R.N. denies spending time on her cell phone when she had supervised visits with her son. However, the family case worker testified that R.N.'s cell phone was "a big distraction" and that when R.N. "feels overwhelmed, she tends to retreat to her cell phone in times of stress." Resolving conflicts in the testimony was the role of the trial court, as the factfinder. There would be no arguable merit to asserting that the trial court's findings of fact, which were supported by the family case worker's testimony, were clearly erroneous.

This court's independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Eileen T. Evans is relieved of any further representation of R.N. on appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals