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DISTRICT I

September 22, 2020

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

2020AP1188-NM	In re the termination of parental rights to D.H., a person under the age of 18: State of Wisconsin v. D.F. (L.C. # 2018TP160)
2020AP1189-NM	In re the termination of parental rights to D.F., a person under the age of 18: State of Wisconsin v. D.F. (L.C. # 2018TP161)
2020AP1190-NM	In re the termination of parental rights to D.H., a person under the age of 18: State of Wisconsin v. D.F. (L.C. # 2018TP162)
2020AP1191-NM	In re the termination of parental rights to D.H., a person under the age of 18: State of Wisconsin v. D.F. (L.C. # 2018TP163)

Before Dugan, 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).

D.F. appeals from orders terminating her parental rights to her children: D.H. (born September 1, 2010); D.F. (born April 15, 2012); D.H. (born September 3, 2015), and D.H. (born August 3, 2016). Appellate counsel, Jay R. Pucek, has filed a consolidated no-merit report. *See* WIS. STAT. RULES 809.107(5m), 809.32; *see also Anders v. California*, 386 U.S. 738 (1967). D.F. was advised of her right to file a response, but she has not responded. Based upon an independent review of the records and the no-merit report, this court concludes that there are no arguably meritorious issues to pursue on appeal. Therefore, the orders terminating D.F.'s parental rights are summarily affirmed.

The children were removed from D.F.'s care in February 2017 and were adjudicated children in need of protection or services (CHIPS) in April 2017. *See* WIS. STAT. § 48.13. The older two children were placed together, and the younger two children were placed together but separate from their older siblings. The State filed petitions seeking to terminate D.F.'s parental rights as to each child on July 17, 2018.² As grounds against D.F., the petition as to each child

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.

² The petitions also sought to terminate the parental rights of A.S., the father of child D.F., and D.H., the father of the other three children. The fathers' rights to their respective children were terminated by orders dated December 20, 2019; neither father is a part of this appeal.

alleged both continuing CHIPS and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6).

The cases were tried together. A jury determined, as to each of the children, that both grounds existed for terminating D.F.’s parental rights. The cases proceeded to a disposition hearing at which both foster mothers, a case manager, and D.F. testified.³ Following the testimony, the circuit court made extensive findings to support its ultimate decision to terminate D.F.’s parental rights to all four children. Written orders were entered, and D.F. appeals.

The no-merit report addresses potential issues regarding the circuit court’s competency and compliance with mandatory time limits; whether the termination petitions “satisf[ied] the requirements for [their] content set [as] forth in” WIS. STAT. § 48.42(1); and whether “any other issues [arose] before or at trial requiring reversal,” including concerns related to jury selection, jury instructions, the State’s motion in limine, the State’s attempt to introduce certain evidence, and evidentiary objections raised during trial. The no-merit report sets forth an adequate discussion of these issues and our review of the records confirms appellate counsel’s conclusion that these issues lack arguable merit, so we need not address them further.

The no-merit report also addresses whether sufficient evidence supports the jury’s verdicts finding grounds for terminating D.F.’s parental rights. When a termination petition alleges as grounds for termination that a child is in continuing need of protection or services, the State must prove the following:

³ Father D.H. also testified; A.S. did not appear in person for the disposition hearing.

First, the child must have been placed out of the home for a cumulative total of more than six months pursuant to court orders containing the termination of parental rights notice. Second, the [applicable county department] must have made a reasonable effort to provide services ordered by the court. Third, the parent must fail to meet the conditions established in the order for the safe return of the child to the parent's home. Fourth, there must be a substantial likelihood that the parent will not meet the conditions of safe return of the child within the [nine]-month period following the conclusion of the termination hearing.^[4]

Walworth Cty. DHHS v. Andrea L.O., 2008 WI 46, ¶6, 309 Wis. 2d 161, 749 N.W.2d 168; *see also* WIS. STAT. § 48.415(2)(a) (2015-16). The State has the burden to show that grounds for termination exist by clear and convincing evidence. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768.

Failure to assume parental responsibility is established “by proving that the parent ... [has] not had a substantial parental relationship with the child.” WIS. STAT. § 48.415(6)(a). A substantial parental relationship “means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” WIS. STAT. § 48.415(6)(b). When the fact-finder evaluates whether a person has had such a relationship

⁴ With respect to the fourth element, WIS. STAT. § 48.415(2)(a) was amended, effective April 6, 2018, to remove the nine-month test. *See* 2017 Wis. Act 256, § 1. Under the revised statute, the State must show, “if the child has been placed outside the home for less than 15 of the most recent 22 months, that there is a substantial likelihood that the parent will not meet these conditions as of the date on which the child will have been placed outside the home for 15 of the most recent 22 months[.]” *See id.*

The termination petitions in this matter were filed after the effective date of the amendment, but the preceding CHIPS petitions had been filed before the amendment, so the termination warnings given to D.F. in the CHIPS orders warned her about the nine-month period of the prior version. However, the termination petitions alleged that D.F. would not meet either timeframe, the jury was charged with fact-finding using the nine-month period requirement, and it was indisputable that at the time the termination petitions were filed, the children had been out of D.F.'s home for fifteen of the last twenty-two months. Accordingly, there is no arguable merit regarding which version of the statute was applied.

with the child, the fact-finder may consider such factors including but not limited to “whether the person has expressed concern for or interest in the support, care or well-being of the child, [and] whether the person has neglected or refused to provide care or support for the child[.]” *Id.*

The no-merit report sets forth the applicable evidentiary burdens on the State and the proper standard of review, and identifies evidence supporting the elements of both grounds for termination. Our review of the record satisfies us that the no-merit report properly analyzes the sufficiency of the evidence as to both grounds for termination, and that appellate counsel has appropriately concluded that any challenge thereto would lack arguable merit.

Finally, appellate counsel addresses whether the circuit court erroneously exercised its discretion when it terminated D.F.’s parental rights to her children. This court agrees 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. Here, the record reflects that the circuit court expressly considered the relevant factors in light of the evidence as to each child, made a number of factual findings based on that evidence, and reached a reasonable decision. Thus, we conclude that any challenge to the circuit court’s decision to terminate D.F.’s parental rights as to her four children would be without arguable merit.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jay R. Pucek is relieved from further representation of D.F. 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