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December 29, 2020

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

2020AP1646-NM State of Wisconsin v. S.N.D. (L.C. # 2019TP86)

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).

Before Dugan, 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 unless otherwise noted.

S.N.D. appeals from an order terminating her parental rights to her child, A.G. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. S.N.D. was served with a copy of the report and advised of her right to file a response. She has not filed a response. Based on our review of the no-merit report and our independent review of the circuit court record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes that no issue of arguable merit could be raised on appeal and summarily affirms the order.

A.G. was born on March 13, 2018. A.G. was detained three weeks after his birth and found to be in need of protection and services. On May 21, 2019, the State filed a petition to terminate S.N.D.'s parental rights to A.G. The petition alleged that A.G. was a child in continuing need of protection or services (CHIPS) under WIS. STAT. § 48.415(2), and S.N.D. had failed to assume parental responsibility under § 48.415(6). On January 22, 2020, after a trial to the bench, the circuit court determined that the State had established grounds based on both allegations. After a dispositional hearing held the same day, the circuit court concluded that terminating S.N.D.'s parental rights would be in A.G.'s best interests. The circuit court then entered an order terminating S.N.D.'s parental rights to A.G.

The no-merit report addresses whether there would be arguable merit to a challenge to the sufficiency of the evidence as to grounds for termination. The circuit court made the following factual findings. The State offered S.N.D. services tailored to her cognitive and physical limitations to help her meet the conditions for return of A.G. set forth in the order finding him to be in need of protection and services. The State made reasonable efforts to assist S.N.D., but she had not been able to meet the conditions for safe return of A.G. to her care. S.N.D. refused to address her issues with alcohol and drugs and refused to meet, or has been unable to meet, other

conditions for A.G.'s return. S.N.D. needed assistance to safely hold A.G., prepare bottles, feed him and change his diapers due to her cognitive limitations and physical impairments from multiple strokes. S.N.D. has required constant supervision from a visitation specialist during S.N.D.'s visits with A.G., which S.N.D. attended intermittently and inconsistently. S.N.D. has not exercised responsibility for A.G.'s daily supervision and has not provided for his medical or educational needs or provided him with any financial support. Based on these findings, there was sufficient evidence for the circuit court to conclude that A.G. continued to be in need of protection and services and S.N.D. failed to assume parental responsibility for A.G. There would be no arguable merit to a claim that there was insufficient evidence for the circuit court to conclude that grounds for termination existed.

The no-merit report addresses whether there would be arguable merit to claim that the circuit court erroneously exercised its discretion when it determined that terminating S.N.D.'s parental rights would be in A.G.'s best interests. The ultimate decision whether to terminate parental rights is committed to the circuit court's discretion. *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The best interests of the child is the prevailing factor. WIS. STAT. § 48.426(2). In considering the best interests of the child, the circuit court shall consider: (1) the likelihood of adoption after termination; (2) the age and health of the child; (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 those relationships; (4) the wishes of the child; (5) the duration of the separation of the parent from the child; and (6) whether the child would 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* § 48.426(3).

At the dispositional hearing, Jasmine Ragland, A.G.'s case manager, testified at length about A.G. After hearing the testimony, the circuit court found that A.G., who was almost two years old, had been living in a stable and loving home since he was five months old. The circuit court found that A.G. was bonded to his foster parents and called them mom and dad, and his foster parents were very bonded to him and wanted to adopt him. The circuit court found that A.G. was thriving and had no medical or behavioral problems. The circuit court found that A.G. had inconsistent periodic supervised visitation with S.N.D., but did not have much of a bond with her due to the limited periods of time he had spent with her since being removed from her home when he was less than three weeks old. The circuit court found that S.N.D. had never met five or six of his half-siblings, most of whom were not living with S.N.D., did not have a relationship with his maternal relatives and his biological father was unknown. The circuit court found that terminating S.N.D.'s parental rights would allow A.G. to enter into a stable and loving situation moving forward. Based on our review of the record, which supports the circuit court's findings, we conclude that the court properly exercised its discretion in concluding that terminating S.N.D.'s parental rights was in A.G.'s best interest. See *Gerald O.*, 203 Wis. 2d at 152 ("The [circuit] court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach."). There would be no arguable merit to an appellate challenge to the circuit court's decision.

The no-merit report is exemplary in its detail and the breadth of its discussion of potential appellate issues. In addition to the issues discussed above, the no-merit report addresses whether there are non-frivolous arguments that could be raised on appeal with regard to: (1) the circuit court's adherence to statutory deadlines; (2) S.N.D.'s waiver of a jury trial; (3) the circuit court's

decision to deny S.N.D.'s motion to adjourn the morning of trial; (4) a potential violation of S.N.D.'s substantive due process rights; and (5) the circuit court's order denying S.N.D.'s motion to reopen the grounds portion of the case and/or for reconsideration. We agree with the no-merit report's analysis of these issues and its conclusion that the issues have no arguable merit.

After independently reviewing the record, this court has found no other arguable basis for reversing the order terminating S.N.D.'s parental rights. This court concludes that any further appellate proceedings would be wholly frivolous.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Steven W. Zalewski is relieved of any further representation of S.N.D. 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