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DISTRICT I

Amended June 2, 2021
June 2, 2021

To:

Hon. Mark A. Sanders
Circuit Court Judge

Tammy Kruczynski
Juvenile Clerk

Danielle E. Chojnacki

Karen Lueschow

Anne M. Abell

Charmian Klyve

D.P.

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

2021AP279-NM

In re the termination of parental rights to D.E., a person under the age of 18: State of Wisconsin v. D.P. (L.C. # 2019TP123)

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).

D.P. appeals from an order terminating his parental rights to his son, D.E. D.P.'s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. D.P. filed a response.² After reviewing the record, counsel's report, and D.P.'s response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the order. WIS. STAT. RULE 809.21.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version.

² The response expresses disagreement with the no-merit report and asks us to "review the case."

D.E. was taken into protective custody in June 2018 due to allegations of physical abuse. At the time, he was seven years old and residing with his grandmother.³ D.E. was subsequently found to be a child in need of protection or services.

In July 2019, the State petitioned to terminate D.P.'s parental rights. D.P. pled no contest to the allegation that D.E. was a child in continuing need of protection or services. The circuit court accepted the plea and found D.P. unfit. After a dispositional hearing, the court terminated his parental rights. This no-merit appeal follows.

The no-merit report addresses whether D.P.'s plea was knowingly, voluntarily, and intelligently made. 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 Cnty. 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 Cnty. 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 D.P.'s plea reflects that it satisfied these requirements.⁴

³ D.P. was incarcerated at the time D.E. was removed from his grandmother's house.

⁴ At the hearing to establish a factual basis for the plea, the circuit court found there was a substantial likelihood that D.P. would not meet the conditions for the safe return of D.E. within nine months. This finding was unnecessary due to the legislature's amendment of WIS. STAT. § 48.415(2)(a)3. *See* 2017 Wis. Act 256, § 1. The amended statute eliminates the need for a prospective analysis as long as the child has already been outside the parent's home for "15 of the most recent 22 months." Sec. 48.415(2)(a)3. In this case, D.E.'s out-of-home placement plainly met that timeframe.

The no-merit report also addresses whether the circuit court properly exercised its discretion at the dispositional hearing in terminating D.P.’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 D.E. to terminate D.P.’s parental rights.

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 Karen Lueschow of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order terminating D.P.’s parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Karen Lueschow is relieved of further representation of D.P. 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