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 11, 2021

To:

Hon. Marshall B. Murray
Circuit Court Judge
Branch 43
901 N. 9th. St., Rm. 208
Milwaukee, WI 53233

Tammy Kruczynski
Juvenile Clerk
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
Milwaukee County District Attorney's
Office Children's Court
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
Charmian Klyve
635 North 26th St.
Milwaukee, WI 53233-1803

Joseph N. Ehmann
Regional Attorney Manager
Wisconsin State Public Defenders
P.O. Box 7862
Madison, WI 53707-7862

B. R.

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

2021AP601-NM State of Wisconsin v. B.R. (L.C. # 2020TP88)
2021AP602-NM State of Wisconsin v. B.R. (L.C. # 2020TP89)

Before Dugan, J.[1]

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[1] These appeals, which were consolidated by order of this court, are 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 unless otherwise noted.

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).

B.R. appeals from circuit court orders terminating her parental rights to her two children, Jack and Jane.[2] B.R.'s appointed attorney, Gregory Bates, has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. B.R. was served with a copy of the report and advised of her right to file a response. She did not file a response. This court has considered appellate counsel's report and has independently reviewed the record as required by ***Anders v. California***, 386 U.S. 738 (1967). This court agrees with appellate counsel's conclusion that further proceedings would lack arguable merit. Therefore, the orders terminating B.R.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

Jack was born on March 1, 2018, and placed outside the home approximately nine months later. Jane was born on March 27, 2019, and placed outside the home one month later. In 2019, both children were found to be in need of protection or services. *See* WIS. STAT. § 48.13 (governing "CHIPS" cases).

In April 2020, the State petitioned to terminate B.R.'s parental rights to Jack and Jane based on WIS. STAT. § 48.415(2) (continuing CHIPS) and § 48.415(6) (failure to assume parental responsibility). After B.R. failed to appear for mediation and the court date that followed, the circuit court found her in default. The circuit court subsequently found a factual basis for the

[2] B.R.'s children have the same initials: J.M. For ease of reading and to protect confidentiality, we use pseudonyms when referring to the children just as counsel did in his no-merit report. The parental rights of the father of Jack and Jane were also terminated and are not at issue in these appeals.

grounds alleged in the petitions and that it was in each child's best interest that B.R.'s parental rights be terminated.

The no-merit report addresses a number of issues, including whether there would be any arguable merit to challenging the circuit court's compliance with the statutory time limits, the default judgment that was entered against B.R., the circuit court's finding of unfitness, the circuit court's exercise of discretion terminating B.R.'s parental rights, or the circuit court's discharge of B.R.'s trial attorney. This court agrees with appellate counsel that there would be no arguable merit to pursuing a post-disposition motion or a merit appeal based on those issues and will briefly elaborate on a few of the issues below.

First, this court considers whether there would be arguable merit to a challenge to the court's default judgment or its decision not to reopen that judgment. A circuit court has both inherent and statutory authority to enter a default judgment as a sanction for failure to obey its orders. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768.

At the initial hearing, B.R. informed the circuit court that she was scheduled to be released from prison within a few weeks. The parties agreed that mediation was appropriate, and the circuit court calendared the mediation to take place following B.R.'s release. The circuit court additionally set a status conference to take place after the mediation. The circuit court warned B.R. to attend each hearing or risk a default judgment being entered against her and explained that "[a] default judgment basically strips you of your voice relative to the matter."

Although B.R. had notice of the upcoming mediation and status conference, she failed to appear at either. The circuit court proceeded to find B.R. in default, which was a matter within its discretion. ***Id.***, ¶18.

At the next hearing, B.R.'s attorney detailed the efforts he made to get in touch with B.R. and requested that the circuit court adjourn the cases for a few weeks to give him additional time to try to reach her. The circuit court concluded that the default judgment would stand. The circuit court found, based on information presented to it by the case manager assigned to the cases, B.R. "knew of today's court date and has done nothing to try to come into this court hearing … or contact the [c]ourt or even contact her lawyer[.]" The circuit court deemed B.R.'s conduct egregious. There would be no arguable merit to alleging that the circuit court erroneously exercised its discretion when it found B.R. in default.

Next, this court considers the sufficiency of the evidence on the grounds for terminating parental rights. During the prove-up portion of the hearing, the State produced evidence on each of the required elements through exhibits as well as through the testimony of the case manager. *See* WIS JI—CHILDREN 324 & 346. The circuit court found that there was sufficient evidence as to the grounds under WIS. STAT. § 48.415(2) (continuing CHIPS) and § 48.415(6) (failure to assume parental responsibility) and that B.R. was unfit.

Before proceeding to the dispositional phase, the circuit court allowed B.R.'s attorney to withdraw. WISCONSIN STAT. § 48.23(2)(b)3. allows a circuit court to presume that a parent has waived his right to counsel if, after being ordered to appear in court, the parent fails to do so and the court finds that failure egregious and without a justifiable excuse. A parent's failure to appear for consecutive hearings is presumed to be egregious. ***Id.*** If a court finds that a parent has waived his right to counsel, the court may discharge counsel pursuant to § 48.23(4m). *See* ***id.*** ("In any situation under this section in which counsel is knowingly and voluntarily waived or in which a parent is presumed to have waived his or her right to counsel, the court may discharge counsel."). Given B.R.'s failure to appear for consecutive hearings and the circuit court's

finding that the failure was egregious, there would be no arguable merit to a challenge on this basis.

Next, we turn to the issue of whether there would be any merit to challenging the circuit court's decision to terminate B.R.'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 circuit 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, the circuit court made findings on the record and explicitly discussed each of the statutory factors, as the no-merit report explains. For instance, the circuit court found that the children, who were placed together with an adoptive resource with whom they had a strong relationship, did not have a substantial relationship with B.R. The circuit court noted that while the children were too young to express their wishes, it "suspect[ed] that if we tried to remove

them from [the adoptive resource]'s home, it would not be good. Clearly both children would be able to enter into a more stable family relationship as a result of termination…. This is the only placement they have known."

The circuit 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 circuit court's exercise of discretion would lack arguable merit.

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

Upon the foregoing,

IT IS ORDERED that the orders terminating B.R.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of B.R. on appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals