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June 22, 2021

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

2021AP786-NM

In re the termination of parental rights to H.M.C., a person under
the age of 18: State of Wisconsin v. Y.M.G. (L.C. # 2019TP230)

Before Donald, J.¹

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 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).

Y.M.G. appeals an order terminating her parental rights to her daughter, H.M.C. Attorney Brian C. Findley, appointed counsel for Y.M.G., filed and served a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. Y.M.G. 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 arguably meritorious issues exist for an appeal, and we summarily affirm the order.

H.M.C. was born to Y.M.G. in May 2018. H.M.C. weighed three pounds at birth and had THC in her urine and meconium. The Division of Milwaukee Child Protective Services (DMCPS) conducted an investigation and determined that H.M.C. could not safely leave the hospital with Y.M.G. On June 6, 2018, the State petitioned for a finding that H.M.C. was a child in need of protection or services (CHIPS) and obtained an order temporarily placing her in the foster home of L.P. In support of the CHIPS petition, the State alleged not only the circumstances of H.M.C.'s low birth weight and drug test results, but also that Y.M.G.'s son J.J. was removed from Y.M.G.'s care in December 2016 when he was eleven months old, after he sustained second-degree burns on his lower body. The State further alleged that, as a result of J.J.'s injuries, Y.M.G. was convicted of both felonious child neglect resulting in bodily harm and misdemeanor child neglect.

On July 30, 2018, Y.M.G. failed to appear for a hearing on the CHIPS petition and was found in default. On September 19, 2018, the circuit court entered a dispositional order that found that H.M.C. was a child in need of protection or services and continued her placement

with L.P. The order included conditions that Y.M.G. was required to fulfill before the circuit court would return H.M.C. to Y.M.G.'s care and a notice warning Y.M.G. about the grounds for termination of her parental rights. H.M.C. thereafter remained continuously placed with L.P. outside of Y.M.G.'s home pursuant to the CHIPS order and its subsequent extension.

On November 11, 2019, the State filed a petition to terminate Y.M.G.'s parental rights to H.M.C. As grounds, the State alleged that H.M.C. was a child in continuing need of protection or services and that Y.M.G. had failed to assume parental responsibility for H.M.C.² See WIS. STAT. § 48.415(2), (6). Y.M.G. disputed the allegations, and the issue of whether grounds existed to terminate her parental rights proceeded to a three-day jury trial commencing on October 12, 2020. The jury found that both grounds for termination existed, and the circuit court therefore found that Y.M.G. was an unfit parent. See WIS. STAT. § 48.424(4). The matter proceeded immediately to a two-day dispositional hearing before the circuit court, which determined that termination of Y.M.G.'s parental rights was in H.M.C.'s best interest.³

We first consider an issue that appellate counsel did not address, namely, whether Y.M.G. could raise an arguably meritorious claim that the circuit court failed to meet statutory time limits and thereby lost competency to proceed. See *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Although some of the time limits set forth in WIS. STAT. ch. 48 for termination of parental rights proceedings were not met in this case, continuances are allowed “upon a showing of good cause in open court[.]” See WIS. STAT. § 48.315(2). Failure to

² The petition also sought to terminate the parental rights of H.M.C.'s father, L.C. He stipulated that grounds existed for terminating his parental rights to H.M.C.

³ The dispositional hearing included the question of whether to terminate L.C.'s parental rights. The order terminating L.C.'s parental rights is not before us.

object to a continuance “waives any challenge to the court’s competency to act during the period of delay or continuance.” *See* § 48.315(3). Here, the circuit court on several occasions granted continuances that extended the proceedings beyond the statutory deadlines, but on each such occasion, the circuit court found good cause for the continuance and Y.M.G. did not object to any period of delay. Accordingly, she cannot mount an arguably meritorious challenge to the circuit court’s competency to proceed based on failure to comply with statutory time limits.

The no-merit report also does not include a discussion of whether there were any procedural defects in the proceedings, whether the jury was properly selected, whether the jury instructions were proper, whether the circuit court correctly exercised its discretion when ruling on evidentiary disputes, or counsels’ opening and closing arguments to the jury. Our independent review of the record, however, satisfies us that no procedural defects exist and that no issues of arguable merit arise from the jury selection, jury instructions, evidentiary rulings, or arguments of counsel. Further discussion of these matters is not warranted.

We next consider whether the evidence was sufficient to support the jury’s verdict that grounds existed to terminate Y.M.G.’s parental rights. Grounds for termination must be established by clear and convincing evidence. *See* WIS. STAT. §§ 48.424, 48.31(1). A jury’s determination that grounds exist for termination will be upheld if any credible evidence supports that determination. *See State v. Quinsanna D.*, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752.

The circuit court instructed the jury that, before it could find that Y.M.G. failed to assume parental responsibility for H.M.C., the State was required to prove by clear and convincing evidence that Y.M.G. had not had a substantial parental relationship with H.M.C. *See* WIS.

STAT. § 48.415(6); WIS JI—CHILDREN 346. The State then presented testimony from a DMCPs case manager assigned to Y.M.G. and her family. The case manager testified that Y.M.G. never provided a home for H.M.C., did not consistently engage in supervised visitation with her, never progressed to partially supervised, unsupervised, or overnight visitation, and cancelled—both with and without notice—a multitude of visits. The case manager further testified that Y.M.G. was not engaged in H.M.C.’s day-to-day life; did not provide for H.M.C.’s education, protection, or daily care; did not attend H.M.C.’s medical appointments; and did not supply gifts or financial support for H.M.C. We agree with appellate counsel’s conclusion that the jury could credit this testimony and find that Y.M.G. had failed to assume parental responsibility for H.M.C. Accordingly, no arguably meritorious basis exists to challenge the sufficiency of the evidence supporting this finding.

The circuit court instructed the jury that, before it could find that H.M.C. was a child in continuing need of protection or services, the State was required to prove that: (1) she was adjudged to be in need of protection or services and placed outside of Y.M.G.’s home for a cumulative period of at least six months pursuant to a court order containing a termination of parental rights notice; (2) the DMCPs made reasonable efforts to provide the services ordered by the circuit court; and (3) Y.M.G. did not meet the conditions established for the safe return of the child to the family home. *See* WIS. STAT. § 48.415(2); WIS JI—CHILDREN 324.

In the no-merit report, appellate counsel closely examines whether sufficient evidence established that DMCPs made reasonable efforts to provide court-ordered services in light of the case manager’s testimony that neither she nor other DMCPs personnel had complied with the court order to refer Y.M.G. for an AODA assessment and random urinalyses. We need not consider whether the evidence was sufficient to establish the second element necessary to prove

continuing CHIPS under WIS. STAT. § 48.415(2). We have already determined that Y.M.G. could not mount an arguably meritorious challenge to the jury's finding that she failed to assume parental responsibility for H.M.C. The circuit court therefore properly found, as required, that Y.M.G. was an unfit parent. *See* WIS. STAT. § 48.424(4). When a reviewing court upholds a finding of parental unfitness on one statutory ground, the reviewing court need not address alternative grounds. *See Waukesha Cnty. DHHS v. Teodoro E.*, 2008 WI App 16, ¶24, 307 Wis. 2d 372, 745 N.W.2d 701. Accordingly, errors or defects that might affect the continuing CHIPS finding in this case do not provide an arguably meritorious basis for further postdisposition litigation.

We next consider whether Y.M.G. could mount an arguably meritorious challenge to the circuit court's decision to terminate her parental rights. The decision to terminate parental rights lies within the circuit court's discretion. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The prevailing factor is the child's best interests. *See* WIS. STAT. § 48.426(2). In considering the best interests of the child, a circuit court must consider: (1) the likelihood of adoption after termination; (2) "[t]he age and health of the child"; (3) "[w]hether 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"; (4) "[t]he wishes of the child"; (5) "[t]he duration of the separation of the parent from the child"; and (6) "[w]hether 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." Sec. 48.426(3).

Here, the State presented testimony at the dispositional hearing from the DMCPs case manager and from L.P. The circuit court also heard testimony from Y.M.G., from two of her

sisters; from L.C., and from one of his sisters. At the conclusion of the testimony, the circuit court considered each of the statutory factors in light of the evidence presented.

The circuit court first found that L.P. was committed to adopting H.M.C. and that the likelihood of adoption was “very strong.” The circuit court next found that “nothing about the age or the health of [H.M.C.] would be a barrier to her being adopted.” The circuit court went on to find that H.M.C. was too young to verbalize her wishes but that L.P. had given H.M.C. the only home that she had known and that she had lived in that home throughout her entire life.

Next, the circuit court found that, although H.M.C. knew the identity of her biological parents, she did not have a substantial relationship with either of them or with any other member of her extended biological family. Further, the circuit court credited testimony from L.P. that she would ensure opportunities for H.M.C. to develop relationships with her biological relatives, and the circuit court found that the biological family members could have such relationships if they wished to do so. *See Darryl T.-H. v. Margaret H.*, 2000 WI 42, ¶29, 234 Wis. 2d 606, 610 N.W.2d 475 (court may consider adoptive parent’s promise to foster relationship with child’s family of origin). The circuit court therefore concluded that terminating Y.M.G.’s parental rights to H.M.C. would not damage any relationships that H.M.C. had with her biological family, nor would termination of Y.M.G.’s parental rights be harmful to H.M.C.

Finally, the circuit court found that termination of Y.M.G.’s parental rights would permit H.M.C. to enter into a more stable and permanent family relationship. The circuit court took into account that L.P. had met H.M.C.’s needs since a few days after H.M.C.’s birth and that L.P. continued to assist H.M.C. every day “to navigate her daily life.” The circuit court concluded

that, in light of the statutory factors, consideration of H.M.C.'s best interests required terminating Y.M.G.'s parental rights.

Our review of the record satisfies us that the circuit court properly exercised its discretion. The circuit court examined the relevant facts, applied the correct legal standard, and used a rational process to reach a reasonable conclusion. See *Gerald O.*, 203 Wis. 2d at 152. An appellate challenge to the circuit court's decision to terminate Y.M.G.'s parental rights would lack arguable merit.

The no-merit report includes a discussion of whether Y.M.G. could pursue an arguably meritorious claim that her trial counsel was ineffective. To prevail on such a claim, a litigant must show that counsel's performance was deficient and that the deficiency prejudiced the defense. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984). For the reasons stated in the no-merit report, we agree with appellate counsel's assessment that a claim of ineffective assistance of trial counsel would lack arguable merit here.

Last, we have considered whether any arguably meritorious issues arose as a consequence of conducting the trial during the public health crisis occasioned by COVID-19. The record shows that, despite the pandemic, the circuit court seated a twelve-person jury and administered the proceedings in a way that protected Y.M.G.'s rights while accommodating the needs of the trial participants. A challenge to the order terminating Y.M.G.'s parental rights based on the circumstances of the trial would lack arguable merit.

Based on an independent review of the record, we conclude that no additional issues warrant discussion. Any further proceedings would be without arguable merit

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

IT IS FURTHER ORDERED that Attorney Brian C. Findley is relieved of any further representation of Y.M.G. on appeal. *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