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DISTRICT I

July 7, 2021

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County
Electronic Notice

Danielle E. Chojnacki
Electronic Notice

T.I.C.
Sent via U.S. Mail

Jay R. Pucek
Electronic Notice

Division of Milwaukee Child Protective Services
Charmian Klyve
Electronic Notice

Julian B. Lacera
Electronic Notice

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

2021AP814-NM In re the termination of parental rights to J.C., a person under the age of 18: State of Wisconsin v. T.I.C. (L.C. # 2020TP31)

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).

T.I.C. appeals from an order terminating his parental rights to daughter J.C. Appellate counsel, Jay R. Pucek, has filed a no-merit report. *See* WIS. STAT. RULES 809.107(5m) (2019-20),[2] 809.32; *see also* ***Anders v. California***, 386 U.S. 738 (1967). T.I.C. was advised of his right

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2019-20).

[2] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

to file a response, but he has not responded. Based upon our independent review of the record and the no-merit report, this court concludes that there are no arguably meritorious issues to pursue on appeal, and the order terminating T.I.C.'s parental rights is summarily affirmed.

Background

Five-month-old J.C. was removed from the parental home on February 21, 2019, after she was released from the hospital following a car accident two days earlier. T.I.C. had been driving a vehicle at a high rate of speed when the vehicle crashed. J.C., who was incorrectly strapped into an improperly installed safety seat, was ejected from the car and suffered serious injury. J.C.'s mother, N.B., was also ejected from the vehicle, and died from her injuries a few days later. T.I.C. was charged with five felonies stemming from the incident. He pled guilty to two reduced charges, second-degree reckless homicide and second-degree reckless injury, and was sentenced to eighteen years' imprisonment. J.C. was adjudicated a child in need of protection or services (CHIPS) in an order dated May 28, 2019.

On February 11, 2020, the State filed the underlying petition to terminate T.I.C.'s parental rights, alleging two grounds for termination: continuing CHIPS and failure to assume parental responsibility. *See* WIS. STAT. § 48.415(2), (6). T.I.C. entered a no-contest plea to the continuing CHIPS ground. Following a dispositional hearing, the circuit court terminated T.I.C.'s parental rights. T.I.C. appeals.

Mandatory Timelines and Competency

Although not discussed in the no-merit report, we briefly consider whether there is any arguable merit to a claim that the circuit court failed to comply with mandatory time limits,

thereby losing competency to proceed. *See* WIS. STAT. §§ 48.422(1)-(2) & 48.424(4)(a); *see also* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. The statutory time limits cannot be waived, *see* ***April O.***, 233 Wis. 2d 663, ¶5, but continuances are permitted for good cause "and only for so long as is necessary[,]" *see* WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. *See* § 48.315(3). Our review of the record satisfies us that the time limits were either followed or adjourned for sufficient cause, and that T.I.C. did not object, so there is no arguable merit to a challenge to the circuit court's competency.

Plea to Grounds

The first issue appellate counsel discusses is whether T.I.C.'s plea to grounds was knowing, intelligent, and voluntary. Before accepting a no-contest plea to a termination petition, the circuit court must engage the parent in a colloquy under WIS. STAT. § 48.422(7). *See* ***Oneida Cnty. Dept. of Soc. Servs. v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The circuit court must: (1) address the parent and determine that the admission is made voluntarily, with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) establish whether any promises or threats were made to secure the plea; (3) establish whether a proposed adoptive resource for the children has been identified; (4) establish whether any person has coerced a parent to refrain from exercising his or her parental rights; and (5) determine whether there is a factual basis for the grounds alleged in the petition. *See* WIS. STAT. § 48.422(7). The circuit court must also ensure that the parent understands the constitutional rights being given up with the plea, *see* ***Therese S.***, 314 Wis. 2d 493, ¶5, and that the plea will result in a finding of parental unfitness, *see* ***id.***,¶10. As in a criminal case, the colloquy is required to ensure that the plea is knowing, intelligent, and voluntary and, thus,

constitutionally adequate. *See* ***Brown Cnty. v. Brenda B.***, 2011 WI 6, ¶35, 331 Wis. 2d 310, 795 N.W.2d 730; ***State v. Bangert***, 131 Wis. 2d 246, 265-66, 389 N.W.2d 12 (1986).

Our review of the no-merit report and the record satisfies us that appellate counsel has appropriately analyzed this issue. Specifically, we note that counsel identified two potential issues with the plea colloquy: the circuit court did not discuss potential dispositions of the case with T.I.C., nor did it expressly review the elements the State would have to prove for the continuing CHIPS ground. However, to be able to withdraw a plea because of a defect in the colloquy, the parent must be able to allege that he or she did not understand the information that should have been provided via the colloquy. *See* ***Brenda B.***, 331 Wis. 2d 310, ¶36. While neither potential dispositions nor the elements of continuing CHIPS were reviewed with T.I.C. during the plea colloquy, appellate counsel notes that this information was extensively reviewed with T.I.C. by the circuit court at the initial appearance,[3] and T.I.C. had acknowledged that he understood both the four potential dispositions as well as the elements of the continuing CHIPS ground. We agree with appellate counsel's conclusion that T.I.C. could not sufficiently allege the lack of knowledge necessary for withdrawing a plea due to a defective colloquy; thus, there is no arguable merit to seeking plea withdrawal or otherwise challenging the plea.

Sufficiency of the Evidence for Grounds

As noted above, part of the circuit court's obligation with a plea to grounds is to determine whether a sufficient factual basis exists for the plea, and appellate counsel next

[3] The Honorable Mark A. Sanders conducted the initial appearance. The Honorable Ellen R. Brostrom conducted the plea hearing.

discusses whether there was sufficient evidence supporting grounds here. When a termination petition alleges as grounds that a child is in continuing need of protection or services, the State must prove that the child has 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; the applicable county department has made a reasonable effort to provide services ordered by the court; and the parent has failed to meet the conditions established in the order for the safe return of the child to the parent's home. *See* WIS. STAT. § 48.415(2)(a).[4] 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. Our review of the record satisfies us that the circuit court appropriately concluded the State had presented sufficient evidence to support termination, and that this issue has been correctly analyzed by appellate counsel as lacking arguable merit. We therefore do not address this issue further.

Termination Decision

Finally, appellate counsel discusses whether the circuit court erroneously exercised its discretion when it terminated T.I.C.'s parental rights. This court agrees with appellate counsel's conclusion 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.

[4] If the child has been placed outside the home for *less* than fifteen of the most recent twenty-two months, then the State must also prove "that there is a substantial likelihood that the parent will not meet [the return] conditions as of the date on which the child will have been placed outside the home for 15 of the most recent 22 months[.]" WIS. STAT. § 48.415(2)(a)3. At the time that the termination petition was filed, J.C. had been out of her father's home for approximately twelve months; at the time of the plea hearing, J.C. had been out of her father's home for approximately twenty months; and at the time of the dispositional hearing, J.C. had been out of her father's home for approximately twenty-two months.

§ 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, made a number of factual findings based on the evidence presented, and reached a reasonable decision. Thus, any challenge to the circuit court's decision to terminate T.I.C.'s parental rights would lack 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 order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jay R. Pucek is relieved from further representation of T.I.C. 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