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DISTRICT I

August 31, 2021

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

2021AP1141-NM In re the termination of parental rights to R.C.:
State of Wisconsin v. A.A-C. (L.C. # 2020TP66)

Before White, 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).

A.A-C. appeals from an order involuntarily terminating her parental rights (TPR) to her nonmarital child, R.C. A.A-C.'s appellate counsel has filed a no-merit report pursuant to WIS.

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[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.

STAT. RULES 809.107(5m) and 809.32, as well as ***Anders v. California***, 386 U.S. 738 (1967). A.A-C. was served with a copy of the no-merit report and was advised of her right to file a response but has not done so. After considering the no-merit report and independently reviewing the record, we conclude there are no issues with arguable merit for review. Therefore, we summarily affirm.[2] *See* WIS. STAT. RULE 809.21.

R.C. was born August 1, 2018. At the time of the birth, A.A-C. had two other children that had been removed from her care and placed with her cousin. A safety plan was put in place after R.C.'s birth, but two of the individuals identified to provide supervision no longer wanted to be part of the plan, resulting in A.A-C. being left alone with the infant for significant amounts of time. A.A-C. reported sitting in a hot car with R.C. and did not understand the seriousness of the infant being kept in the heat. She also missed R.C.'s first wellness check following the birth. At the rescheduled wellness check on August 10, R.C. was found to have lost eight ounces since being discharged from the hospital, and A.A-C. could not tell staff when she had last fed the child. Bandages on R.C.'s hands had not been changed in over a week. R.C. was then removed from A.A-C.'s care and placed with a foster parent.

The State's TPR petition alleged as grounds for termination both failure to assume parental responsibility and child in continuing need of protection or services (CHIPS). *See* WIS.

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[2] The State also petitioned for the involuntary termination of the unknown biological father's parental rights. His case is not before us. The record suggests he may be deceased.

The form order terminating A.A-C.'s parental rights incorrectly states that both A.A-C. and the unknown biological father failed to appear at the hearing and are in default. A.A-C. appeared in person or by counsel at all relevant hearings, and the circuit court made a default finding only as to the father. Accordingly, the identification of A.A-C. on the "in default" line appears to be a clerical error, which we correct by striking A.A-C.'s name from finding number five in the order. *See* ***State v. Schwind***, 2019 WI 48, ¶30 n.5, 386 Wis. 2d 526, 926 N.W.2d 742.

STAT. § 48.415(2), (6). A.A-C. waived her right to a jury trial in the grounds phase and stipulated that she had failed to assume parental responsibility. The circuit court conducted a colloquy with A.A-C., then took testimony from R.C.'s case manager to establish a factual basis for A.A-C.'s admission. Based on the colloquy and evidence, the court accepted A.A-C.'s no-contest plea and made a finding of parental unfitness under § 48.415(6). The CHIPS ground was dismissed.

The court subsequently held a dispositional hearing on December 18, 2020, and February 17, 2021, at which various witnesses testified. A.A-C. opposed TPR and suggested that her cousin be appointed R.C.'s guardian as an alternative. The cousin testified she was willing and able to care for R.C. The guardian ad litem appointed for R.C. supported TPR and concurred in the State's assessment that A.A-C.'s relationship with R.C. was insubstantial and not a parental relationship. The court stated it would consider the evidence and draft a written decision as soon as possible after receiving a transcript. The court subsequently entered a written decision finding that TPR was in R.C.'s best interest and an order terminating A.A-C.'s parental rights.

The no-merit report addresses whether the circuit court complied with all mandatory time limits, including the 30-day time limit for holding an initial hearing, *see* WIS. STAT. § 48.422(1), the 45-day time limit for holding a fact-finding hearing, *see* § 48.422(2), the 45-day time limit for holding a dispositional hearing, *see* WIS. STAT. § 48.424(4), and the ten-day time limit for entering a disposition, *see* WIS. STAT. § 48.427(1). Extensions in most instances were accompanied by an explicit "good cause" finding, *see* WIS. STAT. § 48.315(3), while in the remaining instances the record contains evidence to support a finding of good cause, *see* ***State v. Quinsanna D.***, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752. In any event, as counsel notes, objections to competency are forfeited if not raised, and the failure by the court to

act within any of WIS. STAT. ch. 48's designated time periods "does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction." § 48.315(3).

The no-merit report also addresses whether A.A-C.'s ability to meaningfully participate in the proceedings was in any way compromised by her participation via "Zoom" videoconferencing in light of the precautions surrounding the COVID-19 pandemic. We agree with counsel's conclusion that any challenge to A.A-C.'s ability to meaningfully participate in the proceedings would lack arguable merit. The record demonstrates that A.A-C. was provided with opportunities to interact with her counsel in a private breakout room. When A.A-C.'s connection was lost, the proceedings were paused and she appears to have promptly reconnected. The record further demonstrates A.A-C. was able to hear and see the proceedings, as she responded appropriately to questions posed to her.

The no-merit report also addresses whether there is any arguable merit to challenge A.A-C.'s no-contest plea in the grounds phase. The circuit court conducted a thorough colloquy with A.A-C. in which it instructed her that a stipulation in the grounds phase would result in a finding of parental unfitness. It also advised A.A-C. of the nature of the allegations against her, the rights she was giving up by stipulating in the grounds phase, the potential dispositions that might result, and the standard governing the disposition; and it established the absence of

coercion, threats or promises to induce the stipulation.[3] *See* ***Brown Cnty. Dep't of Hum. Servs. v. Brenda B.***, 2011 WI 6, ¶¶34-35, 331 Wis. 2d 310, 795 N.W.2d 730; ***Kenosha Cnty. Dep't of Hum. Servs. v. Jodie W.***, 2006 WI 93, ¶25, 293 Wis. 2d 530, 716 N.W.2d 845; *see also* WIS. STAT. § 48.422(7).

Additionally, the colloquy, coupled with the testimony of R.C.'s case manager, established a factual basis for A.A-C.'s stipulation in the grounds phase. *See* ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, ¶56, 233 Wis. 2d 344, 607 N.W.2d 607, *holding on other grounds clarified by* ***St. Croix Cnty. Dep't of Health & Hum. Servs. v. Michael D.***, 2016 WI 35, 368 Wis. 2d 170, 880 N.W.2d 107; *see also* WIS. STAT. § 48.422(3). The testimony established that R.C.'s foster parent had been providing for her daily care, protection and educational needs, and that A.A-C.'s visitation with R.C. had not progressed beyond six-hour-per-week supervised visitation. A.A-C. had missed doctor's appointments and had not contacted R.C.'s daycare provider about her progress or well-being. There would be no arguable merit to a challenge to

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[3] Counsel has not addressed the circuit court's failure to inquire about whether a proposed adoptive parent for the child had been identified. *See* WIS. STAT. § 48.422(7)(bm). A permanency plan dated June 2020 (i.e., preceding the September 2020 plea hearing) listed adoption as a concurrent permanence goal and identified R.C.'s foster parent as a potential adoptive parent. Under § 48.422(7)(bm), the identification of a proposed adoptive parent triggers the obligation to request a report under WIS. STAT. § 48.913(7), which includes a list of all transfers of anything of value between the proposed adoptive parent and the birth parent. The circuit court did not order that report at the time of A.A-C.'s no-contest plea. Nonetheless, when the foster parent was asked at the disposition hearing what things she had provided to A.A-C., the foster parent replied that she had offered A.A-C. only "clothes and rides and things like that." The record discloses no issue of arguable merit regarding coercive or impermissible payments between the proposed adoptive parent and the birth mother under §§ 48.422(7)(bm) and 48.913(4), and any error regarding the failure to determine the existence of a proposed adoptive parent at the time of A.A-C.'s stipulation is therefore harmless. *See* ***State v. Jodie A.***, Nos. 2015AP46, 2015AP47, unpublished slip op. ¶13 (WI App July 7, 2015). Additionally, A.A-C. confirmed during the colloquy that she had not been promised anything in exchange for her stipulation in the grounds phase.

A.A-C.'s no-contest plea, including to the factual basis for her stipulation in the grounds phase. *See* WIS. STAT. § 48.415(6).

The no-merit report also addresses whether there would be any arguable basis for challenging the circuit court's decision to terminate A.A-C.'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 trial 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).

We agree with counsel's conclusion that there is no arguable merit to any challenge to the circuit court's decision to terminate parental rights. The court found that although A.A-C. "loves all three of her children very much," her borderline intellectual functioning and past conduct demonstrated she was "unlikely ever to be capable of caring for a child on her own." The court's written decision gave explicit consideration to each of the relevant factors identified in WIS.

STAT. § 48.426(3) and calibrated those factors to the overall "best interest" standard.[4] The court noted R.C. had been separated from her parents for nearly her entire life and was likely to be adopted by her foster parent following termination. The court identified § 48.426(3)(c) as the "most complex" factor, observing that R.C. had formed a relationship with her birth mother but finding that relationship "lack[ed] the depth of parent and child." It acknowledged that severing that relationship would cause some degree of harm, but it determined that harm was "outweighed by the overall benefits of termination/adoption," particularly because R.C's relationship with her foster parent was "fundamental, substantial and profound." The court also found any harm would be mitigated by the foster parent's commitment to R.C. "having a relationship with her mother and her family of origin." *See* ***State v. Margaret H.***, 2000 WI 42, ¶29, 234 Wis. 2d 606, 610 N.W.2d 475 ("In its discretion, the court may afford due weight to an adoptive parent's stated intent to continue visitation with family members …."). It determined termination and likely adoption was a more stable and permanent option than a guardianship with A.A-C.'s cousin. There appears on this record no meritorious basis for asserting the court erroneously exercised its discretion when determining whether termination was in R.C.'s best interest.

Our review of the record discloses no other potential issues for appeal. We therefore accept the no-merit report, affirm the order terminating A.A-C.'s parental rights to R.C., and discharge appellate counsel of the obligation to represent A.A-C. further in this appeal.

Upon the foregoing,

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[4] At the time of the TPR decision, R.C. was approximately two and one-half years old and was incapable of expressing her wishes regarding TPR.

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Steven W. Zaleski is relieved of any further representation of A.A-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