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DISTRICT II

February 9, 2022

To:

Hon. Jodi L. Meier
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Juvenile Clerk
Kenosha County
Electronic Notice

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Kenosha, WI 53140

Brent Simerson
Electronic Notice

B.K.D.

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

2021AP1455-NM	Kenosha County DHS v. B.K.D. (L.C. #2020TP50)
2021AP1456-NM	Kenosha County DHS v. B.K.D. (L.C. #2020TP51)
2021AP1457-NM	Kenosha County DHS v. B.K.D. (L.C. #2020TP52)
2021AP1458-NM	Kenosha County DHS v. B.K.D. (L.C. #2020TP53)

Before Neubauer, 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).

In these consolidated appeals, B.K.D. appeals from circuit court orders terminating his parental rights to T.N.D., M.C.D., E.M.M.O.D. and D.T.D. (the children). B.K.D.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m). B.K.D. received a

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.

copy of the report and has not filed a response to it. Upon consideration of the report and an independent review of the record, we summarily affirm the orders because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.²

The Kenosha County Division of Children and Family Services petitioned to terminate B.K.D.'s parental rights on two grounds: (1) the children were in continuing need of protection or services (continuing CHIPS) pursuant to WIS. STAT. § 48.415(2); and (2) abandonment pursuant to § 48.415(1)(a)2. A jury found both grounds for termination as to all children, and the circuit court thereafter terminated B.K.D.'s parental rights after a dispositional hearing.

The no-merit report addresses: (1) the sufficiency of the evidence of abandonment and continuing CHIPS at the grounds phase to support the circuit court's determination that B.K.D. was unfit; and (2) whether the circuit court properly exercised its discretion in determining that it was in the children's best interests to terminate B.K.D.'s parental rights. We agree with appellate counsel that these issues do not have arguable merit for appeal.³

We have reviewed the record including, without limitation, pre-trial matters, the circuit court's evidentiary rulings, voir dire and the jury instructions. We see no issues with arguable merit for appeal.

² Due to the size of the record in these consolidated appeals, we extend the time to decide these appeals to the date of this opinion. WIS. STAT. RULES 809.107(6)(e) and 809.82(2).

³ We observe that the no-merit report does not discuss the standards of review we apply to the circuit court's decisions in this case.

We conclude that the evidence supports the jury's verdict that there were grounds to terminate B.K.D.'s parental rights. "When reviewing a jury's verdict, we consider the evidence in the light most favorable to the verdict." *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d. 273, 797 N.W.2d 854. The credibility of the witnesses and the weight to be afforded to their testimony was for the jury to determine. *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989).

At trial, evidence was taken from child welfare and family support professionals, the foster parents, the mother, and B.K.D. The jury found that the children were in continuing need of protection or services and had been placed outside of B.K.D.'s home for six months or longer pursuant to court orders that contained termination of parental rights notices,⁴ the County made reasonable efforts to provide court-ordered services, and B.K.D. failed to meet the conditions for the children's return. The jury also found that while the children were placed outside of the home, B.K.D. failed to communicate or visit with the children for a period of three months or longer. The jury's findings are supported in the trial record. The County met its burden to show grounds for termination by clear and convincing evidence. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768. We conclude that no arguable merit could arise from

⁴ There would be no arguable merit to a challenge based upon the fact that B.K.D. was given the termination of parental rights warnings pursuant to the statute in effect at the time the February 28, 2017 CHIPS dispositional order was entered, WIS. STAT. § 48.415(2)(a)3. (2015-16), but the termination of parental rights proceedings occurred under the amended version of the statute, WIS. STAT. § 48.415(2)(a)3. (2019-20). See *Eau Claire Cnty. Dept. of Human Servs. v. S.E.*, 2021 WI 56, ¶¶39-40, 397 Wis. 2d 462, 960 N.W.2d 391 (proof of likelihood of meeting conditions of return no longer required under amended statute).

a challenge to the sufficiency of the evidence of the grounds to terminate B.K.D.'s parental rights.

The decision to terminate parental rights is within the circuit court's discretion. *State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d. 606, 610 N.W.2d 475. The circuit court must consider the WIS. STAT. § 48.426(3) statutory factors to determine if termination is in the child's best interests. The record in this case indicates that the court considered the appropriate factors: the likelihood of the children's adoption after termination, the children's age and health, the children's substantial family relationships and whether it would be harmful to sever those relationships, the duration of the parent-child separation, and future stability for the children as a result of the termination. The court's findings in support of termination were not clearly erroneous. WIS. STAT. § 805.17(2). The court's discretionary determination that it was in the children's best interests to terminate B.K.D.'s parental rights is supported in the record. We agree with counsel's conclusion that an appellate challenge would lack arguable merit.

We have considered whether there would be any arguable merit to a claim that the court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Continuances are permitted "upon a showing of good cause in open court ... and only for so long as is necessary[.]" WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. Section 48.315(3). The record shows that the circuit court found good cause to toll the time limits, and B.K.D. did not object. There would be no arguable merit to a challenge to the circuit court's competency to proceed based on a failure to comply with statutory time limits.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any issues with arguable merit for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the orders terminating B.K.D.'s parental rights, and relieve Attorney Brent Simerson of further representation of B.K.D. in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brent Simerson is relieved of further representation of B.K.D. in these matters.

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

Sheila T. Reiff
Clerk of Court of Appeals