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May 3, 2022

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Circuit Court Judge
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Courtney L.A. Roelandts
Electronic Notice

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

2022AP366-NM

In re the termination of parental rights to S.D., a person under the
age of 18: State of Wisconsin v. T.M.H. (L.C. # 2021TP117)

Before Dugan, 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).**

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.

T.M.H., by counsel, appeals the circuit court order terminating her parental rights to S.D. Attorney Steven Zaleski, appointed counsel for T.M.H., has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. T.M.H. was informed of her right to respond to the report, but has not filed a response. Upon consideration of the report, and an independent review of the record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, this court summarily affirms the circuit court's order. *See* WIS. STAT. RULE 809.21.

The State filed the petition to terminate T.M.H.'s parental rights to S.D. As grounds, the petition alleged that S.D. was in continuing need of protection or services (CHIPS) and that T.M.H. failed to assume parental responsibility. *See* WIS. STAT. §§ 48.415(2), (6). T.M.H. waived her statutory right to a jury trial, and the matter proceeded to a fact-finding hearing as to grounds. The circuit court found that the State had established both of the alleged grounds for termination of parental rights, and entered a finding of unfitness. The case proceeded to a dispositional hearing, where the court made a verbal decision to terminate T.M.H.'s parental rights to S.D. The court then entered a written order terminating T.M.H.'s parental rights, and T.M.H. appealed.

The no-merit report first addresses whether the circuit court complied with the statutory deadlines that govern termination of parental rights proceedings. This court agrees with counsel that there is no arguable merit to this issue. In each instance, the court either complied with the applicable deadlines or found good cause for extending the deadlines.

The no-merit report next addresses whether there would be any arguable merit to a claim that T.M.H.'s waiver of the statutory right to a jury trial under WIS. STAT. § 48.422(4) was not

knowing, intelligent, and voluntary. Due process does not require the circuit court to engage in a personal colloquy with the parent to confirm waiver of the right to a jury trial in the grounds phase of a termination of parental rights (TPR) proceeding. *Racine Cnty. Human Servs. Dep't v. Latanya D.K.*, 2013 WI App 28, ¶2, 346 Wis. 2d 75, 828 N.W.2d 251. Nonetheless, this court has recognized that “a personal colloquy concerning waiver of the jury trial right is a good idea in TPR proceedings.” *Id.*, ¶21. In this case, the court did engage in an on-the-record colloquy with T.M.H. to confirm that she knew she was giving up her right to a jury trial and that she had not been forced, threatened, pressured, or paid to give up that right. T.M.H. confirmed for the court that she had discussed the waiver decision with her trial counsel and was making it freely. Upon an independent review of the record, this court concludes that any challenge to the validity of T.M.H.’s waiver of the right to a jury trial would be without arguable merit.

Next, the no-merit report discusses whether the evidence was sufficient to sustain the circuit court’s finding of parental unfitness on the grounds of continuing CHIPS and failure to assume parental responsibility. The no-merit report discusses in detail the hearing evidence that was presented by the State to establish these grounds. Without attempting to recite the evidence again here, this court is satisfied that there would be no arguable merit to challenging the sufficiency of the evidence to support the court’s finding of unfitness during the grounds phase of the proceedings.

The no-merit report also discusses whether there would be any arguable merit to challenging the circuit court’s decision to terminate T.M.H.’s parental rights at the conclusion of the dispositional phase of the proceedings. This court agrees with counsel 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).

At the dispositional hearing, the court heard testimony from the child's foster mother and case supervisor, as well as a verbal statement made by T.M.H. in court. In rendering its decision, the circuit court considered on the record all of the statutory factors set forth in WIS. STAT. § 48.426(3), and concluded that termination of T.M.H.'s parental rights to S.D. was in the child's best interest. This court agrees with counsel that a challenge to the circuit court's exercise of discretion as to disposition would be wholly frivolous.

The no-merit report also addresses whether an arguably meritorious argument could be made that T.M.H.'s substantive due process rights were violated because, due to T.M.H.'s cognitive limitations, she was unable to meet the conditions established by the court for the return of S.D. to her care. This court agrees with counsel that there is no arguable merit to this issue. The record reflects that the return conditions were "narrowly tailored" to the particular needs of T.M.H. as a parent who required specialized parenting instruction as to S.D. *See Kenosha Cnty. DHS v. Jodie W.*, 2006 WI 93, ¶39, 293 Wis. 2d 530, 716 N.W.2d 845. The dispositional order directed the State to provide certain services that addressed T.M.H.'s needs, including a parenting assessment, a specialized parenting class, parenting services, basic home management, and individual therapy. The record establishes that, although participation was inconsistent, T.M.H. availed herself of several of the services offered. Any substantive due process claim analogous to the claim raised in *Jodie W.* would be wholly frivolous. *Id.*

Finally, there is nothing in the no-merit report or the record to suggest that trial counsel rendered ineffective assistance of counsel in representing T.M.H. Upon an independent review of the record, no other arguable basis for reversing the orders terminating T.M.H.'s parental rights has been found. Therefore, any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of any further representation of T.M.H. in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals