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DISTRICT II

May 25, 2022

To:

Hon. Chad G. Kerkman
Circuit Court Judge
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Rebecca Matoska-Mentink
Juvenile Clerk
Kenosha County Courthouse
Electronic Notice

R.M.M.

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

2022AP364-NM

Kenosha County DHS v. R.M.M. (L.C. #2021TP34)

Before Grogan, 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).

R.M.M. appeals from an order involuntarily terminating her parental rights to her minor son, C.W.G. Appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. R.M.M. received a copy of the report, was advised of her right

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.

to file a response, and has not done so. Upon consideration of the no-merit report and an independent review of the record, this court concludes that the order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The day after his April 2020 birth, C.W.G. was taken into protective custody due to neglect. He was subsequently found to be a child in need of protection or services (CHIPS). C.W.G. remained placed outside of R.M.M.'s home, and in May 2021, the Kenosha County Division of Children and Family Services filed a petition to involuntarily terminate R.M.M.'s parental rights, alleging that C.W.G. was in continuing need of protection or services, *see* WIS. STAT. § 48.415(2), and that R.M.M. failed to assume parental responsibility, *see* § 48.415(6).

At the initial appearance, the circuit court ordered R.M.M. to appear in person for all hearings and warned that if she failed to personally appear “for each and every hearing[,]” she could be found in default. The court adjourned the initial appearance to enable R.M.M. to obtain counsel. R.M.M. appeared with appointed counsel for the adjourned initial appearance and entered a denial. R.M.M. failed to appear for the next two hearings and, on the County's motion, the court found her in default at the grounds phase. The court adjourned disposition due to the lack of a court report.

R.M.M. appeared with her attorney at the adjourned dispositional hearing and, at her counsel's request, the circuit court again agreed to adjourn disposition. Following a contested dispositional hearing at which R.M.M. was present, the court found that termination was in C.W.G.'s best interest and entered an order terminating R.M.M.'s parental rights to C.W.G. This no-merit appeal follows.

Appellate counsel's no-merit report first addresses the potential issue of whether there were any procedural defects in the proceedings. Having conducted an independent review, this court is satisfied that the discussion in the no-merit report correctly analyzes this issue as without arguable merit, and we will not discuss it further.

Next, the no-merit report addresses whether the circuit court properly exercised its discretion in finding R.M.M. in default at the grounds phase. In a termination of parental rights case, it is within the court's discretion to find a party in default as a sanction for failing to comply with a court order. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768. At the initial appearance, the court ordered R.M.M. to "appear in person for all hearings" and ascertained her understanding that she could be found in default if she failed to appear. Despite the court's order, R.M.M. failed to appear for two consecutive hearings. The County moved to default R.M.M., and her attorney told the court he could not account for his client's absences. The County presented evidence, and the court found that both alleged termination grounds were established by clear and convincing evidence. *See id.*, ¶¶24-26 (before entering a default judgment, the court must take sufficient evidence to support a finding that grounds have been established by clear and convincing evidence). Having independently reviewed the County's evidence in light of the elements of both alleged unfitness grounds, we agree with appellate counsel's conclusion that the County met its burden to prove R.M.M.'s unfitness under both WIS. STAT. § 48.415(2) (continuing CHIPS) and § 48.415(6) (failure to assume parental responsibility).

Additionally, after being found in default, R.M.M. appeared twice for disposition. She failed to offer satisfactory reasons for her missed court appearances and never moved to vacate

the circuit court’s default finding. We conclude that any challenge to the circuit court’s default decision would lack arguable merit.

The last issue discussed in counsel’s no-merit report is whether the circuit court properly exercised its discretion at disposition in determining that it was in C.W.G.’s best interest to terminate R.M.M.’s parental rights. *See State v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the “best interests of the child” is the prevailing standard, and the court is required to consider the factors delineated in § 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Here, the court expressly considered the statutory factors in light of the appropriate legal standard and the facts of record. We agree with appellate counsel’s analysis and conclusion that a challenge to the court’s exercise of discretion at disposition would lack arguable merit.

Our independent review of the record does not disclose any other potentially meritorious issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved from further representing R.M.M. in this 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