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DISTRICT II

June 8, 2022

To:

Hon. Larisa V. Benitez-Morgan
Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
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A.J.D., Jr.

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

2022AP25-NM	Kenosha County DHS v. A.J.D., Jr. (L.C. #2020TP43)
2022AP26-NM	Kenosha County DHS v. A.J.D., Jr. (L.C. #2020TP44)
2022AP27-NM	Kenosha County DHS v. A.J.D., Jr. (L.C. #2020TP45)
2022AP28-NM	Kenosha County DHS v. A.J.D., Jr. (L.C. #2020TP46)

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).

A.J.D., Jr., appeals circuit court orders terminating his parental rights to E.Z.D., K.I.D., P.A.J.D., and U.M.D. Attorney Lauren Jane Breckenfelder, appointed counsel for A.J.D., has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. A.J.D. was

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.

informed of his right to respond to the report and has not filed a response. Counsel also filed a supplemental no-merit report. After considering the report and supplemental report and independently reviewing the record, we summarily affirm the circuit court's orders because we conclude that there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.²

The Kenosha County Division of Children and Family Services petitioned for the termination of A.J.D.'s parental rights to E.Z.D., K.I.D., P.A.J.D., and U.M.D. The County alleged grounds of continuing need of protection or services as to all four children and additional grounds of failure to assume parental responsibility and abandonment as to E.Z.D. A.J.D. pled no contest to the continuing CHIPS grounds as to each of the four children, and the additional grounds as to E.Z.D. were dismissed. After accepting A.J.D.'s no-contest pleas, the circuit court held a dispositional hearing and terminated A.J.D.'s parental rights to the four children.

The no-merit report first addresses the statutory time limits for conducting TPR hearings. We agree with counsel that there is no issue of arguable merit with respect to these time limits. Although the circuit court granted several continuances beyond the statutory time limits, in each instance the record shows good cause for a continuance. The continuances were therefore

² Counsel filed the no-merit report in these consolidated no-merit appeals on March 11, 2022. The time for A.J.D. to file a response to the report was within ten days after service of the report. *See* WIS. STAT. RULE 809.107(5m). As noted above, A.J.D. did not file a response. The clerk of this court submitted these no-merit appeals to the court on April 21, 2022. On April 25, 2022, we ordered counsel to file a supplemental report or other response by May 9, 2022. On May 9, 2022, counsel filed a motion to extend the time to respond to May 20, 2022. We granted the motion based on counsel's showing of good cause. *See* WIS. STAT. RULE 809.82(2)(a) (providing that the court may for good cause "enlarge or reduce the time prescribed by these rules or court order for doing any act"). Counsel timely filed the supplemental no-merit report on May 10, 2022. To the extent that any extension of the time to decide these no-merit appeals is necessary to comply with time limits, *see* RULE 809.107(6)(e), we conclude there is good cause based on the circumstances described.

proper. *See* WIS. STAT. § 48.315(2) (allowing for continuances based on a showing of good cause). Additionally, A.J.D. did not object to any of the continuances. *See* § 48.315(3) (“Failure to object to a period of delay or a continuance waives any challenge to the court’s competency to act during the period of delay or continuance.”).

The no-merit report next addresses whether the TPR petitions satisfied statutory requirements. We agree with counsel that there is no arguable merit to this issue. We see no arguable basis for A.J.D. to seek reversal based on any alleged failure to comply with statutory requirements for the petitions.

The no-merit report also addresses whether A.J.D.’s no-contest pleas to the continuing CHIPS grounds were validly entered. We agree with counsel that there is no arguable merit to this issue. A.J.D. signed a detailed plea questionnaire and waiver of rights form, and the circuit court conducted a detailed colloquy with A.J.D. With two exceptions, A.J.D.’s no-contest pleas were taken in compliance with the statutory and case law requirements. *See* WIS. STAT. § 48.422(7); *Oneida Cnty. DSS v. Therese S.*, 2008 WI App 159, ¶¶5, 10-11, 16, 314 Wis. 2d 493, 762 N.W.2d 122. We explain why neither of these exceptions provides any arguable basis to appeal.

The first exception is that the circuit court did not order or review a financial report addressing any payments or other transfers to A.J.D. from the proposed adoptive parents for E.Z.D, even though it appears such a report was required. The statutes impose a duty on the court to order and review such a report when the proposed adoptive parents are not relatives of the child. *See* WIS. STAT. §§ 48.02(15), 48.422(7)(bm), and 48.913(7). The existence of any such payment or transfer may create a rebuttable presumption of coercion. *See* § 48.422(7)(bm).

The record does not include any information establishing that the proposed adoptive parents for E.Z.D. were relatives.³ Accordingly, it appears that the court should have ordered a financial report under § 48.422(7)(bm) with respect to the proposed adoptive parents for E.Z.D.

However, counsel states in the supplemental no-merit report that A.J.D. has confirmed that the proposed adoptive parents of E.Z.D. did not, at any point in time, transfer payments, goods, or anything else of value to A.J.D. Counsel concludes that, absent any such transfer, there is no presumption of coercion and no arguable merit to pursue further proceedings based on the lack of a report under WIS. STAT. § 48.422(7)(bm). We agree with counsel's conclusion.

The second exception to the circuit court's compliance with its plea colloquy duties is that the court did not establish a factual basis for A.J.D.'s pleas at the time the court accepted the pleas. However, as counsel points out, the petition contained a sufficient factual basis, and the court subsequently heard evidence to support the CHIPS grounds for A.J.D.'s pleas at the time of the dispositional hearing, thereby providing a factual basis for the pleas which was more than adequate. *See Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶¶30-32, 246 Wis. 2d 1, 629 N.W.2d 768.⁴ There would be no arguable merit to a claim that a factual basis for the pleas was lacking.

The no-merit report next addresses whether the circuit court judge erred in declining to recuse herself at trial counsel's request. We agree with no-merit counsel that there is no arguable

³ The record contains information establishing that the proposed adoptive parents for the other three children were relatives.

⁴ Additionally, A.J.D.'s signed plea questionnaire and waiver of rights form, which the court reviewed with A.J.D., provided that A.J.D. agreed the petitions contained sufficient facts to find him unfit as a parent.

merit to this issue. The record shows no basis for mandatory recusal. *See* WIS. STAT. § 757.19 (listing grounds for mandatory disqualification of a judge). Further, we see no basis to argue for recusal based on actual or apparent bias. The record does not contain evidence that could overcome the presumption that the judge acted fairly, impartially, and without prejudice. *See State v. Herrmann*, 2015 WI 84, ¶24, 364 Wis. 2d 336, 867 N.W.2d 772.

Finally, the no-merit report addresses whether the circuit court erred in deciding to terminate A.J.D.’s parental rights during the dispositional phase of the proceedings. We agree 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). The circuit court must consider the factors set forth in WIS. STAT. § 48.426, giving paramount consideration to the best interest of the child. *See Gerald O.*, 203 Wis. 2d at 153-54. The court did so here, as discussed in the no-merit report. The court heard relevant evidence, applied the statutory factors to that evidence, and ultimately found that terminating A.J.D.’s parental rights was in the best interest of each of the children. We see no nonfrivolous basis to argue that the court erroneously exercised its discretion.

Our review of the record discloses no other arguably meritorious issue for appeal.

Therefore,

IT IS ORDERED that the circuit court’s orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Lauren Jane Breckenfelder is relieved of any further representation of A.J.D., Jr. in this matter.

Nos. 2022AP25-NM
2022AP26-NM
2022AP27-NM
2022AP28-NM

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

Sheila T. Reiff
Clerk of Court of Appeals