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DISTRICT II

June 15, 2022

To:

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Circuit Court Judge
Electronic Notice

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Electronic Notice

Elizabeth Adams
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Waukesha County Courthouse
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M.J.V.

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

2022AP300-NM	Waukesha County DH&HS v. M.J.V. (L.C. #2020TP8)
2022AP301-NM	Waukesha County DH&HS v. M.J.V. (L.C. #2020TP9)

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).

Attorney Leonard D. Kachinsky, appointed counsel for M.J.V., has filed a consolidated no-merit report in these appeals of the orders terminating M.J.V.'s parental rights to S.J.V. and I.J.V. See WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a claim of procedural defects during the termination-of-parental-rights (TPR) proceedings, error as to circuit court rulings,

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.

insufficiency of the evidence to support the jury findings as to grounds, or a challenge to the circuit court's decision that termination of M.J.V.'s parental rights was in the children's best interest. M.J.V. was sent a copy of the report and has filed a response. Attorney Kachinsky has filed a supplemental no-merit report as previously ordered by this court. Upon this court's independent review of the entire record as well as the no-merit report, response, and supplemental no-merit report, this court agrees with counsel's assessment that there are no arguably meritorious appellate issues. Therefore, this court summarily affirms the orders terminating M.J.V.'s parental rights. *See* WIS. STAT. RULE 809.21.

On February 26, 2020, Waukesha County petitioned to terminate M.J.V.'s parental rights to S.J.V. and I.J.V., alleging grounds of continuing need of protection or services (CHIPS) and failure to assume parental responsibility.² *See* WIS. STAT. § 48.415(2) and (6). M.J.V. contested the petitions and exercised her right to a jury trial. At the conclusion of the trial, the jury found that grounds existed to terminate M.J.V.'s parental rights as to both grounds alleged in the petitions. After a dispositional hearing that extended through several days, the circuit court found that termination of M.J.V.'s parental rights was in the children's best interests. On August 13, 2021, the circuit court entered orders terminating M.J.V.'s parental rights to both children.

The no-merit report addresses whether there would be arguable merit to any claim of a procedural defect during the TPR proceedings. Counsel concludes that the circuit court

² Waukesha County also petitioned to terminate the parental rights of the children's father, and the petitions as to both parents proceeded together through grounds and disposition. These appeals concern only the termination of M.J.V.'s parental rights.

complied with all statutory procedural requirements. *See* WIS. STAT. §§ 48.42, 48.422, 48.424, 48.426, 48.427, 48.29, 48.299, and 48.315(2). This court agrees with counsel that any claim of a procedural defect during the proceedings would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to any of the circuit court's rulings during the TPR proceedings. Specifically, the no-merit report addresses the circuit court's decisions: (1) denying the parents' request for a change of venue to Milwaukee County; and (2) denying the parents' request for a new jury based on the guardian ad litem's statement during jury voir dire that he represented the best interests of the children.³ The circuit court properly exercised its discretion as to both matters and gave an appropriate cautionary instruction that the jury was not to consider the best interests of the children as the court would consider that at a future proceeding. This court agrees with counsel's assessment that there would be no arguable merit to further proceedings challenging either decision by the circuit court.

The no-merit report also addresses whether there would be arguable merit to a claim that there was insufficient evidence to support the jury's finding of grounds for termination based on CHIPS and failure to assume. Grounds for termination must be established by clear and convincing evidence. *See* WIS. STAT. §§ 48.424(2) and 48.31(1). A jury's determination that grounds for termination exist will be upheld so long as there is any credible evidence to support that determination. *See State v. Quinsanna D.*, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 449,

³ The no-merit report also notes that M.J.V. objected to the lack of any person of color in the jury venire. The no-merit report concludes that there would be no arguable merit to further proceedings based on that objection. This court agrees with counsel's assessment.

655 N.W.2d 752. “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 give their testimony is a matter left to the jury. *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989). To prove grounds based on CHIPS, Waukesha County was required to prove: (1) that each child had been placed outside the home for a cumulative total of six months or longer; (2) that Waukesha County had made reasonable efforts to provide the services ordered by the circuit court; and (3) that M.J.V. failed to meet the conditions established for the safe return of the children. *See* WIS. STAT. § 48.415(2). This court agrees with counsel’s assessment that an argument that the evidence was insufficient to support the jury’s findings as to the CHIPS grounds would lack arguable merit.⁴

The no-merit report also addresses whether the circuit court properly exercised its discretion by determining that termination of M.J.V.’s parental rights was in the children’s best interests. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996) (court’s decision that termination of parental rights is in child’s best interests is reviewed for an erroneous exercise of discretion). The court considered the factors set forth in WIS. STAT. § 48.426(3) and explained its determination that termination was in the children’s best interests. This court agrees with counsel’s assessment that an argument that the circuit court erroneously exercised its decision would lack arguable merit.

⁴ The termination ground of failure to assume parental responsibility required Waukesha County to prove that M.J.V. failed to accept and exercise “significant responsibility for the daily supervision, education, protection and care” of the subject child. *See* WIS. STAT. § 48.415(6). However, because this court concludes that there would be no arguable merit to challenge the sufficiency of the evidence to support the jury’s findings as to the CHIPS grounds, the court does not address the sufficiency of proof on the alternative grounds of failure to assume.

M.J.V. asserts in her no-merit response that she does not believe the termination-of-parental-rights decision was fair. She asserts that the clinical psychologist who assessed the parents' home visits lied in his report when he stated that the parents did not notice when the children were touching the stove. Rather, M.J.V. asserts, her husband did notice and responded by taking the children into the living room.

The psychologist testified at trial that he observed three home visits with the parents and the children. He described one incident when S.J.V. got upset and ran past the stove and turned the knobs on the stove, and M.J.V. intervened. However, the psychologist also testified that at subsequent visits he observed the behavior repeated, with both children turning the knobs on the gas burners for the stove. He stated that he smelled gas and turned the stove off and had to bring the behavior to the parents' attention. The psychologist explained that he was concerned that the behavior was repeating, that it was dangerous, and that the parents were not monitoring the behavior as they needed to. The children's father testified that, contrary to the psychologist's assessment, the father was in front of the children during the last incident with the stove before the visits were returned to the community setting. The jury was entitled to make credibility determinations and to resolve any conflict in the testimony regarding the incidents with the stove. This court discerns no arguable merit to further proceedings on this issue.

By prior order, this court noted that the no-merit response appears to assert that the psychologist who assessed the home visits was ineffective because he was English-speaking and that a subsequent therapist who worked with the family was more effective because she was Spanish-speaking. This court's order also noted that, during the dispositional phase, M.J.V. was appointed successor counsel who requested a Spanish-language interpreter for M.J.V. at the dispositional hearing. This court requested further input from no-merit counsel as to whether

there would be arguable merit to further proceedings on the basis that M.J.V.'s counsel at the grounds phase failed to request a Spanish-language interpreter to assist M.J.V. in understanding the proceedings.

Counsel has filed a supplemental no-merit report concluding that there would be no arguable merit to further proceedings on this issue. Counsel explains that he has consulted with M.J.V. on this issue and that M.J.V. does not allege that she was unable to understand anything during the grounds phase based on the lack of an interpreter. This court concludes that the supplemental no-merit report establishes that this issue lacks arguable merit.

Finally, the no-merit response asserts that the parents' visitation rights were restricted after the home visits with the psychologist and that the parents then did not see the children in person for a whole year due to the pandemic. It asserts that most of the people in court were against the parents and that the children were taken away from them based on lies and because the parents are Hispanic.

At trial, the social worker for Waukesha County acknowledged that, after the incidents with the stove, the parents' visitations were returned to the community setting, and the amount of time they had with their children was substantially reduced. She explained that the decision was made to return the visits to the community setting based on safety concerns reported by the psychologist. The social worker also explained that, when the pandemic began, visits were required to be transitioned to virtual visits and that she later obtained therapeutic support to transition the visits back to in person. This court concludes that nothing in the materials before the court would support a claim of arguable merit based on the assertions in the no-merit response.

Upon this court's independent review of the record, this court has not located any other arguable basis for reversing the orders terminating M.J.V.'s parental rights. This court concludes that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Upon the foregoing,

IT IS ORDERED that the orders terminating M.J.V.'s parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of any further representation of M.J.V. in these matters. *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