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DISTRICT IV

July 21, 2022

To:

Hon. Daniel G. Wood
Circuit Court Judge
Electronic Notice

Megan Sanders-Drazen
Electronic Notice

Kathe Koback
Juvenile Clerk
Adams County Courthouse
Electronic Notice

Stefanie P. Wagner
Electronic Notice

S.R.W.

Jeanne L. Zamzow
Electronic Notice

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

2022AP815-CRNM	In re the termination of parental rights to R.R.W., a person under the age of 18: Adams County Health and Human Services Department v. S.R.W. (T.C. # 2021TP2)
2022AP816-CRNM	In re the termination of parental rights to R.A.W., a person under the age of 18: Adams County Health and Human Services Department v. S.R.W. (T.C. # 2021TP3)

Before Graham, 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).

S.R.W. appeals circuit court orders terminating his parental rights to R.A.W. and R.R.W. Attorney Megan Sanders-Drazen, appointed counsel for S.R.W., has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. S.R.W. was sent a copy of the report

¹ These appeals are 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.

and has not filed a response. Based on the report and an independent review of the record, I conclude that there are no arguably meritorious issues for appeal. Accordingly, I affirm the circuit court's orders.

The Adams County Health and Human Services Department petitioned for the termination of S.R.W.'s parental rights to R.A.W. and R.R.W. The Department alleged as grounds that each child was in continuing need of protection or services. *See* WIS. STAT. § 48.415(2).

S.R.W. appeared at the initial hearing and at a continued initial hearing, but he failed to appear at a subsequent hearing despite having notice. The circuit court rescheduled the hearing and ordered S.R.W. to appear.

S.R.W. failed to appear at the rescheduled hearing. The circuit court determined that S.R.W. was in default for purposes of the grounds phase of the proceedings and, after taking evidence to support the alleged unfitness grounds, the court found that S.R.W. was unfit.

The circuit court held a separate dispositional hearing, and S.R.W. appeared at that hearing. After taking additional evidence, the court terminated S.R.W.'s parental rights to R.A.W. and R.R.W.

The no-merit report first addresses whether S.R.W. could challenge the circuit court's entry of a default judgment against S.R.W. during the grounds phase of the proceedings. I agree with counsel that there is no arguable merit to this issue. A circuit court has discretion to enter a default judgment against a parent during the grounds phase of proceedings based on the parent's failure to comply with a court order, provided that (1) the court finds that the parent's conduct in

failing to comply was egregious and in bad faith, and (2) the court takes evidence sufficient to support a finding of unfitness based on the grounds alleged. *See State v. Shirley E.*, 2006 WI 129, ¶13 & n.3, 298 Wis. 2d 1, 724 N.W.2d 623; *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶¶16-19, 36, 246 Wis. 2d 1, 629 N.W.2d 768. Here, the circuit court satisfied both of these requirements, and there is ample evidence in the record to support the court’s findings.

Appellate counsel states in the no-merit report that she is not aware of any information that would support a claim that S.R.W.’s trial counsel was ineffective by failing to move to vacate the default judgment against S.R.W. Based on an independent review of the record, I similarly see no basis for such a claim. When S.R.W. appeared at the dispositional hearing, he testified and offered explanations for his failure to appear at the previous hearings, but his testimony did not show that his failure to appear was unpreventable or otherwise excusable. At one point S.R.W. seemed to claim that he was unaware of the second of the two hearings that he missed, but ultimately he admitted that he “probably” received the written order to appear at that hearing. Additionally, other portions of the record show that S.R.W.’s trial counsel was attempting to contact S.R.W. prior to the hearing, but S.R.W. would not return counsel’s calls, and S.R.W.’s failure to communicate with counsel was one of the reasons the circuit court cited when finding that S.R.W.’s conduct was egregious and not excusable.

The no-merit report next addresses whether S.R.W. could challenge the circuit court’s decision to terminate S.R.W.’s parental rights during the dispositional phase of the proceedings. I agree with counsel that there is no arguable merit to this issue. The circuit court’s ultimate decision on 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 court must consider the factors set forth in WIS. STAT. § 48.426 and give paramount consideration to the best interests of the

children. *See Gerald O.* at 153-54. The record shows that the court did so here. There is no non-frivolous basis on which S.R.W. could challenge the court's exercise of its discretion.

This court's independent review of the record discloses no other issues of arguable merit, including with respect to the statutory time limits and other procedural requirements in a termination of parental rights case.

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 Megan Sanders-Drazen is relieved of any further representation of S.R.W. in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals