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DISTRICT I

July 26, 2022

To:

Hon. Marshall B. Murray
Circuit Court Judge
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

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Division of Milwaukee Child Protective
Services
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K. J.

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

2022AP889-NM	In re the termination of parental rights to M. W., a person under the age of 18: State of Wisconsin v. K. J. (L.C. # 2020TP252)
2022AP890-NM	In re the termination of parental rights to J. J., a person under the age of 18: State of Wisconsin v. K. J. (L.C. # 2020TP253)
2022AP891-NM	In re the termination of parental rights to J. J., a person under the age of 18: State of Wisconsin v. K. J. (L.C. # 2020TP254)
2022AP892-NM	In re the termination of parental rights to L. J., a person under the age of 18: State of Wisconsin v. K. J. (L.C. # 2020TP255)
2022AP893-NM	In re the termination of parental rights to M. J., a person under the age of 18: State of Wisconsin v. K. J. (L.C. # 2020TP256)

Before White, 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).

K.J. appeals from orders terminating her parental rights to her five children: M.W., born in October 2010; J.J., born in November 2011; J.J., born in March 2016; L.J., born in November 2017; and M.J., born in July 2019. Appellate counsel, Jill Marie Skwor, has filed a consolidated no-merit report. *See* WIS. STAT. RULES 809.107(5m), 809.32; *see also Anders v. California*, 386 U.S. 738 (1967). K.J. was advised of her right to file a response, but she has not responded. Based upon an independent review of the records and the no-merit report, this court concludes that an appeal would lack arguable merit. Therefore, the orders terminating K.J.’s parental rights are summarily affirmed.

The Milwaukee County Sheriff’s Department responded to a domestic violence call on September 25, 2019, and discovered that the family involved was homeless and living in squalid and unsafe conditions in their vehicle. A strong odor emanated from the vehicle; when a deputy opened the door, fecal matter fell out. The children’s hair, clothing, and bodies “smelled of a combination of mold, urine and fecal matter.” There were flies on and around the children’s bodies. The children’s clothes were so soiled that they were stiff and subsequently discarded. The two youngest children, a twenty-two-month-old boy and two-month-old girl, were naked from the waist down. The children were taken into temporary physical custody that day. They

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.

were subsequently determined to be in need of protection or services and were placed outside the home by orders entered in May 2020.

On November 17, 2020, the State filed petitions to terminate K.J.'s parental rights to the children, alleging that each child was in continuing need of protection or services and that K.J. had failed to assume parental responsibility.² K.J. was found in default on March 23, 2021 during the grounds phase after she failed to attend two court hearings despite warnings that her attendance was required. The ongoing case manager informed the court that she had spoken to K.J. the day before the hearing at which the default was granted and expected her to attend the hearing. K.J.'s counsel informed the court that K.J. was in contest posture regarding the grounds for the TPR, that she last had contact with K.J. at the beginning of the month, and that she did not know why K.J. was not in attendance, but she had expected K.J. to attend the hearing.

The circuit court heard evidence in support of the petitions at a prove-up hearing, and found both grounds against K.J. had been proven for all five children. The case manager testified that she had "on and off contact" with K.J. "throughout these past years whether or not by letters, trying to contact her relatives, trying to do text, voicemails and trying to leave some opening to try to maintain communication with her." She testified that K.J. failed to follow through with recommended services for AODA, parenting classes, trauma informed parenting

² The youngest four children have the same father, M.J. The termination petitions also alleged continuing CHIPs and failure to assume parental responsibility as grounds for terminating his rights. M.W.'s father was alleged to be R.C., though R.C. had never been present even during K.J.'s pregnancy, and paternity had never been adjudicated. As to R.C. or any unknown father, the State alleged failure to assume parental responsibility.

education, domestic violence counseling services and therapy. K.J. had been discharged from a shelter for disregarding the shelter's rules and asking M.J., the children's father who had repeatedly committed domestic violence against her, to stay with her at the shelter. K.J. continued to struggle with homelessness and did not engage in the mobility mentoring services arranged by DMCPS. K.J. had not been consistent with her supervised visitation with the children after January 2021 when K.J. and M.J. broke the no contact order in front of the children. The younger children especially struggled with K.J.'s inconsistent visitation. K.J.'s counsel stated that she was unsure why K.J. had not attended the prove-up hearing but "she does love her children very much[.]"

The cases proceeded to a dispositional hearing³ after which the circuit court made an oral decision that termination of K.J.'s parental rights was in the children's best interests. Orders terminating K.J.'s parental rights were subsequently entered as to each child. K.J. appeals.

Mandatory Timelines and Competency

Appellate counsel first discusses whether mandatory timelines were properly followed. *See* WIS. STAT. §§ 48.422(1)-(2) & 48.424(4)(a). Failure to comply with the statutory time limits may deprive the circuit court of competency to proceed. *See State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. The statutory time limits cannot be waived, *see id.*, but continuances are permitted for good cause "and only for so long as is necessary[.]" *see* WIS.

³ M.W.'s father, whoever it might be, was also found in default, and the prove-up hearing allowed the circuit court to conclude that grounds had also been shown as to him. M.J. requested a court trial on grounds, which was conducted first so as to allow a joint, consolidated disposition hearing.

STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court’s competency to act during the continuance. *See* § 48.315(3). Our review of the records satisfies us that the time limits were either followed or adjourned for good cause and that K.J. raised no objections, so there is no arguable merit to a challenge to the circuit court’s competency.

Sufficiency of the Petitions

Appellate counsel next discusses whether the termination petitions satisfied the statutory requirements for content. *See* WIS. STAT. § 48.42(1). Our review of the records confirms counsel’s conclusions that the petitions are legally sufficient and that “any argument that the petitions failed to meet the statutory requirements fails.” Thus, there is no arguable merit to challenging the legal sufficiency of the termination petitions.

Default Judgment

Appellate counsel next discusses whether the circuit court properly exercised its discretion when it found K.J. in default for failing to appear at two hearings. At the first hearing, held on December 15, 2020, K.J. appeared and was directed by the court to “appear at all court hearings” and was cautioned that “if you fail to appear at any hearing, you could be defaulted and that means you give up your right to be a part of the hearing and your right to contest the petition[.]” K.J. failed to appear at the next court date. The State moved for default; the circuit court took the motion under advisement.

K.J. was present at the next hearing on February 26, 2021. Near the end of the hearing, the circuit court told her, “I’m also going to order that you appear at all court dates regarding this

matter.” It again warned K.J. that a “failure to appear in court ... could result in you being defaulted and what that means is if you are defaulted that means that the Court has found that you [have] waived or given up your right to contest the petition[s] and the Court will move forward without your participation.” The circuit court then asked K.J. whether she understood this warning; K.J. personally answered affirmatively. Despite her acknowledgement of the circuit court’s warning, K.J. failed to attend the next hearing on March 23, 2021. The State again moved for default. K.J.’s counsel informed the court that K.J. was in contest posture and that she was unaware of why K.J. was not in attendance. This time, the circuit court found that K.J.’s behavior was “egregious and without excuse” and it granted the default motion, subject to a prove-up hearing.

A circuit court has both inherent and statutory authority to enter a default judgment as a sanction for failure to obey its orders. *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768. Such a sanction must be accompanied by a finding that the party’s conduct was egregious or in bad faith. *See State v. Shirley E.*, 2006 WI 129, ¶13 n.3, 298 Wis. 2d 1, 724 N.W.2d 623. In entering the default determination, the circuit court found that K.J. had “received warnings at least twice This is the second time after [she had] been advised a second time [she has] missed court after being advised and I find again, that behavior to be egregious and without excuse[.]” Our review of the records confirms appellate counsel’s conclusion that “any argument that the circuit court erroneously exercised its discretion by entering a default judgment against K.J. for her failure to appear in court lacks arguable merit.”

Sufficiency of the Evidence

Appellate counsel next discusses whether sufficient evidence was presented at the prove-up hearing to support the circuit court’s findings that grounds existed to terminate K.J.’s parental rights to each child. The State has the burden to show that grounds for termination exist by clear and convincing evidence. *See Evelyn C.R.*, 246 Wis. 2d 1, ¶22.

When a termination petition alleges as grounds that a child is in continuing need of protection or services, the State must prove that the child has been placed out of the home for a cumulative total of more than six months pursuant to court orders containing the termination of parental rights notice; the applicable county department has made a reasonable effort to provide services ordered by the court; and the parent has failed to meet the conditions established in the order for the safe return of the child to the parent’s home. *See* WIS. STAT. § 48.415(2)(a).

Failure to assume parental responsibility is shown “by proving that the parent ... [has] not had a substantial parental relationship with the child.” WIS. STAT. § 48.415(6)(a). A substantial parental relationship “means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” WIS. STAT. § 48.415(6)(b). When the fact-finder evaluates whether a person has had such a relationship with the child, the fact-finder may consider such factors including but not limited to “whether the person has expressed concern for or interest in the support, care or well-being of the child, [and] whether the person has neglected or refused to provide care or support for the child[.]” *Id.* The fact-finder may also consider whether a parent exposed the child to a hazardous living

environment. See *Tammy W.-G. v. Jacob T.*, 2011 WI 30, ¶¶22, 36-38, 333 Wis. 2d 273, 797 N.W.2d 854.

Our review of the records and the no-merit report satisfies us that the circuit court appropriately concluded that the State presented sufficient evidence to support termination on both grounds. The five children had been detained by DMCPs after law enforcement was called to a domestic violence situation in which M.J., the father of four of the children, was alleged to have struck K.J. in the face with a hammer and the sheriff's deputies found the children in states of undress, filthy, and without food or supplies. The TPR petitions alleged that DMCPs had contact with the family at least five times in 2018 and 2019 for reports of neglect that were not substantiated because initial assessment social workers were unable to locate the family, which was homeless and without resources. At the prove-up hearing, the case manager testified that K.J. failed to follow through with recommended services for AODA, parenting classes, trauma informed parenting education, domestic violence counseling services and therapy. K.J. had been discharged from a shelter for disregarding the shelter's rules and continued to struggle with homelessness throughout the pendency of these actions. K.J. had not met the conditions of return required in the dispositional order detaining the children. K.J. had not participated in nor exercised responsibility for the daily supervision, education, or financial support of the children while they were detained. Appellate counsel has correctly analyzed this issue as lacking arguable merit.

Termination Decision

Finally, appellate counsel discusses whether the circuit court erroneously exercised its discretion when it terminated K.J.'s parental rights. "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. Here, the records reflect that the circuit court expressly considered the relevant factors in light of the evidence as to each child, made a number of factual findings based on the evidence presented, and reached a reasonable decision. We therefore agree with appellate counsel's conclusion that any challenge to the circuit court's decision to terminate K.J.'s parental rights would lack arguable merit.

Our independent review of the records reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Jill Marie Skwor is relieved of further representation of K.J. 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