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DISTRICT I

August 2, 2022

To:

Hon. Marshall B. Murray
Circuit Court Judge
Electronic Notice

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Juvenile Clerk
Milwaukee County Courthouse
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Danielle E. Chojnacki
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Steven Zaleski
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K. D.

Division of Milwaukee Child Protective Services
Chairman Klyve
635 North 26th Street
Milwaukee, WI 53233-1803

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

2022AP703-NM	State of Wisconsin v. K. D. (L.C. # 2020TP206)
2022AP704-NM	State of Wisconsin v. K. D. (L.C. # 2020TP207)

Before Dugan, 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).

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[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 unless otherwise noted. We cite the current version of the statutes for ease of reference. During the times relevant here, there have been no pertinent changes to the cited statutes.

K.D. appeals the circuit court orders terminating her parental rights to her biological children, B.S. and A.S. Attorney Steven Zaleski, appointed counsel for K.D., has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. K.D. was informed of her right to respond to the report, but has not filed a response. After considering the report and conducting an independent review of the records as required by ***Anders v. California***, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, this court summarily affirms the circuit court's orders. *See* WIS. STAT. RULE 809.21.

B.S. was born on October 28, 2016. A.S. was born on September 14, 2017. The children were removed from their parental home on November 5, 2018, and found to be in need of protection and services. The State petitioned to terminate the parental rights of K.D., the children's mother, and the children's father on September 22, 2020.[2] As to K.D., the State alleged that the children continued to be in need of protection and services pursuant to WIS. STAT. § 48.415(2), and that K.D. failed to assume parental responsibility for the children pursuant to WIS. STAT. § 48.415(6). K.D. entered no-contest pleas to the allegation that the children continued to be in need of protection and services. The court held a dispositional hearing and determined that the termination of K.D.'s parental rights was in the children's best interest.

The no-merit report addresses whether K.D.'s no-contest pleas were knowingly, intelligently, and voluntarily entered and whether there was a sufficient factual basis for the

[2] The children's father, A.S., has also appealed the termination orders.

pleas. Before accepting a no-contest plea to a termination petition, the circuit court must engage the parent in a colloquy pursuant to WIS. STAT. § 48.422(7). *See* ***Oneida Cnty. Dep't of Soc. Servs. v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The circuit court must: (1) address the parent and determine that the admission is made voluntarily, with an understanding of the nature of the acts alleged in the petition and the potential dispositions; (2) establish whether any promises or threats were made to secure the plea; (3) establish whether a proposed adoptive resource for the children has been identified; (4) establish whether any person has coerced the parent to refrain from exercising his or her parental rights; and (5) determine whether there is a factual basis for the grounds alleged in the petition. *See* WIS. STAT. § 48.422(7). The circuit court must also ensure that the parent understands the constitutional rights given up by the plea, *see* ***Therese S.***, 314 Wis. 2d 493, ¶5, and that the plea will result in a finding of parental unfitness, *see* ***id.***, ¶10. As in a criminal case, the colloquy is required to ensure that the plea is knowing, intelligent, and voluntary and, thus, constitutionally adequate. *See* ***Brown Cnty. DHS v. Brenda B.***, 2011 WI 6, ¶35, 331 Wis. 2d 310, 795 N.W.2d 730; ***State v. Bangert***, 131 Wis. 2d 246, 265-66, 389 N.W.2d 12 (1986).

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 agency responsible for the care of the child has made a reasonable effort to provide services ordered by the court; and the parent has failed to meet the conditions established for the safe return of the child to the parent's home. *See* WIS. STAT. § 48.415(2)(a). The State has the burden to show that grounds for termination exist by clear and convincing evidence. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶22, 246 Wis. 2d 1, 629 N.W.2d 768.

The State presented the testimony of Jacob Meyer, the ongoing child welfare case manager for the family, to provide a factual basis for K.D.'s plea. Meyer testified about efforts to provide services for K.D. and K.D.'s inability to meet the conditions established for the safe return of the children to her home. Among other things, Meyer testified that K.D. had not been able to control her alcohol and drug addiction; that she had not been able to demonstrate a consistent understanding of how her addiction affects her children; that she had not been able to demonstrate consistent control over her mental health; and that she had not been able to demonstrate necessary behavioral changes as related to not allowing violence in front of her children.

Our review of the no-merit report and the records satisfies us that appellate counsel has appropriately analyzed this issue as lacking arguable merit. Meyer's testimony provided a sufficient factual basis for K.D.'s no-contest pleas. We agree with appellate counsel's conclusion that the circuit court's colloquy with K.D. complied with the appropriate legal standards. There would be no arguable merit to a challenge to the pleas.

The no-merit report addresses whether the circuit court erroneously exercised its discretion during the dispositional phase of proceedings. "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 factors enumerated in § 48.426 include: (a) the likelihood of the child's adoption after termination; (b) the age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home; (c) whether the child has

substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships; (d) the wishes of the child; (e) the duration of the separation of the parent from the child; and (f) whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination.

During the dispositional hearing, Meyer and the former case worker for K.D., Amber Runnigen, testified. The record shows that the circuit court considered their testimony in light of each of the statutory factors, made a number of factual findings, and reached a reasonable decision that terminating K.D.'s parental rights to B.S. and A.S. was in the children's best interest. We need not summarize all of the evidence, but note that it included that the children have been placed with the same foster parent and are likely to be adopted by her; that the children had been removed from K.D.'s care for the majority of their lives; B.S. was removed from K.D.'s care when she was three years old and A.S. was removed from K.D.'s care when he was fourteen months old, and neither child had lived with K.D. since they were removed; and that the children had a relationship with K.D., but it was not a substantial relationship; and the children were well cared for and bonded to their foster mother. The court properly exercised its discretion in concluding that it was in the children's best interest to terminate K.D.'s parental rights, so that they could have stability and be adopted by their foster mother. There would be no arguable merit to an appellate challenge the circuit court's disposition.

The no-merit report address whether K.D.'s right to meaningfully participate in the proceedings was violated because some of the hearings in this case were held by videoconference. We agree with the report that the record shows that K.D. was able to participate and interact with counsel. There would be no arguable merit to this claim.

The no-merit report addresses whether there would be arguable merit to a claim that K.D. received ineffective assistance of trial counsel. To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that he was prejudiced by the deficient performance. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The no-merit report points out that K.D. stated during the plea colloquy that she was satisfied by the representation she was receiving. Our review of the record reveals no basis for a claim of ineffective assistance of counsel. There would be no arguable merit to an appellate challenge premised on ineffective assistance of trial counsel.

The no-merit report also addresses whether there would be an arguable meritorious appellate claim based on the statutory deadlines applicable to this action, and concludes that there would not be. This court's review of the record discloses no other arguably meritorious issues 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 Steven Zaleski is relieved of any further representation of K.D. in these matters.

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

Sheila T. Reiff
Clerk of Court of Appeals