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DISTRICT IV

August 18, 2022

To:

Hon. Todd L. Ziegler
Circuit Court Judge
Electronic Notice

Steven Zaleski
Electronic Notice

Karen Vieth
Juvenile Clerk
Monroe County Courthouse
Electronic Notice

S. J. E.

Molly Elizabeth Kingeter
P.O. Box 40
Sparta, WI 54656-0040

Aaron James Lueck
Electronic Notice

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

2022AP1082-NM

In re the termination of I.R., a person under the age of 18: Monroe County DHS v. S. J. E. (L.C. # 2020TP7)

Before Blanchard, P.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.J.E. appeals an order terminating her parental rights to I.R. Attorney Steven Zaleski has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULES 809.107(5m) and 809.32. The no-merit report addresses whether there were any procedural errors; whether S.J.E.'s admission of grounds was knowing, intelligent and voluntary; whether the circuit court properly exercised its discretion at disposition; and whether S.J.E. received the

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.

effective assistance of counsel. S.J.E. was sent a copy of the report, but has not filed a response. Upon my independent review of the entire record, as well as the no-merit report, I agree with counsel's assessment that there are no arguably meritorious appellate issues. I affirm.

On October 26, 2020, Monroe County filed a petition to terminate S.J.E.'s parental rights to I.R. The petition alleged that grounds existed to terminate S.J.E.'s parental rights under WIS. STAT. § 48.415(2), because I.R. was in continuing need of protection or services. On February 17, 2022, S.J.E. stipulated that grounds existed to terminate her parental rights. At the conclusion of the dispositional phase, the court determined that termination was in I.R.'s best interest, and terminated S.J.E.'s parental rights.

The no-merit report addresses whether there would be arguable merit to further proceedings based on the circuit court's failure to adhere to statutory time limits. I agree with counsel that further proceedings on this basis would be wholly frivolous. The court granted several continuances beyond the statutory time limits, all of which were supported by good cause in the record, and S.J.E. did not object to any delay or continuance. *See* WIS. STAT. § 48.315(2) (allowing for continuances based on a showing of good cause); *see also* § 48.315(3) (providing that "[f]ailure by the court or a party to act within any time period specified in this chapter does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction" and also that "[f]ailure 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").

Next, the no-merit report addresses whether there would be arguable merit to a challenge to S.J.E.'s no-contest plea to grounds. Before accepting S.J.E.'s no-contest plea, the circuit court conducted a plea colloquy that, together with the detailed stipulation of grounds form that

S.J.E. signed, established S.J.E.’s ability to understand the proceedings, her understanding of the CHIPS grounds, and the rights she would be waiving through the no-contest plea. *See Oneida Cnty. Dep’t of Soc. Serv. v. Therese S.*, 2008 WI App 159, ¶¶5-6, 314 Wis. 2d 493, 762 N.W.2d 122. The court also established that S.J.E. had sufficient time to discuss her case with her attorney, and that no one had promised her anything or threatened her in any way to plead no-contest to grounds. *See id.*; WIS. STAT. § 48.422(7)(a)-(b). The court then established that there was a factual basis to support the stipulation, through the testimony of the ongoing case managing social worker for this case. *See Therese S.*, 314 Wis. 2d 493, ¶¶5-6; WIS. STAT. § 48.422(7)(c). I agree with counsel’s assessment that a challenge to the court’s determination that S.J.E. entered a valid no-contest plea to grounds would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at disposition. I 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. Here, the court heard relevant evidence, applied the statutory factors to that evidence, and ultimately found that terminating S.J.E.’s parental rights was in the best interest of I.R. I discern no issue of arguable merit to pursue based on the court’s exercise of its discretion at disposition.

Finally, the no-merit report addresses whether there would be arguable merit to a claim of ineffective assistance of counsel. I agree with counsel’s assessment that this issue would lack arguable merit.

Upon my independent review of the record, I have found no other arguable basis for reversing the order terminating S.J.E.'s parental rights. I conclude that any further appellate proceedings would be wholly frivolous.

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of any further representation of S.J.E. in this matter. *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