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DISTRICT I

August 30, 2022

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

Katie L. Gutowski
Electronic Notice

Steven Zaleski
Electronic Notice

Tawny R. Brooks
Electronic Notice

Division of Milwaukee Child Protective
Services

Charmian Klyve
635 North 26th Street
Milwaukee, WI 53233-1803

R. E.

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

2022AP1105-NM

In re the termination of parental rights to C. E., a person under the
age of 18: State of Wisconsin v. R.E. (L.C. # 2021TP101)

Before Donald, 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).

R.E. appeals an order terminating his parental rights (TPR) to his biological child, C.E. Attorney Steven Zaleski has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report sets forth the procedural history of the case and addresses the circuit court's adherence to

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.

statutory deadlines; whether the circuit court properly found C.E. in default as to the alleged TPR grounds; whether C.E. has any basis to seek relief from the default judgment; and whether the circuit court properly exercised its discretion in the disposition phase of the proceeding. R.E. was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we conclude that counsel shall be allowed to withdraw and the TPR order will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

The TPR petition alleged that C.E., who was born in August 2018, had been found to be a child in need of protection or services (CHIPS) and placed outside the home in October 2019; that C.E. remained in need of protection and services as of May 2021; and that R.E. had failed to assume parental responsibility for C.E. The circuit court found R.E. in default as to both alleged grounds after R.E. failed to appear at an adjourned hearing on the petition, the State introduced the CHIPS documents, and R.E.'s case manager testified as to the circumstances of the child's removal and R.E.'s failure to satisfy the conditions of return or to undertake significant responsibility for the child's care since removal. The court subsequently terminated R.E.'s parental rights, concluding it was in C.E.'s best interest to do so.

We agree with counsel's analysis and conclusion that any challenge to the TPR order would lack arguable merit. The record shows that the circuit court either acted within all applicable Chapter 48 deadlines or found good cause to extend them. *See* WIS. STAT. §§ 48.422(1)-(2), 48.424(4)(a). Moreover, R.E. did not object to any continuances, so the court's competency was not implicated. *See* WIS. STAT. § 48.315(3). Before finding R.E. in default on grounds, the circuit court ordered R.E. to appear at all subsequent hearings and determined that his failure to do so was egregious and without clear and justifiable excuse. *See* WIS. STAT. § 48.23(2)(b)3; *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768.

R.E. provided no reason for his failure to appear, did not move for relief from the default judgment, and subsequently failed to appear at any other hearing in the proceeding.

As to the disposition, the circuit court properly considered the factors under WIS. STAT. § 48.426 and gave paramount consideration to the best interests of the child. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The court observed that C.E. was young at removal, at which time she had gonorrhea and developmental delays, but that she had thrived in foster care to become a “happy, healthy, fully functional little girl” who was likely to be adopted by her foster mother. The court further noted that R.E.’s relationship with C.E. was “sporadic,” “strained,” and not always “appropriate,” and that C.E. would not be harmed by severing the relationship.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the order terminating R.E.’s parental rights to C.E. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of any further representation of R.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