



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

September 7, 2022

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

Carl W. Chesshir
Electronic Notice

Katie L. Gutowski
Electronic Notice

S.Q.B.

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

Linnea J. Matthiesen
Electronic Notice

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

2022AP1087-NM

In re the termination of parental rights to D.H., a person under the age of 18: State of Wisconsin v. S.Q.B. (L.C. # 2020TP115)

Before Brash, C.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.Q.B. appeals from an order terminating her parental rights to her daughter D.H. Appellate counsel, Carl W. Chesshir, has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32 concluding that no grounds exist to challenge the order terminating S.Q.B.'s parental rights. S.Q.B. was advised of her right to file a response to the no-merit report,

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.

but she has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we agree with counsel's assessment that there are no arguably meritorious issues for appeal. Therefore, the order terminating S.Q.B.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

D.H. was born in April 2016. Because S.Q.B. was incarcerated at the time of D.H.'s birth, D.H. was detained upon discharge from the hospital. D.H. was initially placed with her maternal grandmother, but she was removed from that placement in May 2016. D.H. was then placed in foster care. On July 15, 2016, the circuit court entered a dispositional order that found D.H. to be a child in need of protection or services (CHIPS) and continued her placement with the same foster family. The dispositional order included conditions that S.Q.B. was required to fulfill before D.H. would be returned to her care, as well as a notice warning S.Q.B. about potentially applicable grounds for termination of her parental rights. D.H. has been continuously placed outside of S.Q.B.'s home, in the same foster care placement, since the dispositional order was entered.

On February 11, 2020, the State filed the underlying petition to terminate S.Q.B.'s parental rights, alleging three grounds for termination: abandonment, continuing CHIPS, and failure to assume parental responsibility.² *See* WIS. STAT. § 48.415(1), (2), (6). S.Q.B. ultimately entered a no-contest plea to the continuing CHIPS ground. After conducting a plea colloquy, the circuit court accepted S.Q.B.'s no-contest plea, finding that it was knowingly,

² The petition also sought to terminate the parental rights of a man who had been alleged to be D.H.'s biological father and the rights of any unknown biological father. The father's rights are not at issue in this no-merit appeal, and we do not address them further.

intelligently, and voluntarily made. At a subsequent hearing, the State presented testimony to establish a factual basis for S.Q.B.'s no-contest plea, and the court found that there was an adequate factual basis for the plea. Following a dispositional hearing, the court entered an order terminating S.Q.B.'s parental rights to D.H. S.Q.B. appeals.

Although not discussed in the no-merit report, we first consider whether there would be arguable merit to further proceedings based on the circuit court's failure to adhere to statutory time limits. The time limits in WIS. STAT. ch. 48 cannot be waived. *See State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Nevertheless, continuances are permitted for good cause, *see* WIS. STAT. § 48.315(2), and the failure to object to a continuance waives any challenge to the court's competency to act during the continuance, *see* § 48.315(3). Moreover, a court's failure to act within any of ch. 48's designated time limits "does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction." Sec. 48.315(3). Our review of the record satisfies us that to the extent the statutory time limits were not followed in this case, they were tolled for sufficient cause, and S.Q.B. did not object to any continuances. Accordingly, there would be no arguable merit to a claim that S.Q.B. is entitled to relief based on any failure to comply with the statutory time limits.

The no-merit report addresses whether S.Q.B.'s no-contest plea to the continuing CHIPS ground was knowing, intelligent, and voluntary. We agree with appellate counsel that any challenge to S.Q.B.'s plea would lack arguable merit. Before accepting a no-contest plea during the grounds phase of a termination of parental rights case, 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. During that colloquy, the court must: (1) address the parent and determine that his or her 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 parent's admission; (3) establish whether a proposed adoptive parent has been identified and, if the proposed adoptive parent is not related to the child, order and review a report containing the information specified in WIS. STAT. § 48.913(7); (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 parent's admission to grounds. *See* § 48.422(7). The court must also ensure that the parent understands the constitutional rights being given up by his or her plea, *see Therese S.*, 314 Wis. 2d 493, ¶5, and that the plea will result in a finding of parental unfitness, *see id.*, ¶10.

Our review of the record and the no-merit report satisfies us that the circuit court fulfilled its duties during the plea colloquy, with two exceptions. First, the court did not expressly address whether a proposed adoptive parent had been identified for D.H., as required by WIS. STAT. § 48.422(7)(bm). Nevertheless, a permanency plan dated November 6, 2020 (i.e., before the March 2021 plea hearing) listed adoption as the permanence goal for D.H. and identified D.H.'s foster parents as her adoptive resource. Under these circumstances, the court's error during the plea colloquy in failing to expressly address whether a proposed adoptive parent had been identified was harmless. *See State v. Jodie A.*, Nos. 2015AP46, 2015AP47, unpublished slip op. ¶¶11-13 (WI App July 7, 2015) (concluding a circuit court's failure to identify potential adoptive resources during the plea colloquy was harmless where other portions of the record showed that an adoptive resource had been identified).

Second, under WIS. STAT. § 48.422(7)(bm), the identification of a proposed adoptive parent who is not related to the child triggers the obligation to request a report under WIS. STAT.

§ 48.913(7), which must include a list of all transfers of anything of value between the proposed adoptive parent and the birth parent. Although the record indicates that the proposed adoptive parents in this case are not related to D.H., the circuit court did not order a § 48.913(7) report. Appellate counsel has represented to this court, however, that he has spoken to S.Q.B. and has confirmed that she did not receive any payments from anyone in regards to her parental rights. Additionally, S.Q.B. confirmed during the plea colloquy that she had not been promised or paid anything in exchange for her no-contest plea. On these facts, any error regarding the circuit court's failure to order and review a § 48.913(7) report was harmless. See *Jodie A.*, Nos. 2015AP46, 2015AP47, ¶13. Consequently, any challenge to S.Q.B.'s no-contest plea based on the court's failure to comply with § 48.422(7)(bm) would lack arguable merit.

The no-merit report also addresses whether the circuit court erroneously exercised its discretion when it terminated S.Q.B.'s parental rights. We agree with appellate counsel's conclusion that this issue lacks arguable merit. "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 child's best interests shall be the "prevailing factor" in the court's decision, see WIS. STAT. § 48.426(2), and the court must consider the factors set forth in § 48.426(3) when assessing the child's best interests, see *Sheboygan Cnty. Dep't of Health & Hum. Servs. v. Julie A.B.*, 2002 WI 95, ¶29, 255 Wis. 2d 170, 648 N.W.2d 402.

Here, the record reflects that the circuit court expressly considered the statutory factors, made a number of factual findings based upon the evidence presented, and reached a reasonable decision to terminate S.Q.B.'s parental rights. In particular, the court found that D.H. was very likely to be adopted by her foster parents; that she did not have a substantial relationship with any of her biological family members; that her foster parents and siblings were the only family

she had ever known; that although D.H. was too young to understand the proceedings, “compelling testimony” indicated that she wished to remain with her foster parents; that D.H. had been separated from her biological parents for her entire life; and that terminating S.Q.B.’s parental rights would allow D.H. to enter into a more stable and permanent family relationship. *See* WIS. STAT. § 48.426(3)(a), (c)-(f). The court also considered D.H.’s age and health at the time of disposition and at the time she was removed from S.Q.B.’s care. *See* § 48.426(3)(b). Based on these factors, the court determined that terminating S.Q.B.’s parental rights would be in D.H.’s best interests. Accordingly, any challenge to the court’s determination in that regard would lack arguable merit.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of any further representation of S.Q.B. in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals