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DISTRICT I

November 15, 2022

To:

Hon. Marshall B. Murray
Circuit Court Judge
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

Karen Lueschow
Electronic Notice

Jenni Spies-Karas
Electronic Notice

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

C.J.

Deanna M. Weiss
Electronic Notice

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

2022AP981-NM	In re the termination of parental rights to C.Z.J.W., a person under the age of 18: State of Wisconsin v. C.J. (L.C. # 2019TP147)
2022AP982-NM	In re the termination of parental rights to J.J., a person under the age of 18: State of Wisconsin v. C.J. (L.C. # 2019TP148)
2022AP983-NM	In re the termination of parental rights to C.B.M.J., a person under the age of 18: State of Wisconsin v. C.J. (L.C. # 2019TP149)

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).

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.

C.J. appeals from the orders terminating her parental rights to three of her children. Appellate counsel, Karen Lueschow, has filed a no-merit report. *See* WIS. STAT. RULES 809.107(5m), 809.32; *see also Anders v. California*, 386 U.S. 738 (1967). C.J. was advised of her right to file a response and has responded. Based upon an independent review of the record as mandated by *Anders* and the no-merit report, this court concludes that there are no arguably meritorious issues to pursue on appeal. Therefore, the orders terminating C.J.’s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

On August 20, 2019, the State filed petitions to terminate C.J.’s parental rights to three of her children. The petitions alleged that the children were in continuing need of protection or services (CHIPS) and that C.J. failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2) and (6). C.J. contested the petitions and exercised her right to a jury trial. At the conclusion of the trial, the jury found that grounds existed to terminate C.J.’s parental rights as to both grounds alleged in the petitions. After a dispositional hearing, the circuit court found that termination of C.J.’s parental rights was in the children’s best interests. The circuit court entered orders terminating C.J.’s parental rights to the three children. C.J. 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 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. Accordingly, there would be no arguable merit to a claim that C.J. is entitled to relief based on any failure to comply with the statutory time limits.

The no-merit report addresses whether there would be arguable merit to a claim that there was insufficient evidence to support the jury's findings as to grounds, and in turn, whether the circuit court properly made a finding of unfitness. Grounds for termination must be established by clear and convincing evidence. *See* WIS. STAT. §§ 48.424(2) and 48.31(1). A jury's determination that grounds for termination exist will be upheld so long as there is any credible evidence to support that determination. *See State v. Quinsanna D.*, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752. "When reviewing a jury's verdict, we consider the evidence in the light most favorable to the verdict." *Tammy W-G. v. Jacob T.*, 2011 WI 30, ¶39, 333 Wis. 2d. 273, 797 N.W.2d 854. The credibility of the witnesses and the weight to give their testimony is a matter left to the jury. *State v. Wilson*, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989).

To prove grounds based on CHIPS, the State was required to prove: (1) that each child had been placed outside the home for a cumulative total of six months or longer; (2) that the Division of Milwaukee Child Protective Services made reasonable efforts to provide the services ordered by the circuit court; and (3) that C.J. failed to meet the conditions established for the safe return of the children. *See* WIS. STAT. § 48.415(2). To prove grounds based on failure to assume parental responsibility, the State was required to prove that C.J. had not had a substantial parental relationship with the children. *See* § 48.415(6). The no-merit report details the testimony of the case managers, the foster parents, the children's therapist, and C.J. This court agrees with counsel's assessment that a challenge to the sufficiency of the evidence supporting the jury's

findings as to grounds, and subsequently, a challenge to the circuit court's finding of unfitness, would lack arguable merit.

The no-merit report next addresses whether C.J could mount an arguably meritorious challenge to the circuit court's decision to terminate her parental rights. The decision to terminate parental rights lies within the circuit court's discretion. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The prevailing factor is the children's best interests. *See* WIS. STAT. § 48.426(2). In considering the best interests of the children, a circuit court must consider: (1) the likelihood of adoption after termination; (2) the age and health of the children; (3) whether the children have substantial relationships with the parent or other family members, and whether it would be harmful to the children to sever these relationships; (4) the wishes of the children; (5) the duration of the separation of the parent from the children; and (6) whether the children will be able to enter into more stable and permanent family relationships as a result of the terminations, taking into account the conditions of the children's current placements, the likelihood of future placements, and the results of prior placements. Sec. 48.426(3).

The circuit court heard testimony from the children's foster parents and C.J., as well as from two case managers, both of whom advocated for reunification. However, upon consideration of the relevant factors as to each child, the circuit court ultimately determined that termination was in the children's best interests. Our review of the record satisfies us that the circuit court properly exercised its discretion. The circuit court examined the relevant facts, applied the correct legal standard, and used a rational process to reach a reasonable conclusion.

See *Gerald O.*, 203 Wis. 2d at 152. An appellate challenge to the circuit court’s decision to terminate C.J.’s parental rights would lack arguable merit.

The no-merit report also includes a discussion about whether C.J. generally “received fair procedures.” We agree with counsel’s determination that the circuit court followed the procedures outlined by WIS. STAT. ch. 48 and case law. Accordingly, an appellate challenge to the fairness of C.J.’s termination proceedings would lack arguable merit.

C.J.’s response discusses her love for her children, her desire to reunite with them, and perceived flaws in the proceedings. While this court sympathizes with C.J.’s position, our review of the record, as stated, shows that the circuit court complied with the proper procedures.

Based on an independent review of the record, we conclude that no additional issues warrant discussion. Any further proceedings would be without arguable merit

IT IS ORDERED that the orders terminating C.J.’s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Karen Lueschow is relieved of any further representation of C.J. on appeal. *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