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DISTRICT IV

December 8, 2022

To:

Hon. Michael A. Haakenson
Circuit Court Judge
Electronic Notice

Jacki Gackstatter
Juvenile Clerk
Rock County Courthouse
Electronic Notice

Thomas Brady Aquino
Electronic Notice

Laura M. Force
Electronic Notice

Lisa Marie Line
Electronic Notice

Jennifer Leigh Nash Elliot
Electronic Notice

A.J. Sr.

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

2022AP1492-NM	In re the termination of parental rights to A.J., a person under the age of 18: Rock County DHS v. A.J., Sr. (L.C. # 2021TP3)
2022AP1493-NM	In re the termination of parental rights to A.J., a person under the age of 18: Rock County DHS v. A.J., Sr. (L.C. # 2021TP4)

Before Graham, J.

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).

Attorneys Laura Force and Thomas Aquino, appointed counsel for A.J., Sr., filed no-merit reports pursuant to WIS. STAT. RULE 809.107(5m) (2019-20).¹ Counsel provided A.J. with copies of the reports. I ordered counsel to address an additional issue, and counsel did so in a supplemental no-merit report. A.J. filed a response to the supplemental no-merit report. I

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

conclude that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After an independent review of the records, I conclude that the records do not show arguable merit to any issue that could be raised on appeal.

As to both children, A.J. entered a plea of no contest to the ground of continuing child in need of protection and services (CHIPS). The court conducted the personal colloquy with A.J., as required by WIS. STAT. § 48.422(7) and *Kenosha Cnty. v. Jodie W.*, 2006 WI 93, ¶¶24-25, 293 Wis. 2d 530, 716 N.W.2d 845. However, the court did not then hear testimony in support of the continuing CHIPS ground, as required by § 48.422(3). In my order of November 3, 2022, I directed counsel to review this issue.

The supplemental no-merit report concludes that this issue lacks arguable merit because an appellate court would decide that the error is harmless, as in *Waukesha Cnty. v. Steven H.*, 2000 WI 28, ¶¶57-60, 233 Wis. 2d 344, 607 N.W.2d 607. To reach that conclusion, the supplemental no-merit report relies on testimony that the circuit court took in support of a default judgment against A.J. that was granted approximately one year before his no contest plea, and later vacated.

Although this testimony was sufficient to support the ground for termination at the time it was taken, it fails to establish that this ground continued to exist a year later, when A.J. entered his no-contest plea. However, an appellate court may consider “the testimony of other witnesses at other hearings when the entire record is examined.” *Id.*, ¶58. Here, testimony at the disposition hearing, held after A.J.’s no-contest plea, provides information about relevant events that occurred after the earlier default judgment testimony. These two hearings, read together,

show that it would be frivolous to argue this issue on appeal, because the testimony is sufficient to satisfy the harmless error test as set forth and applied in *Steven H.*

The circuit court held a contested disposition hearing and concluded that it was in the best interests of the children that A.J.'s parental rights be terminated. In its decision, the court concluded that there was a very high chance the children would be adopted and that the children lacked a substantial relationship with A.J. The court considered the proper standard and factors under WIS. STAT. § 48.426(2) and (3), did not consider improper factors, and reached a reasonable result. An argument that the court erroneously exercised its discretion would be frivolous.

In A.J.'s response to the supplemental no-merit report, he makes several statements explaining why he believes he is not unfit as a parent. To the extent that A.J. is disputing the grounds phase, any issue regarding his fitness as a parent was waived by his no-contest plea, and his response does not change my conclusion that there is no basis to argue for plea withdrawal on the ground that the circuit court's error in taking his plea was not harmless. To the extent A.J. is challenging the disposition phase, his assertions do not provide a non-frivolous basis to argue that the court entered its disposition in error.

Therefore,

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

IT IS FURTHER ORDERED that Attorneys Force and Aquino are relieved of any further representation of A.J. in these matters. *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