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DISTRICT I

December 28, 2022

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

2022AP1716-NM In re the termination of parental rights to L. P., a person under the age of 18:
State of Wisconsin v. A. F. P. (L. C. # 2021TP220)

Before Dugan, 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).

A.F.P. appeals an order terminating his parental rights to his daughter, L.P. Appellate counsel, Leonard D. Kachinsky, 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

[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.

terminating A.F.P.'s parental rights. A.F.P. was advised of his right to file a response to the no-merit report, but he has not responded. After considering the no-merit report and conducting an 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 A.F.P.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

L.P. was born prematurely on July 30, 2020. At the time of L.P.'s birth, her mother, B.W., tested positive for multiple drugs. B.W. discharged herself from the hospital on the day L.P. was born, against medical advice. Because of L.P.'s premature birth and drug withdrawal symptoms, L.P. remained in the hospital until August 11, 2020. Upon her discharge from the hospital, L.P. was placed in a foster home, and she has remained in the same foster home since that date. L.P.'s foster parents had previously adopted one of B.W.'s other daughters, who is L.P.'s biological half-sister.

A.F.P. was adjudicated to be L.P.'s father, following a DNA test in November 2020. On March 5, 2021, the circuit court entered a dispositional order that found L.P. to be a child in need of protection or services (CHIPS). The dispositional order included conditions that A.F.P. was required to fulfill before L.P. would be returned to his care, as well as a notice warning him about potentially applicable grounds for the termination of his parental rights.

On September 28, 2021, the State filed the underlying petition to terminate A.F.P.'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). On February 28, 2022, A.F.P. entered a no-contest plea to the failure to assume parental responsibility ground. After conducting a plea colloquy, the circuit court accepted A.F.P.'s plea, finding that it was knowingly, intelligently, and voluntarily made. The State subsequently presented testimony to establish a factual basis for A.F.P.'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 A.F.P.'s parental rights to L.P.

The no-merit report first addresses whether there were any procedural defects in the circuit court proceedings that would give rise to an arguable basis for appeal. We agree with appellate counsel that this issue lacks arguable merit.

In particular, we conclude that there would be no 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). To the extent that the statutory time limits were not followed in this case, the record shows that A.F.P. did not

[2] The petition also sought to terminate B.W.'s parental rights, and her parental rights were ultimately terminated. B.W.'s rights are not at issue in this no-merit appeal, however, and we do not address them further.

object to any continuances, and consented to scheduling the fact-finding and dispositional hearings beyond the statutory time limits. Accordingly, there would be no arguable merit to a claim that A.F.P. is entitled to relief based on any failure to comply with the statutory time limits.

The no-merit report next addresses whether A.F.P.'s no-contest plea during the grounds phase was knowing, intelligent, and voluntary. We agree with appellate counsel that any challenge to A.F.P.'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 under WIS. STAT. § 48.422(7). *See* ***Oneida Cnty.DSS 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; (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 the 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. The court ascertained that A.F.P. was forty-one years old; had completed eleventh grade and earned an HSED; could read and write English; had read the termination of parental rights petition and understood the allegations therein; had not been

diagnosed with a cognitive disability or mental illness that would make it difficult for him to understand the proceedings; and had not consumed any drugs or alcohol in the last twenty-four hours. The court then confirmed A.F.P.'s understanding that no one could force him to enter a no-contest plea. The court explained the rights that A.F.P. was waiving by entering a no-contest plea and confirmed that A.F.P. understood those rights. The court also explained the elements that the State would need to prove to show that A.F.P. had failed to assume parental responsibility. The court confirmed A.F.P.'s understanding that his plea would result in a finding of parental unfitness. The court then explained the potential dispositions and the rights that A.F.P. would have during the dispositional phase of the case, and it confirmed A.F.P understood that the sole question during the dispositional phase would be whether the termination of his parental rights was in L.P.'s best interest. Finally, the court confirmed that no one had threatened or coerced A.F.P. or made any promises to induce him to enter his plea.[3]

The circuit court subsequently heard testimony from L.P.'s former case manager, Kayla Rush. Rush testified that A.F.P. had never met L.P. Although A.F.P. had been incarcerated since March 2021, Rush confirmed that he did not have any contact with L.P. prior to his incarceration. Rush also testified that A.F.P. had never paid child support for L.P., contacted her

[3] Although the circuit court did not specifically inquire during the plea colloquy as to whether a prospective adoptive parent had been identified, *see* WIS. STAT. § 48.422(7)(bm), a permanency plan filed prior to the plea hearing listed adoption as the permanence goal for L.P., identified L.P.'s foster parents as an adoptive resource, and stated that L.P.'s foster parents were interested in adopting her. A "Court Report For Termination of Parental Rights," which was also filed before the plea hearing, similarly identified L.P.'s foster parents as an adoptive resource and stated that they were "willing and able to adopt" her. As such, A.F.P. could not allege that he was unaware at the time he entered his no-contest plea that prospective adoptive parents had been identified for L.P. *See* ***Brown Cnty. DHS v. Brenda B.***, 2011 WI 6, ¶36, 331 Wis. 2d 310, 795 N.W.2d 730 (explaining that to withdraw a plea based on a defect in the plea colloquy, a parent must be able to allege that he or she did not understand the information that should have been provided during the colloquy).

foster home, or provided for her day-to-day care. Rush further testified that she had helped other incarcerated parents facilitate contact with their children, but A.F.P. never asked her to facilitate visitation with L.P. while he was incarcerated and never put L.P. on his visitation list. Based on Rush's testimony, the court found that the State had established a factual basis for A.F.P.'s no-contest plea to the failure to assume parental responsibility ground. On this record, any challenge to A.F.P.'s plea would lack arguable merit.

Finally, the no-merit report addresses whether the circuit court erroneously exercised its discretion when it terminated A.F.P.'s parental rights. Again, we agree with appellate counsel 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. DHHS 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 A.F.P.'s parental rights. In particular, the court found that L.P. was very likely to be adopted by her foster parents, who were licensed and had previously adopted L.P.'s older half-sister. *See* WIS. STAT. § 48.426(3)(a). The court noted that L.P. was nearly two years old and that her health was "excellent" at the time of the dispositional hearing, despite the challenges she had faced at the time of her birth. *See* § 48.426(3)(b). The court found that L.P. did not have a substantial relationship with any of her biological family members, aside from the half-sister with whom she resided. *See* § 48.426(3)(c). The court further found that severing

L.P.'s relationships with her other biological family members would not be harmful to L.P., and it credited the testimony of L.P.'s foster mother that she would be willing to facilitate contact with L.P.'s biological family in the future. *See* ***id.*** The court acknowledged that L.P. was too young to express her wishes, but it also acknowledged "the basic trauma of being removed from the only home that [L.P. has] ever known." *See* § 48.426(3)(d). The court further found that L.P. had been separated from her biological parents for "her entire life" and that terminating A.F.P.'s parental rights would "allow her to relatively quickly … enter into a more stable and permanent family relationship." *See* § 48.426(3)(e), (f).

Ultimately, the circuit court emphasized that removing L.P. from her current placement would be "traumatic" because L.P. was "completely bonded" with her foster parents. The court also stressed that L.P.'s current placement allowed her to remain with her older half-sister, which was L.P.'s "most important biological relationship." For all of these reasons, the court concluded that terminating A.F.P.'s parental rights was in L.P.'s best interest. Any challenge to the court's discretionary 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 Leonard D. Kachinsky is relieved of any further representation of A.F.P. in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals