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DISTRICT I

March 8, 2023

To:

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

Anna Hodges
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

Lara Parker
Electronic Notice

Steven Zaleski
Electronic Notice

D.D.

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

Deanna M. Weiss
Electronic Notice

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

2022AP2022-NM	In re the termination of parental rights to D.B., a person under the age of 18: State of Wisconsin v. D.D. (L.C. # 2021TP237)
2022AP2024-NM	In re the termination of parental rights to J.R., a person under the age of 18: State of Wisconsin v. D.D. (L.C. # 2021TP238)

Before White, JJ.[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).

D.D., by counsel, appeals the circuit court orders terminating her parental rights to her children, D.B. and J.R. Attorney Steven Zaleski, appointed counsel for D.D., has filed a no-

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32.[2] D.D. was informed of her right to respond to the report, but she has not done so. Upon consideration of the report, and an independent review of the record as required by ***Anders v. California***, 386 U.S. 738 (1967), this court concludes there would be no arguable merit to any issue that could be raised on appeal. Therefore, this court summarily affirms the circuit court's orders. *See* RULE 809.21.

D.B. and J.R. were found to be children in need of protection or services (CHIPS) after D.D., their biological mother, was involved in a car accident after leading police on a high-speed chase in March 2020. At the time the crash occurred, D.D. had left the children—who were approximately two and one-half years old and six months old—home alone. D.D. sustained life-threatening injuries as a result of the crash; she was subsequently incarcerated.

On November 2, 2021, the State filed the underlying petitions to terminate D.D.'s parental rights to both children, alleging three grounds for termination: abandonment, continuing CHIPS, and failure to assume parental responsibility.[3] *See* WIS. STAT. § 48.415(1)(a)2., (2), (6). A jury trial was scheduled for April 2022 for the fact-finding portion of the proceedings; D.D. failed to appear.[4]

[2] Attorney Zaleski filed the same no-merit report in each appeal. It appears that the appeals can be consolidated for dispositional purposes. The court will do so upon its own motion.

[3] The petitions also sought to terminate the parental rights of J.R.'s biological father and of the man who D.D. alleged to be D.B.'s father, along with the rights of any unknown biological father. The fathers' rights are not at issue in this no-merit appeal, and we do not address them further.

[4] D.D. indicated at a previous hearing she would be released from prison prior to the fact-finding hearing.

The circuit court entered a default judgment against D.D. after finding her failure to appear to be egregious, in bad faith, and without justification. The matter then proceeded to a dispositional hearing in July 2022, where D.D. appeared and testified. Also testifying at the hearing was the case manager for the family and the children's foster parent. Ultimately, the circuit court determined that it was in the best interests of both children for D.D.'s parental rights to be terminated. This no-merit appeal follows.

The no-merit report first addresses whether the circuit court complied with all mandatory statutory time limits, including the 45-day time limit for holding a fact-finding hearing, *see* WIS. STAT. § 48.422(2), and the 45-day time limit for holding a dispositional hearing, *see* WIS. STAT. § 48.424(4). In this case, the jury trial for the fact-finding portion of the proceedings was scheduled beyond the 45-day time limit, but it was accompanied by a "good cause" finding for the extension by the circuit court, in accordance with WIS. STAT. § 48.315(2).

Additionally, the dispositional hearing was also scheduled beyond the 45-day time limit, but without an explicit good cause finding for the delay stated on the record. However, as appellate counsel notes, the failure by the court to act within any of WIS. STAT. ch. 48's designated time periods "does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction." *See* WIS. STAT. § 48.315(3). Furthermore, no one objected to the continuance. *See* ***id.*** ("Failure to object to a period of delay or a continuance waives any challenge to the court's competency to act during the period of delay or continuance.")

Additionally, the dispositional hearing had initially been set to begin immediately upon completion of the jury trial, but had to be rescheduled due to D.D.'s failure to appear. Thus, the

record indicates that, based on these circumstances, there was good cause for the continuance. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶¶39-40, 259 Wis. 2d 429, 655 N.W.2d 752 (concluding that in the absence of an explicit finding of "good cause," support for such a finding was "apparent in the record," and included the fact that the parties agreed to the continuance). Therefore, this court agrees with appellate counsel that there would be no arguable merit to challenge the circuit court's compliance with applicable time limits.

The no-merit report next discusses whether there would be arguable merit to a challenge to the circuit court's default finding. A circuit court has both inherent and statutory authority to enter a default judgment as a sanction for failure to obey its orders. ***Evelyn C.R. v. Tykila S.***, 2001 WI 110, ¶17, 246 Wis. 2d 1, 629 N.W.2d 768. The decision regarding whether to enter a default judgment rests soundly within the circuit court's discretion. ***Id.***, ¶18.

The record indicates that the circuit court repeatedly advised D.D. that her failure to appear for court dates could result in a default finding. Furthermore, D.D. provided no reason for her non-appearance; she merely sent an email to her trial counsel the night before the hearing stating that she would be unable to appear.

Additionally, D.D. had approximately three months after the default judgment was entered to seek a remedy as permitted under WIS. STAT. § 806.07. We find nothing in the record that demonstrates any of the grounds for seeking relief from a judgment, as set forth in § 806.07. Furthermore, appellate counsel represents that he investigated whether facts exist beyond the record to explain or justify D.D.'s non-appearance, and found none. We therefore agree with appellate counsel's assessment that there would be no arguable merit to a challenge of the default judgment entered against D.D.

The no-merit report also discusses whether there would be any arguable merit to challenging the circuit court's decision to terminate D.D.'s parental rights at the conclusion of the dispositional phase of the proceedings. "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 circuit court must consider the factors set forth in § 48.426(3) when assessing the child's best interests, *see* ***Sheboygan Cnty. DHS v. Julie A.B.***, 2002 WI 95, ¶29, 255 Wis. 2d 170, 648 N.W.2d 402.

The record reflects that at the dispositional hearing, 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 D.D.'s parental rights. In particular, the court noted that the children had an adoptive resource, had both spent most of their lives separated from D.D., and "in all likelihood" did not have a substantial relationship with D.D given her inconsistent contact with them. This court therefore agrees with appellate counsel that there is no arguable merit to this issue.

Finally, the no-merit report discusses whether D.D. could pursue an arguably meritorious claim that her trial counsel was ineffective. To prevail on such a claim, a litigant must show that counsel's performance was deficient and that the deficiency prejudiced the defense. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). There is nothing in the no-merit report or the record to suggest that trial counsel rendered ineffective assistance of counsel in representing D.D., and therefore we agree with appellate counsel that such a claim would lack arguable merit.

Based on an independent review of the record, no other arguable basis for reversing the orders terminating D.D.'s parental rights has been found. Any further proceedings would be without arguable merit.

Upon the foregoing,

IT IS ORDERED that appeal Nos. 2022AP2022-NM and 2022AP2024-NM are hereby consolidated for dispositional purposes.

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

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