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DISTRICT III

April 4, 2023

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

2023AP228-NM

Eau Claire County Department of Human Services v. G. M. I.
(L. C. No. 2021TP9)

Before Gill, 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).

Counsel for George filed a no-merit report pursuant to WIS. STAT. RULE 809.32 concluding there is no arguable basis for challenging the order terminating his parental rights

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

(TPR) to his son, Andy.² George was advised of his right to respond to the report, and he has not responded. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no issue of arguable merit. Therefore, the order terminating George's parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Andy was born in April 2016. He never lived with George, and he was protectively placed outside his mother's home in October 2017. On August 2, 2021, the Eau Claire County Department of Human Services (the Department) petitioned to terminate George's parental rights, alleging as grounds two statutory forms of abandonment: continuing need for protection and services (CHIPS), failure to assume parental responsibility; and the continuing denial of periods of physical placement or visitation.³ After several adjournments for good cause, including the respective parents' efforts to obtain counsel and the mother's motion to substitute the judge, George contested the petition and requested a jury trial.

The Department moved for partial summary judgment as to the continuing denial of periods of physical placement or visitation ground.⁴ This TPR ground is established by proving all of the following:

² For ease of reading, we refer to G.M.I. and his son A.J.C. by pseudonyms rather than by their initials.

³ Andy's mother voluntarily terminated her parental rights, and that termination is not before us in this appeal.

⁴ The Department also claimed that summary judgment was warranted with respect to the abandonment grounds. Although the circuit court did not grant partial summary judgment on those grounds, only one ground for termination need be established. *See* WIS. STAT. § 48.415 ("Grounds for termination of parental rights shall be *one* of the following" (emphasis added)).

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under [WIS. STAT. §§] 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by [WIS. STAT. §§] 48.356(2) or 938.356(2).

(b) That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the court has not subsequently modified its order so as to permit periods of physical placement or visitation.

WIS. STAT. § 48.415(4). Here, the motion asserted that George had been denied visitation with Andy by a WIS. STAT. § 48.363 order of the circuit court on November 9, 2018; that the order included conditions for the reinstatement of visitation; that George was given written notice of the grounds for the TPR; that as of the date of the petition for the TPR, the order had not been revised to allow for visitation; and that more than one year had passed since entry of that order.

At a hearing on the summary judgment motion, George moved to discharge his counsel and proceed pro se, complaining that his counsel failed to respond to the Department’s summary judgment motion. Although George’s counsel explained that he intended to raise arguments at the dispositional hearing rather than the grounds phase, George interjected that he did not agree with counsel’s decision not to file a response to the summary judgment motion, and he insisted on representing himself. The court encouraged George to confer with his counsel before deciding whether to proceed pro se, noting that attorneys understand the legal process and how to advance arguments that a non-attorney may not understand. The court added that the “good cause” arguments George claimed counsel should have made in opposition to the motion went only to whether the abandonment grounds had been established. The court determined, however, that it did not need to address the abandonment grounds, as there were no genuine issues of material fact related to an alternate ground—the continuing denial of periods of physical placement or visitation.

The circuit court recounted that George was denied visitation under a WIS. STAT. ch. 48 order that contained the TPR notices required by law and that one year had elapsed without modification to that order. Having concluded that this ground for termination was established, the court found George unfit. The court directed George to confer with his counsel, adding that if George wished to move forward pro se, that request would be addressed at the start of the dispositional hearing.

At the outset of the scheduled dispositional hearing, George renewed his request to proceed pro se. After engaging George in a colloquy, the circuit court found that George was making a knowing, voluntary, and intelligent decision to waive his right to an attorney and to proceed pro se. Because George had not received a copy of the Department's partial summary judgment motion prior to the summary judgment hearing, the court agreed to adjourn the dispositional hearing and revisit summary judgment in order to give George the opportunity to file a response to the motion. After George filed his response, the court reaffirmed its ruling granting partial summary judgment as to the continuing denial of periods of physical placement or visitation ground.

The matter proceeded to a dispositional hearing and, at the close of the Department's evidence, George sought an adjournment, claiming he would have called witnesses had he known he could do so. The circuit court denied the adjournment request, reminding George that he insisted on representing himself despite the court's admonition that an attorney could help him with the process, and that he was told at the close of the previous hearing that the matter would proceed to disposition. After closing arguments, the court considered proper factors and found that termination of George's parental rights was in Andy's best interest.

The no-merit report addresses whether the circuit court complied with statutory time limits;⁵ whether George's waiver of counsel was knowing, intelligent and voluntary; whether the court erred by granting the Department's motion for partial summary judgment; whether the court erred by denying George's request to adjourn the dispositional hearing at the close of the Department's evidence; and whether the court properly exercised its discretion when concluding that termination of George's parental rights was in Andy's best interest.

Upon reviewing the record, we agree with counsel's description, analysis and conclusion that this case presents no arguably meritorious issues for appeal. The no-merit report sets forth an adequate discussion of these potential issues so as to support the no-merit conclusion, and this court need not address them further. An independent review of the record discloses no other potential issues for appeal.

Therefore, upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorneys Colleen Marion and Megan E. Lyneis are relieved of their obligation to further represent G.M.I. in this matter. *See* WIS. STAT. RULE 809.32(3).

⁵ The no-merit report states that although the circuit court did not make a specific good cause finding for the second, third and fifth adjournments, those adjournments were necessary to protect George's right to counsel. While we agree with counsel's analysis, the record reflects that the court did make specific good cause findings for those adjournments.

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

Sheila T. Reiff
Clerk of Court of Appeals