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DISTRICT I

September 26, 2023

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Anna Hodges
Milwaukee County Courthouse
Electronic Notice

Jenni Spies-Karas
Electronic Notice

Steven Zaleski
Electronic Notice

Anne M. Abell
Electronic Notice

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

W. J.
1361 S. 57th Street
West Allis, WI 53214

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

2023AP1201-NM	In re the termination of parental rights to T.J., a person under the age of 18: State of Wisconsin v. W.J. (L.C. #2021TP116)
2023AP1202-NM	In re the termination of parental rights to J.J.J., a person under the age of 18: State of Wisconsin v. W.J. (L.C. #2022TP14)

Before White, 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).

W.J. appeals the circuit court's orders terminating her parental rights to T.J. and J.J.J. Attorney Steven W. Zaleski, appointed counsel for W.J., has filed a no-merit report pursuant to

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.

WIS. STAT. RULES 809.107(5m) and 809.32. W.J. was informed of her right to respond to the report and has not filed a response. After considering the report and independently reviewing the record, we summarily affirm the circuit court's orders because we conclude that there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

The State petitioned for the termination of W.J.'s parental rights to T.J. and J.J.J., alleging grounds of continuing need of protection or services and failure to assume parental responsibility. W.J. pled no contest to the failure to assume parental responsibility ground for each of the two children. After accepting W.J.'s no contest pleas and making findings of unfitness based on the pleas, the circuit court held a dispositional hearing and terminated her parental rights to both children.

The no-merit report first addresses the statutory time limits for conducting TPR hearings. We agree with counsel that there is no issue of arguable merit with respect to these time limits. Although the court granted several continuances beyond the statutory time limits, in each instance the circuit court found good cause for a continuance. The continuances were therefore proper. *See* WIS. STAT. § 48.315(2).

The no-merit report next addresses whether W.J. could challenge the joinder of her case with the case in which the children's father's parental rights were terminated. We agree with counsel that there is no arguable merit to this issue. Joinder was permissible under WIS. STAT. § 803.04 and was a discretionary decision for the circuit court. *See S.D.S. v. Rock Cnty. DSS*, 152 Wis. 2d 345, 361-62, 448 N.W.2d 282 (Ct. App. 1989). The court made a reasonable

decision to join the cases after considering relevant factors, and W.J. could not plausibly argue otherwise.²

The no-merit report next addresses whether W.J.’s no contest pleas were knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. W.J. signed a detailed document prepared by her attorney that set forth the rights she was waiving, her understanding of the effect of her no contest pleas, and other relevant information. Additionally, the circuit court conducted a detailed colloquy with W.J. See WIS. STAT. § 48.422(7); *Oneida Cnty. DSS v. Therese S.*, 2008 WI App 159, ¶¶5, 10-11, 16, 314 Wis. 2d 493, 762 N.W.2d 122. The court also heard testimony to establish the underlying facts before making the findings of unfitness. See § 48.422(3).

As counsel discusses in the no-merit report, the circuit court arguably made two errors during W.J.’s plea colloquy. However, neither provides grounds to pursue an appeal. First, the court provided W.J. with arguably incorrect or incomplete information relating to the burden of proof at the dispositional hearing and the potential alternative dispositions. However, this information was clarified for W.J. at a subsequent hearing, and she confirmed that the information did not change her decision to enter no contest pleas. Accordingly, she could not seek to challenge her pleas on the ground that she was misinformed as to the burden of proof or potential alternative dispositions.

² Joinder of the cases was also consistent with Milwaukee County Circuit Court Rule 6.4(2), which provides that cases in the circuit court’s Children’s Division “may be reassigned according to the ‘One Family/One Judge’ model of decision making so that, to the greatest degree reasonably possible, cases involving maternal siblings may be heard together.”

Second, the circuit court failed to establish during the plea hearing whether a proposed adoptive parent had been identified. *See* WIS. STAT. § 48.422(7)(bm). However, this failure does not provide grounds to appeal because proposed adoptive resources were identified at the dispositional hearing, and there is no indication that W.J. would have pled differently if the adoptive resources had been identified at the plea hearing.

The no-merit report next addresses whether there are any issues relating to the dispositional phase of the proceedings in which the court terminated W.J.'s parental rights to both children. We agree with counsel that there are no issues of arguable merit relating to disposition. "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 court must consider the factors set forth in WIS. STAT. § 48.426, giving paramount consideration to the best interest of the child. *See Gerald O.*, 203 Wis. 2d at 153-54. Here, the court heard relevant evidence, applied the statutory factors to that evidence, and ultimately found that terminating W.J.'s parental rights was in the best interest of each of the children. The court addressed each factor for each child in a thorough and detailed decision. We see no non-frivolous basis to argue that the court erroneously exercised its discretion.

Finally, the no-merit report addresses whether W.J. could claim ineffective assistance of trial counsel. We agree with appellate counsel that there are no grounds for W.J. to raise such a claim.

Our review of the record discloses no other arguably meritorious issue for appeal.

Therefore,

IT IS ORDERED that the circuit court's orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven W. Zaleski is relieved of any further representation of W.J. in these matters.

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

Samuel A. Christensen
Clerk of Court of Appeals