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DISTRICT I

November 28, 2023

To:

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

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Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

Katie L. Gutowski
Electronic Notice

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Electronic Notice

Anne M. Abell
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Division of Milwaukee Child Protective
Services

Charmian Klyve
635 North 26th Street
Milwaukee, WI 53233-1803

L.G.

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

2023AP1471-NM

In re the termination of parental rights to L.D., a person under the
age of 18: State of Wisconsin v. L.G. (L.C. # 2022TP104)

Before Donald, P.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).

L.G., by counsel, appeals the circuit court order terminating her parental rights to L.D. Attorney Steven Zaleski, appointed counsel for L.G., has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. L.G. was informed of her right to respond to the report, but has not filed a response. In response to a prior order of this court, Attorney Zaleski has

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.

obtained a missing transcript, which is now included in the record, and has filed a supplemental letter brief explaining that nothing in that transcript changes his assessment that further proceedings would lack arguable merit. Upon consideration of the no-merit report and supplemental letter brief, and an independent review of the record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes that there is no arguable merit to any issue that could be raised on appeal. Therefore, this court summarily affirms the circuit court's order. *See* WIS. STAT. RULE 809.21.

The State filed the petition to terminate L.G.'s parental rights to L.D. on June 9, 2022. As grounds, the petition alleged that L.D. was a child in continuing need of protection or services (CHIPS) and that L.G. failed to assume parental responsibility. *See* WIS. STAT. §§ 48.415(2), (6). L.G. waived her statutory right to a jury trial, and the matter proceeded to a fact-finding hearing as to the alleged grounds on March 8 and 9, 2023. The circuit court found that the State had established both of the alleged grounds for termination of parental rights, and entered a finding of unfitness. The case proceeded to the dispositional hearing on March 9 and continued to March 15, 2023, where the court made a verbal decision to terminate L.G.'s parental rights to L.D. The court then entered a written order terminating L.G.'s parental rights on March 16, 2023,² and L.G. appealed.

The no-merit report first addresses whether the circuit court complied with the statutory deadlines that govern termination of parental rights proceedings. This court agrees with counsel

² The order also terminated the parental rights of the unknown biological father.

that there is no arguable merit to this issue. In each instance, the court either complied with the applicable deadlines or extended the deadlines upon a showing of good cause.

The no-merit report next addresses whether there would be any arguable merit to a claim that L.G.'s waiver of the statutory right to a jury trial under WIS. STAT. § 48.422(4) was not knowing, intelligent, and voluntary. Due process does not require the circuit court to engage in a personal colloquy with the parent to confirm waiver of the right to a jury trial in the grounds phase of a termination of parental rights (TPR) proceeding. *Racine Cnty. Human Servs. Dep't v. Latanya D.K.*, 2013 WI App 28, ¶2, 346 Wis. 2d 75, 828 N.W.2d 251. Nonetheless, this court has recognized that “a personal colloquy concerning waiver of the jury trial right is a good idea in TPR proceedings.” *Id.*, ¶21. In this case, the court did engage in an on-the-record colloquy with L.G. to confirm that she knew she was giving up her right to a jury trial and that she had not been forced, threatened, pressured, or paid to give up that right. L.G. confirmed for the court that she had discussed the waiver decision with her trial counsel and was making it freely. Upon an independent review of the record, this court concludes that any challenge to the validity of L.G.'s waiver of the right to a jury trial would be without arguable merit.

Next, the no-merit report discusses whether the evidence was sufficient to sustain the circuit court's finding of parental unfitness on the grounds of continuing CHIPS and failure to assume parental responsibility. The no-merit report sets forth the evidence at the fact-finding hearing that supported the circuit court's findings as to grounds. This court is satisfied that there would be no arguable merit to challenging the sufficiency of the evidence to support the court's finding of unfitness during the grounds phase of the proceedings.

The no-merit report also discusses whether there would be any arguable merit to challenging the circuit court’s decision to terminate L.G.’s parental rights at the conclusion of the dispositional phase of the proceedings. This court agrees with counsel that there is no arguable merit to this issue. “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). In rendering its decision, the circuit court considered on the record all of the statutory factors set forth in WIS. STAT. § 48.426(3), and concluded that termination of L.G.’s parental rights to L.D. was in L.D.’s best interest. This court agrees with counsel that a challenge to the circuit court’s exercise of discretion as to disposition would be wholly frivolous.

The no-merit report also addresses whether an arguably meritorious argument could be made that trial counsel rendered ineffective assistance of counsel in representing L.G. We agree with counsel’s assessment that such a claim would lack arguable merit.

Upon an independent review of the record, no other arguable basis for reversing the order terminating L.G.’s parental rights has been found. Therefore, any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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 Steven Zaleski is relieved of any further representation of L.G. in this matter.

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

Samuel A. Christensen
Clerk of Court of Appeals