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DISTRICT I

February 6, 2024

To:

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Circuit Court Judge
Electronic Notice

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Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

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Steven Zaleski
Electronic Notice

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

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

2023AP2320-NM	In re the termination of parental rights to A. C.-N., a person under the age of 18: State of Wisconsin v. T.C. (L.C. # 2022TP110)
2023AP2321-NM	In re the termination of parental rights to T. C., Jr., a person under the age of 18: State of Wisconsin v. T.C. (L.C. # 2022TP111)

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).

T.C., by counsel, appeals the circuit court orders terminating his parental rights to his children, A.C.-N. and T.C., Jr. Attorney Steven Zaleski, appointed counsel for T.C., has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. T.C. was informed of his right to respond to the report, but he has not done so. Upon consideration of the report, and

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.

an independent review of the record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the circuit court's order. *See* WIS. STAT. RULE 809.21.

T.C. is the biological father of A.C.-N., born in March 2019, and T.C., Jr., born in July 2020. T.C. and the children's mother, S.N., have a long history of drug use. The children were born with drugs in their systems: A.C.-N. tested positive for marijuana, and T.C., Jr. tested positive for marijuana and cocaine. Both children spent time in the NICU after they were born for treatment of their withdrawal symptoms. T.C., Jr. was also treated for respiratory distress, and required tube feedings. Both parents admitted to using crack in the months prior to T.C. Jr.'s birth. They were also both on medication for the treatment of heroin addiction.

The children were detained by the Division of Milwaukee Child Protective Services (DMCPS) and placed in foster care in January 2021 due to neglect. T.C. was incarcerated at the time.²

In June 2022, the State filed the underlying petitions to terminate T.C.'s parental rights to A.C.-N. and T.C., Jr.³ In the petitions, the State alleged abandonment, pursuant to WIS. STAT. § 48.415(1)(a)3., and the failure to assume parental responsibility, pursuant to § 48.415(6). During the grounds phase of the proceedings, T.C. chose to enter a no-contest plea to the failure to assume parental responsibility allegations. As part of the plea agreement, the parents were

² T.C. has a lengthy criminal record and was incarcerated for several periods of time throughout these proceedings.

³ The petitions also named S.N. as a respondent, and her parental rights to the children were also terminated as a result of these proceedings. S.N.'s rights are not at issue in this no-merit appeal, and we do not address them further.

given an additional sixty days before a dispositional hearing was scheduled to try to meet the conditions for the return of the children that were imposed by the circuit court when the children were found to be in need of protection or services. Those conditions included that T.C. was to resolve his criminal cases and commit no further crimes, and both parents were to gain control of their substance abuse issues.

The dispositional hearing was held on June 1 and June 15, 2023. At that time, T.C. was again incarcerated, with two theft charges and a drug charge pending. Additionally, S.N. had relapsed with drug use. The circuit court heard testimony from several witnesses, including the DMCPS case manager, one of the children's foster parents, and T.C. The circuit court then considered the required statutory factors for termination, and found that it was in A.C.-N's and T.C., Jr.'s best interest for T.C.'s parental rights to be terminated. This no-merit appeal follows.

In the no-merit report, appellate counsel first addresses whether there would be arguable merit to challenges relating to the competency of the circuit court relating to adherence to statutory deadlines. Counsel states, and the record reflects, that the circuit court either acted within the statutory time periods for these proceedings as set forth in WIS. STAT. §§ 48.422(1)-(2), 48.424(4), and 48.427(1), or found good cause for granting a continuance, pursuant to WIS. STAT. § 48.315(2)-(3). We therefore agree with counsel's analysis that there would be no arguable merit to a claim relating to statutory deadlines.

Appellate counsel next addresses whether there would be any arguable merit to a claim relating to T.C.'s no contest plea. The record reflects that the circuit court engaged in a thorough plea colloquy with T.C. However, appellate counsel observes that the court did not identify the adoptive resource for the children during the colloquy, as required under WIS. STAT.

§ 48.422(7)(bm). Nevertheless, testimony at the dispositional hearing established the identity of a proposed adoptive resource—the foster parents. Accordingly, the error in failing to address this issue during the plea colloquy is harmless. *See Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶¶31–32, 246 Wis. 2d 1, 629 N.W.2d 768. Therefore, we agree with appellate counsel that a claim regarding the validity of T.C.’s plea would lack arguable merit.

Appellate counsel next addresses whether there would be arguable merit to challenges relating to the disposition phase of these 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 circuit court must consider the factors set forth in WIS. STAT. § 48.426(3), giving paramount consideration to the best interests of the child. *See Gerald O.*, 203 Wis. 2d at 153-54. Here, the record reflects that the circuit court expressly considered the relevant factors, made a number of factual findings based on the evidence presented, and reached a reasonable decision. We therefore agree with appellate counsel’s conclusion that any challenge to the circuit court’s decision to terminate T.C.’s parental rights would lack arguable merit.

Finally, the no-merit report discusses whether T.C. could pursue an arguably meritorious claim that his 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 T.C. We therefore we agree with appellate counsel that any such claim would lack arguable merit.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the orders terminating T.C.'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 T.C. in these matters.

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

Samuel A. Christensen
Clerk of Court of Appeals