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DISTRICT II

September 18, 2024

To:

Hon. John A. Jorgensen
Circuit Court Judge
Electronic Notice

Hannah E. Kottke
Electronic Notice

Sara Henke
Register in Probate
Winnebago County Courthouse
Electronic Notice

N.J.D.

Michael Lim
Electronic Notice

Carlos Bailey
Electronic Notice

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

2024AP1139-NM Winnebago County DHS v. N.J.D. (L.C. #2020TP23)

Before Grogan, 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).

N.J.D. (hereinafter Nick) appeals from an order terminating his parental rights to his daughter A.K.V. (hereinafter Amelia).² Attorney Carlos Bailey has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*,

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.

² Pursuant to WIS. STAT. RULE 809.81(8), we use initials or pseudonyms instead of the parties' names in this confidential matter.

386 U.S. 738, 744 (1967). The no-merit report sets forth the procedural history of the case and addresses: (1) whether the circuit court had competency to decide a summary judgment motion on grounds that it was filed outside the statutory deadline; and (2) whether the circuit court properly exercised its discretion in determining that termination was in the child's best interests. Nick was advised of his right to respond to the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, this court concludes that counsel will be allowed to withdraw, and the termination order will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Winnebago County filed a petition to terminate Nick's parental rights to Amelia on July 28, 2020. The petition alleged four grounds for termination: abandonment; the child's continuing need of protection or services; continuing denial of periods of physical placement; and failure to assume responsibility. *See* WIS. STAT. § 48.415(1)(a)2, (2), (4) and (6).

After Nick failed to appear in person or by counsel at a summary judgment hearing, the circuit court found him in default on grounds. The court subsequently found it would be in Amelia's best interests to terminate Nick's parental rights and entered a TPR order on September 26, 2023. This court reversed the September 26, 2023 TPR order in appeal No. 2023AP75, however, upon determining that Nick had been deprived of his right to counsel during the grounds phase of the proceedings.

On remand, the County renewed its motion for summary judgment, and the parties agreed that no factual dispute existed as to the continuing denial of periods of physical placement or visitation. The only objection Nick raised concerned the timeliness of the County's motion, which was filed on June 3, 2021, over ten months after the TPR petition. Nick noted that WIS.

STAT. § 802.08 requires a motion for summary judgment to be filed within eight months of the filing a petition or within the time set in a scheduling order, unless the court extends the deadline pursuant to WIS. STAT. § 801.15(2)(a).

The Record showed that the County had notified Nick and the circuit court during a hearing held on March 15, 2021, within the eight-month time period, that the County planned to file “a dispositive motion regarding the grounds phase” because Nick’s visits with Amelia had been suspended for more than a year, but it was waiting for discovery issues to be resolved before doing so. Based upon the parties’ joint representations that discovery issues were still outstanding, the court found good cause existed “to extend the time limits.” On June 3, 2021, the County advised the court that discovery had been completed and asked for a hearing date to address the summary judgment motion that it filed that day.

The circuit court noted that everyone understood the County’s position that summary judgment should not be addressed until after the parties finished litigating the discovery issue. This was so that Nick could review any additional discovery the court ordered the County to provide prior to filing his response to the summary judgment motion. The court found these circumstances constituted excusable neglect—that is, that a reasonably prudent person would have waited for the discovery issue to be resolved before filing the summary judgment motion.

At the disposition hearing, a Winnebago County Department of Human Services supervisor testified that Amelia had been placed outside the home since her birth; that Nick did not have a substantial relationship with her; and that reasonable efforts had been made to provide services to assist with the child’s return, but that Nick had not met the conditions for return. The primary social worker on the case testified about Amelia’s successful placement for nearly her

entire eight years of life with a foster family who wanted to adopt her, and opined that terminating Nick's parental rights would be in Amelia's best interests.

This court agrees with counsel's analysis and conclusion that any challenge to the circuit court's competency to find grounds on summary judgment or to its exercise of discretion would lack arguable merit. Because counsel's no-merit report adequately addresses these issues, this court does not address them further. This court's independent review of the Record discloses no other potential issues for appeal. This court concludes that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the order of the circuit court terminating parental rights is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Assistant State Public Defender Carlos Bailey is relieved of any further representation of N.J.D. in this matter pursuant to WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals