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DISTRICT III

September 17, 2024

To:

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Circuit Court Judge
Electronic Notice

Renee Marsolek
Juvenile Clerk
Trempealeau County Courthouse
Electronic Notice

Ellen J. Krahn
Electronic Notice

Brenna Marie Wolfe
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S. A. H.
407 8th Ave. W.
Durand, WI 54736

April Lande
Electronic Notice

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

2024AP955-NM B. J. W. v. S. A. H. (L.C. Nos. 2022TP5, 2022TP6)
2024AP956-NM

Before Hruz, 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 Steven[2] filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable basis for challenging the orders terminating Steven's parental rights to his children, Charles and Kara. Steven was advised of his right to file a response to the

[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.

[2] Pursuant to WIS. STAT. RULE 809.81(8), we use pseudonyms when referring to the parties and the children in these confidential matters.

report, and he has not responded. Upon this court's independent review of the records, as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issue of arguable merit appears. Therefore, the orders terminating Steven's parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

On November 22, 2022, Barbara, the children's mother, petitioned for termination of Steven's parental rights, alleging abandonment under WIS. STAT. § 48.415(1) and a failure to assume parental responsibility under § 48.415(6). At an initial hearing held on December 16, 2022, the circuit court judge recused himself because he had earlier represented the child support agency. Barbara moved for summary judgment as to the grounds for termination, and Steven waived the time limits for holding a fact-finding hearing in order to respond to the summary judgment motion. The court ultimately denied the motion for summary judgment, concluding that a "fuller exposition of the facts" was necessary.

At the outset of the trial, the parties addressed the fact that previous termination orders had been reversed on appeal. In the earlier proceeding, Steven's parental rights were terminated on the grounds of the continuing denial of periods of physical placement under WIS. STAT. § 48.415(4). On appeal from those orders, Steven argued, in part, that § 48.415(4), as applied to him, violated his right to substantive due process because it allowed him to be deemed an unfit parent without consideration of his poverty. Steven had been required to pay a $1,000 guardian ad litem fee before the court would hold a hearing on changing placement. Steven therefore argued that his indigence hampered his access to the family courts and prevented consideration of his repeated attempts to regain placement of his children. We reversed the termination orders, concluding that Steven's right to substantive due process was violated, and we remanded the matters with directions that, in any further proceedings evaluating whether Steven was an unfit

parent, "the parties and the court may not use the period during which [Steven] was without placement and was being denied access to the courts until he paid a fee as evidence to support a finding that [Steven] was an unfit parent." ***B.W. v. S.H.***, Nos. 2021AP43 and 2021AP44, unpublished slip op. ¶29 (WI App June 29, 2021). The parties therefore agreed that the jury could consider evidence from prior to March 20, 2014, and after May 1, 2019.

At the time of trial, the children were sixteen and seventeen years old. Barbara testified that she and Steven were living together in February 2006—when Charles was born—but they had parted ways before Kara's August 2007 birth. Barbara further testified that after their separation, Steven saw the children for a few hours a couple of times per week, though there was no set visitation schedule. In August 2011, the parties attended mediation, resulting in a parenting plan that gave Steven placement every other weekend during the school year and alternate weeks during the summer. Barbara testified that Steven followed the plan until January 2012, when "he stopped taking the children completely." Barbara added that Steven did not see the children between March 2012 and January 2014, and he did not contact her regarding them even though her phone number remained the same. Barbara testified that Steven texted her four messages and wrote letters to the children between May 2019 and November 21, 2023, the date of trial; however, Steven did not have any visits with the children during that time.

Steven's brother-in-law testified that he and his wife have served as Steven's guardians since the fall of 2022. Steven lives with them, and they help remind him of daily routines, such as grooming and taking medication.

Steven testified that he loves and misses his children, though he acknowledged that he had not seen them in person or spoken to them since they were ages four and five. Steven also

conceded that between July 30, 2012, and March 20, 2014, he did not contact Barbara about the children, he did not attend their doctors' appointments, and he did not contact their school.

The jury returned verdicts against Steven on both grounds—i.e., abandonment and failure to assume parental responsibility—for termination as to each child. The circuit court made the statutorily required finding that Steven is an unfit parent. After a dispositional hearing, the court concluded it was in the children's best interests to terminate Steven's parental rights.

Any challenge to the proceedings based on a failure to comply with statutory time limits lacks arguable merit. All of the mandatory time limits were either complied with or properly extended for good cause, without objection, to accommodate the parties' varying schedules. The failure to object to a delay waives any challenge to the circuit court's competency on these grounds. *See* WIS. STAT. § 48.315(3). Moreover, scheduling difficulties constitute good cause for tolling time limits. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

The no-merit report addresses whether there was sufficient evidence to support the jury's verdicts as to the grounds for termination and whether the circuit court properly exercised its discretion in concluding that termination of Steven's parental rights was in the children's best interests. Upon reviewing the records, we agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

Because this court's independent review of the records confirms that counsel correctly analyzed the issues surrounding these terminations, and because this court's review discloses no

other potential issues of arguable merit, the orders terminating Steven's parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.[3]

Upon the foregoing reasons,

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Ellen J. Krahn is relieved of her obligation to further represent Steven in these matters. *See* 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

[3] Cases appealed under WIS. STAT. RULE 809.107 "shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filing of the appellant's reply brief." RULE 809.107(6)(e). Conflicts in this court's calendar have resulted in a short delay in the opinion's release. It is therefore necessary for this court to sua sponte extend the deadline for a decision in this case. *See* WIS. STAT. RULE 809.82(2)(a) ("[T]he court upon its own motion … may enlarge or reduce the time prescribed by these rules or court order for doing any act …."); ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995). We extend our deadline accordingly.