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DISTRICT I/II

January 3, 2013

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

2012AP2244-NM In re the termination of parental rights to Yanara G., a person under the age of 18: State of Wisconsin v. Ingrid G. (L.C. # 2011TP268)

Before Reilly, J.[1]

Ingrid G. appeals from a circuit court order terminating her parental rights to Yanara G. Ingrid G.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m) and ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998). Ingrid G. received a copy of the report and has filed a response to it. Upon

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

consideration of the report, Ingrid G.'s response, and an independent review of the record, we summarily affirm the order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The State of Wisconsin petitioned to terminate Ingrid G.'s parental rights on the grounds that Ingrid G. had abandoned and failed to assume parental responsibility for Yanara G. WIS. STAT. §§ 48.415(1)(a)2 and (6). Ingrid G. admitted the abandonment ground, and the circuit court terminated Ingrid G.'s parental rights after a dispositional hearing.

The no-merit report addresses: (1) whether all mandatory WIS. STAT. ch. 48 deadlines were met or extended for good cause; (2) whether the termination of parental rights petition was sufficient; (3) whether the requirements of WIS. STAT. § 48.422(7) were met when Ingrid G. admitted the abandonment ground after a colloquy with the circuit court; (4) whether the circuit court properly exercised its discretion in determining that it was in the child's best interests to terminate Ingrid G.'s parental rights; and (5) whether the circuit court judge should have recused himself because the judge's daughter previously served as a guardian ad litem in the underlying CHIPS case. The no-merit report contains a correct statement of the law governing these issues and properly applies the law to the facts. We agree with appellate counsel that these issues would not have arguable merit for appeal.

We have considered whether there would be any arguable merit to a claim that the court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. *See* ***State v. April O.***, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. Continuances are permitted "upon a showing of good cause in open court … and only for so long as is necessary." WIS. STAT. § 48.315(2). Failure to object to a continuance waives any

challenge to the court's competency to act during the continuance. Sec. 48.315(3). The record shows that the circuit court found good cause to toll the time limits on several occasions and that Ingrid G. did not object. There would be no arguable merit to a challenge to the circuit court's competency to proceed based on a failure to comply with statutory time limits.

We agree with appellate counsel that the termination of parental rights petition was sufficient under the applicable statute.

Before accepting an admission to a termination petition, the circuit court must conduct a colloquy with the parent in accordance with WIS. STAT. § 48.422(7). ***Onieda Cnty. Dept. of Soc. Servs. v. Therese S.***, 2008 WI App 159, ¶5, 314 Wis. 2d 493, 762 N.W.2d 122. The court must determine that the parent's admission is made voluntarily, and the parent understands the nature of the acts alleged in the petition and the potential dispositions. ***Id.*** The court must also establish whether any threats or promises were made and that the admission has a factual basis. ***Id.*** In order for an admission to be entered knowingly and intelligently, "parents must understand that acceptance of their plea will result in a finding of parental unfitness." ***Id.***, ¶10. A court must inform the parent that at the second stage of the process, the court will hear evidence that will result either in the termination of the parent's rights or dismissal of the termination petition. ***Id.***, ¶16. Finally, "the court must inform the parent that '[t]he best interests of the child shall be the prevailing factor considered by the court in determining the disposition.'" ***Id.*** (citation omitted).

The record establishes that the circuit court conducted a proper colloquy with Ingrid G. before accepting her admission to the abandonment ground. There was a factual basis for the

abandonment ground. We conclude that Ingrid G.'s admission was knowing and voluntary, and we agree with counsel's conclusion that an appeal on this basis would lack arguable merit.

The decision to terminate parental rights is within the circuit court's discretion. ***B.L.J. v. Polk Cnty. Dep't of Soc. Servs.***, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991). The circuit court is required to consider the statutory factors to determine if termination is in a child's best interests. WIS. STAT. § 48.426(3). In this case, the record indicates that the circuit court considered the appropriate factors: the likelihood of the child's adoption after termination, the child's age and health, the child's substantial family relationships and whether it would be harmful to sever those relationships, the duration of the parent-child separation, and future stability for the child as a result of the termination. The court's findings in support of termination were not clearly erroneous, WIS. STAT. § 805.17(2), and the factors all weighed in favor of a determination that it was in the child's best interests to terminate Ingrid G.'s parental rights. We agree with counsel's conclusion that an appellate challenge on this basis would lack arguable merit.

We turn to the recusal or WIS. STAT. § 757.19 disqualification issue. While reviewing the file during a break in the dispositional hearing, the circuit court judge discovered that his daughter had served as Yanara G.'s guardian ad litem during a proceeding to extend the underlying CHIPS order. Ingrid G. did not appear at that extension hearing, and the extension order was entered by default. The judge informed Ingrid G. of the circumstances surrounding his daughter's earlier involvement in the case. After Ingrid G. consulted with counsel, she advised the court that she did not seek recusal. Ingrid G. waived grounds for disqualification, if any. WIS. STAT. § 757.19(3). We agree with appellate counsel that this issue does not possess arguable merit for appeal.

We turn to Ingrid G.'s response. In it, she argues for an opportunity to raise her child and notes the changes she has made in her life. All of these concerns were considered by the circuit court when it decided that termination of Ingrid G.'s parental rights was in her child's best interests. Ingrid G.'s response does not identify an issue with arguable merit for appeal.

Our independent review of the record does not disclose any issues with arguable merit for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we affirm the order terminating Ingrid G.'s parental rights and relieve Attorney John Breffeilh of further representation of Ingrid G. in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney John Breffeilh is relieved of further representation of Ingrid G. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals