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DISTRICT II/IV

January 29, 2013

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

2012AP2669-NM

In re the termination of parental rights to Damon T. A., a person under the age of 18: Laura C. P. v. Erick D. A. (L.C. # 2011TP28)

Before Blanchard, J.

Erick D. A. appeals an order terminating his parental rights to his son Damon. Attorney Patrick Flanagan has filed a no-merit report seeking to withdraw as appellate counsel. *See Anders v. California*, 386 U.S. 738, 744 (1967); WIS. STAT. RULE 809.32 (2011-12);¹ *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987). The no-merit report addresses the sufficiency of the evidence to sustain the grounds determination, the

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

circuit court's exercise of discretion at the dispositional phase, and the assistance of counsel. Erick was sent a copy of the report, but has not filed a response. Upon review of the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

Jury Waiver

The record shows that the circuit court engaged Erick in a colloquy to determine that he was knowingly and voluntarily waiving his statutory right to a jury trial before the court proceeded to hold a bench trial. *See* WIS. STAT. §§ 48.422(4), 48.32(2), 48.424(2); ***Walworth Cnty. DH&HS v. Andrea L.O.***, 2008 WI 46, ¶55, 309 Wis. 2d 161, 749 N.W.2d 168. We see no defect with the waiver.

Sufficiency of the Evidence

The petitioners, Damon's mother and step-father, alleged the alternate grounds of abandonment and failure to assume parental responsibility to support their request to terminate Erick's parental rights. In order to prove the termination ground of abandonment, the petitioners needed to show by clear and convincing evidence that: (1) Erick left Damon in the care of another person; (2) Erick knew or could have learned Damon's whereabouts; and (3) Erick failed to visit or communicate with him for more than six months. *See* WIS. STAT. § 48.415(1)(a)3.; WIS JI—CHILDREN 314. Erick could provide an affirmative defense to abandonment by showing that there was good cause for the failure to visit or communicate. *See* WIS. STAT. § 48.415(1)(c). In order to establish the termination ground of failure to assume parental responsibility, the petitioners needed to show that Erick had not developed a substantial relationship with the child—meaning the acceptance and exercise of significant responsibility for the daily

supervision, education, protection, and care of the child. *See* WIS. STAT. § 48.415(6); WIS JI—CHILDREN 346.

The mother testified that Erick had never been involved with the daily care of their son, such as providing food, clothing, toys, or medical treatment, or attending any school functions or parent/teacher meetings, and had never made regular child support payments. Erick himself acknowledged he owed over \$18,000 in child support arrears, and that he had not had any contact with his son since 2007, when the boy's mother had obtained a domestic violence injunction. Nor had Erick made any attempt to obtain a court order for visitation. Upon cross-examination, Erick could not name his son's teachers or health care providers, and was unaware of such things as his son's favorite foods or toys. This evidence was sufficient to find that all of the required elements had been established for both the grounds of abandonment and the grounds of failure to assume responsibility.

Disposition

At a dispositional hearing, a trial court is required to consider such factors as the likelihood of the child's adoption, the age and health of the child, the nature of the child's relationship with the parents or other family members, the wishes of the child, and the duration of the child's separation from the parent, with the prevailing factor being the best interests of the child. WIS. STAT. § 48.426(2) and (3). The record shows that the trial court did so. In particular, the court noted that Damon was flourishing under the care of his mother and stepfather; that the stepfather planned to adopt Damon; and that severing Erick's relationship with Damon would not be detrimental to his well-being, since Damon had not seen his father for nearly five years.

In short, the record shows that the trial court reasonably applied the proper legal standard to the facts of record when reaching its disposition.

Assistance of Counsel

The record does not reveal any deficiencies in trial counsel's performance. Trial counsel elicited testimony that Damon called his father "Daddy" during the period of time the two had contact, and also had a relationship with Erick's grandmother. From that basis, counsel argued that the two had a substantial relationship, and that it would not be in the child's best interest to terminate Erick's parental rights.

In addition to the potential issues discussed by counsel, we note that it appears from the record that all of the statutory deadlines were met or properly extended for good cause, and that required notices were given. We have discovered no other arguably meritorious grounds for an appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the TPR order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Patrick Flanagan is relieved of any further representation of Erick D. A. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals