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DISTRICT III

February 1, 2013

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

2012AP2357-NM St. Croix County Department of Health and Human Services v. Juanita A. (L. C. #2011TP6)

Before Hoover, P.J.[1]

Counsel for Juanita A. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable basis for Juanita to challenge an order concerning terminating her parental rights to her son. Juanita has responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issue of arguable merit

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

appears. Therefore, the order terminating Juanita's parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The petition initially alleged that Juanita failed to assume parental responsibility.[2] The County filed an amended petition alleging a child in continuing need of protection or services. The "continuing CHIPS" ground was later withdrawn prior to trial.

The jury returned a verdict finding Juanita failed to assume parental responsibility. After a dispositional hearing, the circuit court entered an order involuntarily terminating Juanita's parental rights.

The no-merit report addresses whether the circuit court lost competency to proceed because the court failed to meet the deadline for the fact-finding and dispositional hearings. Good cause existed for tolling time limits. *See* ***State v. Robert K.***, 2005 WI 152, ¶¶28-29, 286 Wis. 2d 143, 706 N.W.2d 257. Even if an argument could be made that the record did not establish good cause for initially scheduling the dispositional hearing beyond the statutory time limit, failure to comply with the time limits does not cause the circuit court to lose jurisdiction or competency to proceed. *See* WIS. STAT. § 48.315(3). In addition, failure to object to a delay or continuance waives any challenge to the court's competency. Here, with respect to both the trial and dispositional hearings, Juanita requested additional time.

There is also no arguable issue regarding the sufficiency of the evidence to support the jury's verdict. We give deference on appeal to a jury's verdict as to whether a ground for

[2] The father later voluntarily terminated his parental rights.

termination has been proven. ***State v. Lamont D.***, 2005 WI App 264, ¶9, 288 Wis. 2d 485, 709 N.W.2d 879. We must affirm the jury's verdict if any credible evidence, under any reasonable view, leads to an inference supporting the jury's finding. ***Morden v. Continental AG***, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659.

The failure to assume parental responsibility ground for termination of parental rights is set forth in WIS. STAT. § 48.415(6)(a). Subsection (b) defines "substantial parental relationship" as

> the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child ….

Our supreme court has held the fact-finder must examine the totality of the circumstances ever the entirety of the child's life to determine if a parent has failed to assume parental responsibility, and may consider whether a parent has exposed her child to a hazardous living environment. *See* ***Tammy W-G. v. Jacob T.***, 2011 WI 30, ¶22, 333 Wis. 2d 273, 797 N.W.2d 854. The court stated, "Supervision, protection and care of a child, by definition, involve keeping that child out of harm's way." ***Id.***, ¶37.

There is no arguable merit to any claim that the jury's verdict is not supported by credible evidence. Here, the evidence showed Juanita's son was removed from her care after Juanita entered an admission to a CHIPS petition alleging she was unable to care for him. Her son was diagnosed with severe attention deficit hyperactivity disorder, reactive attachment disorder and developmental traumatic disorder. He had extreme aggressive behavior and emotional problems.

Testimony indicated that during the period Juanita had custody of her son, she relied heavily on others to assist her with parenting and was unable to follow through with techniques taught to her when the various supporting personnel were not present. In the approximately two years between her son's placement in foster care and trial, Juanita had supervised visits, mostly at her home but for a period of time at the health center because her home was unsafe for her son. The visits never progressed to being unsupervised because the evidence showed Juanita was unable to adequately supervise her son, protect him from harm, maintain her home in a safe manner, or adequately protect her infant from her son's aggressive behavior. Witnesses testified that when the various supporting personnel were not present, Juanita was unable to follow through with techniques taught to her. This was due in part to her own health concerns, but also because Juanita did not always take the steps necessary to attend to the concerns. From this evidence of desultory, insubstantial contacts, a reasonable jury could find that Juanita lacked a substantial relationship with her son.

Juanita insists evidence supports a substantial relationship with her son, and any barriers to her assumption of parental responsibility were the fault of the County, and not due to her negligence or inability to assume parental responsibility. However, the jury, not the appellate court, is to balance the credibility of witnesses and the weight given to the evidence. *See* ***id.***, ¶39.

The no-merit report also addresses whether the circuit court erred by permitting Dr. Paul Caillier to testify regarding his psychological evaluation of Juanita. Caillier expressed the opinion that Juanita was in the borderline range for intellectual functioning, and diagnosed her as having a personality disorder with dependent and borderline features, as well as a depressive disorder. According to Caillier, Juanita had a difficult time functioning on a day-to-day basis,

was very dependent, and had an expectation other people would care for her. Ultimately, when asked how his diagnosis related to Juanita's parenting, he expressed the opinion that, "Juanita … has difficulty caring for herself and has little or no ability to care for children, especially special-needs children."

Any argument this testimony should have been excluded lacks arguable merit in light of ***Tammy W-G.*** Dr. Caillier's testimony explained why Juanita had not adequately cared for her son. *See* ***id.***, ¶32. There is no arguable merit regarding the admission of this testimony.

The record also discloses no basis for challenging the circuit court's exercise of discretion when it determined that the best interests of her son required termination of Juanita's parental rights. The court examined the relevant facts and applied the proper factors relating to the best interests of the child set out in WIS. STAT. § 48.426(3).

The court concluded it was in the child's best interest to terminate Juanita's parental rights after considering the child's adoptability and age, the absence of a substantial relationship with Juanita and the child's need for a stable and permanent family relationship. Although the court noted that it believed Juanita had the best intentions of any mother it had seen, its discretionary decision to terminate Juanita's parental rights demonstrates a rational process that is justified by the record. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

The court's independent review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Donna Hintze is relieved of further representing Juanita A. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals