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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

March 13, 2013

To:

Hon. Christopher R. Foley
Children's Court Center
10201 W. Watertown Plank Road
Milwaukee, WI 53226

Dan Barlich, Juvenile Clerk
Children's Court Center
10201 W. Watertown Plank Road
Milwaukee, WI 53226

T. C. Dee
Assistant District Attorney
10201 W. Watertown Plank Road
Milwaukee, WI 53226

David J. Lang
8112 W. Bluemound Road, Ste. #71
Wauwatosa, WI 53213

Claire Starling
Assistant District Attorney
Milwaukee County District Attorney's Office
10201 W. Watertown Plank Road
Wauwatosa, WI 53226

Lastarr A.

Bureau of Milwaukee Child Welfare
Arlene Happach
1555 N. River Center Drive, #220
Milwaukee, WI 53212

Isa Yamahiro
Legal Aid Society of Milwaukee Inc.
Childrens Court Center
10201 W. Watertown Plank Road
Wauwatosa, WI 53226-3532

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

2012AP2680-NM State of Wisconsin v. Lastarr A.
2012AP2681-NM (L.C. #2011TP241& 2011TP242)

Before Curley, P.J.[1]

Lastarr A. appeals from orders terminating her parental rights to Kafi A. and Demau'ray N.[2] Appellate counsel, David J. Lang, has filed a no-merit report pursuant to ***Anders v.***

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12).

[2] The appeals for both children have been consolidated for appeal. The parental rights of each child's father are not at issue in this appeal and will not be addressed.

California, 386 U.S. 738 (1967), ***Brown County v. Edward C.T.***, 218 Wis. 2d 160, 579 N.W.2d 293 (Ct. App. 1998) (per curiam), and WIS. STAT. RULES 809.107(5m) and 809.32 (2011-12).[3] Lastarr A. has not responded.[4] After considering counsel's no-merit report and after conducting an independent review of the record, this court agrees that further proceedings would lack arguable merit. Therefore, the orders terminating Lastarr A.'s parental rights are summarily affirmed.

BACKGROUND

Kafi A. was born in 2001 and Demau'ray N. was born in 2005. In 2008, the Bureau of Milwaukee Child Welfare (hereafter, "Bureau") received a referral to check on the welfare of Kafi A., Demau'ray N., and their two siblings, whom their mother, Lastarr A., had left in the care of her grandparents for about two months. It was determined that the grandparents were not able to continue providing care and the Bureau offered services to Lastarr A. After a failed

[3] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[4] During our review of the record we identified a discrepancy in the address used for Lastarr A.: some documents referred to her street as "Place," while others indicated "Street." We subsequently sent mail to both addresses, and appellate counsel did the same. The letters to the "Street" address were returned, while the letters to the "Place" address were not. Neither this court nor appellate counsel has received any correspondence from Lastarr A.

In addition, we determined that the transcript of the dispositional hearing was not included in the initial transmittal of the appellate record. That transcript has now been added to the appellate record and we have reviewed it.

Both of these challenges delayed this court's consideration of this case. To the extent a formal extension of the deadline for deciding this no-merit appeal is necessary, *see* WIS. STAT. RULE 809.107(6)(e), this court *sua sponte* extends the extend the deadline for deciding the case, *see* ***Rhonda R.D. v. Franklin R.D.***, 191 Wis. 2d 680, 694, 530 N.W.2d 34 (Ct. App. 1995) (we may extend the time to issue a decision in a TPR case).

attempt to assist Lastarr A. with safety services, the children were taken into custody because Lastarr A. could not provide a safe placement for the children.[5]

A CHIPS action was filed. In March 2009, Lastarr A. stipulated to the allegation that she was "unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child." *See* WIS. STAT. § 48.13(10) (2009-10). The CHIPS order outlined numerous conditions that Lastarr A. had to meet in order to have the children returned to her home. The children were placed in foster care and have not been returned to Lastarr A.'s care since the CHIPS order was entered. The CHIPS order was extended in March 2010 and January 2011.

In June 2011, the State filed petitions to terminate Lastarr A.'s parental rights to Kafi A. and Demau'ray N. because of a continuing need for protection or services. *See* WIS. STAT. § 48.415(2). Lastarr A. waived her right to a trial by jury as to the grounds for termination and a court trial was held in May and June 2012.

At trial, the trial court had to determine whether the State had proven all of the following with respect to each child: (1) the child was adjudged to be a child in need of protection and services and placed, or continued in a placement, outside his or her home for a total period of six months or longer pursuant to one or more court orders containing the notice required by law; (2) the agency responsible for the care of the child and the family made a reasonable effort to provide the services ordered by the court; (3) the parent failed to meet the conditions established

[5] Lastarr A.'s parental rights to the two other children who were taken into custody in 2008 are not at issue in this appeal and will not be addressed.

for the safe return of the child to the home; and (4) there is a substantial likelihood that the parent will not meet the return conditions within the nine-month period following the fact-finding hearing. *See* WIS. STAT. § 48.415(2). In June 2012, the trial court issued a written decision finding that all four elements had been proven.

The trial court found that there was "no basis in the record to dispute the proof of the first three elements." First, it was clear that both children had been placed out of the home and that CHIPS orders with appropriate warnings were in effect. Second, the trial court found that Lastarr A. had "clearly not met" numerous conditions for the return of her children, including but not limited to: staying in touch with and cooperating with the Bureau worker; having a safe and stable home; showing that she can care for and supervise the children and understand their special needs; and having successful, extended visits with the children that demonstrate an ability to care for the children on a full-time basis. Third, the trial court found that the Bureau had "made reasonable efforts to provide the services mandated by the court to assist her in meeting the conditions of safe return."

The trial court further found that the fourth element had been proven. The trial court recognized that Lastarr A. had shown some "hopeful signs" by successfully caring for an infant in her care and working with a therapist, but the trial court said that it had to measure that progress "against nearly four years of obstinate refusal to acknowledge the safety risks; the impact of those safety risks on her children; [and] the related inability to understand those needs and meet them." The trial court explained:

> Nearing four years of the child welfare system involvement, [Lastarr A.] is adamant that there was no valid safety issue necessitating involvement … [even though she] stipulated to [CHIPS] jurisdiction on the basis of a petition that set forth

> overwhelming safety concerns—drug use; dumping her children on her grandparents and disappearing for long periods; active suicidal ideation; domestic violence. Her failure to recognize the validity and criticality of those safety risks and their effect on her children demonstrates unequivocally that she does not understand and cannot presently meet the needs of her children.

The trial court also commented on Lastarr A.'s apparent "inability to understand and appreciate Demau'ray's ADHD condition," noting that Lastarr A. had not been active in his therapy and that when she was ordered to meet with the treating psychiatrist, she "engage[d] the doctor in a heated shouting match." The trial court ultimately found that there was a substantial likelihood that Lastarr A. would "not successfully resolve those issues and demonstrate a capacity to safely parent within nine months." Accordingly, the trial court found that Lastarr A. was unfit pursuant to WIS. STAT. § 48.424(4).

The case proceeded to a dispositional hearing, after which the trial court issued a written decision finding that termination of Lastarr A.'s parental rights was in the best interests of both children. The trial court explained:

> [Lastarr A.'s] continuing emotional volatility and refusal to address [her] issues in any meaningful way for the last four years—and as recently evidenced by her threatening phone call to [Kafi A.'s foster mother] during a lunch break in this dispositional hearing—simply make the likelihood of successful and safe

> reunification with [Lastarr A.] highly unlikely and dictate that the safer course be pursued.[6]

(Footnote omitted.) The trial court also discussed the best interests factors as they related to both children, as explained below. This appeal follows.

ANALYSIS

The no-merit report addresses whether there would be any arguable merit to an appeal alleging: (1) that there was insufficient credible evidence to support the trial court's finding that grounds for termination existed; and (2) that the trial court erroneously exercised its discretion when it terminated Lastarr A.'s parental rights. Appellate counsel concludes that both of those issues lack arguable merit. We agree.

We begin with the trial court's finding that the State at trial proved grounds for termination under WIS. STAT. § 48.415(2). There is credible evidence in the record that supports the trial court's findings that Lastarr A. was under a CHIPS order, that the Bureau provided services, and that she had not met all the conditions for return. For instance, for two time periods in 2011, Lastarr A. stopped visits with her children, in part because of her frustration with the Bureau. In addition, the trial court heard evidence that Lastarr A. did not follow through on

[6] Kafi A.'s foster mother testified by phone at the dispositional hearing. After her testimony, while the parties took a lunch break, Lastarr A. left a voicemail message for her. The foster mother was recalled as a witness and told the trial court that in that message, Lastarr A. used expletives, told the foster mother that she would make her "life miserable," and threatened to harm the foster mother. Lastarr A. acknowledged having left a voicemail message, but denied threatening the foster mother. Lastarr A. testified: "I told her I would mess up her understanding. I didn't say nothing about physically hurting her. I told her if she didn't feel me, she would feel me … [meaning she was] going to end up making my child hate [her] by trying to reverse [the child's] mind about [Lastarr A.]." The trial court found: "The credible evidence establishes that [Lastarr A.] threatened [the foster mother]. While it may have been coyly phrased to attempt to avoid that conclusion, it is, in fact, my conclusion."

appointments with her therapists. The testimony presented, including the testimony that was highlighted in the no-merit report, provides adequate support for the trial court's findings, such that there would be no merit to challenge those findings on appeal.

The testimony offered also supports the trial court's finding that Lastarr A. would not meet the conditions of return within nine months, such that a challenge to that finding would lack arguable merit. As explained in the summary of the trial court's findings above, Lastarr A. failed to meet numerous conditions for return and had not demonstrated that her behavior or approach to accepting the services provided had changed.

The second major issue addressed in the no-merit report is whether the trial court properly exercised its discretion in deciding that it was in the children's best interests to terminate Lastarr A.'s parental rights. The ultimate decision whether to terminate parental rights lies within the trial court's discretion. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The best interests of the child is the prevailing factor. WIS. STAT. § 48.426(2). In considering the best interests of the child, a trial court must consider: (1) the likelihood of adoption after termination; (2) the child's age and health; (3) "[w]hether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever those relationships"; (4) the child's wishes; (5) the duration of the parent's separation from the child; and (6) "[w]hether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements." Sec. 48.426(3).

In its written decision, the trial court addressed these six statutory factors in a careful and thoughtful manner with respect to each child. The no-merit report, which examines key testimony at the dispositional hearing, explains that the trial court "found that the bond that [Lastarr A.] had with the children [did] not outweigh the other statutory factors." We agree with this analysis. The trial court's well-reasoned decision explaining why termination of Lastarr A.'s parental rights was in each child's best interests reflects a proper exercise of discretion. *See* ***Gerald O.***, 203 Wis. 2d at 152 (A court "properly exercises its discretion when it examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach."). An appellate challenge to the trial court's determination would lack arguable merit.

We have identified no other potential issues of arguable merit.

For the foregoing reasons, we conclude that there would be no merit to pursuing an appeal of the order terminating Lastarr A.'s parental rights.

IT IS ORDERED that Attorney David J. Lang is relieved of any further representation of Lastarr A. on appeal.

IT IS FURTHER ORDERED that the orders terminating Lastarr A.'s parental rights to Kafi A. and Demau'ray N. are summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals