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DISTRICT I/III

April 30, 2013

To:

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

2013AP602-NM

State of Wisconsin v. Yvette A. (L. C. #2012TP94)

Before Mangerson, J.¹

Counsel for Yvette A. has filed a no-merit report concluding there is no arguable basis for Yvette to challenge an order concerning termination of parental rights to her son. Yvette was

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.

advised of her right to respond and has not responded. Upon this court's independent review of the record, no issue of arguable merit appears.

A petition alleged the child was in continuing need of protection and services (CHIPS) and that Yvette failed to assume parental responsibilities. Yvette appeared without counsel at a hearing on May 8, 2012 and indicated a desire to contest the petition. The court adjourned the hearing and advised Yvette to obtain an attorney through the State Public Defender. The court also warned Yvette of the requirement to appear at the next hearing, and that a failure to appear could result in a default judgment.

Yvette failed to appear at the next hearing. The circuit court found her in default, after a factual prove-up. The matter was rescheduled to July 13, 2012. Yvette appeared at the July 13 hearing, but again without an attorney. She had not yet gone to the public defender's office. The court again admonished her to go to the public defender's office before leaving the building, and the matter was adjourned to August 9, 2012.

On August 9, Yvette appeared represented by counsel. The matter was scheduled for a dispositional hearing on October 26. The court provided Yvette an opportunity to request a reopening of the default finding, but counsel filed a letter dated August 28, indicating that no reopening would be sought. After the dispositional hearing, the circuit court found that it was in the child's best interests that Yvette's parental rights be terminated, and the court terminated her parental rights.

There is no arguable merit to a claim that the court erroneously exercised its discretion in entering a default on the grounds phase. The decision to enter a default against a party who fails to comply with a court order is within the discretion of the circuit court. *See Evelyn C.R. v.*

Tykila S., 2001 WI 110, ¶¶17-18, 246 Wis. 2d 1, 629 N.W.2d 768. Here, the default was based upon Yvette's failure to appear in court after a previous warning about the requirement to appear. Based upon her failure to appear, both the district attorney and the guardian ad litem moved the court to find her in default. The court took evidence at the grounds phase hearing that supported its finding. Furthermore, after obtaining counsel, Yvette was given the opportunity to reopen the default, but declined to do so.

There is also no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated Yvette's parental rights. At the dispositional stage, the circuit court again took evidence that supported its findings. The court correctly applied the best interest of the child standard and considered the proper statutory factors pursuant to WIS. STAT. § 48.426(3). See *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 153-54, 551 N.W.2d 855 (Ct. App. 1996). The court reasonably concluded it was in the child's best interests that Yvette's parental rights be terminated.

This 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 Gregory Bates is relieved of further representing Yvette A. in this matter. See WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals