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DISTRICT II

May 8, 2013

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

2013AP284-NM Kenosha County DHS v. Latanza C. (L.C. #2012TP19)

Before Gundrum, J.[1]

Latanza C. appeals from an order involuntarily terminating her parental rights to her daughter, Soanna M.Z.C. On appeal, Latanza's appellate counsel has filed a comprehensive no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32 and ***Brown County v.***

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

Edward C.T., 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). Latanza received a copy of the report, was advised of her right to file a response and, after two extensions of time, has done so. Counsel advises that he is not filing a supplemental report. Upon consideration of the no-merit report, Latanza's response, and an independent review of the record, we conclude there are no issues that would have arguable merit for appeal. We summarily affirm the order terminating Latanza's parental rights and relieve Attorney John R. Breffeilh of further representation of Latanza C. in this matter.

Pursuant to a court order, twenty-month-old Soanna was removed from Latanza's home on October 11, 2010. The court entered a dispositional order on the same date and identified conditions Latanza had to meet before Soanna could return. Latanza made little progress in meeting the conditions of return and, on April 4, 2012, a petition seeking a termination of parental rights (TPR) was filed on the basis that Soanna continued to be a child in need of protection and services. Latanza waived her right to a jury trial. The court found Latanza to be an unfit parent. Her parental rights were terminated on September 18, 2012.[2]

The no-merit report addresses the following possible appellate issues: (1) whether the petitioner adhered to all mandatory time limits set forth in WIS. STAT. ch. 48, subch. VIII; (2) whether the petition's content satisfied the requirements set forth in WIS. STAT. § 48.42(1); (3) whether Latanza knowingly and voluntarily waived her right to a jury trial; (4) whether the evidence was sufficient to support the trial court's findings of fact; and (5) whether the trial court

[2] The adjudicated father earlier had voluntarily terminated his parental rights to Soanna.

properly exercised its discretion when it terminated Latanza's parental rights. We conclude that counsel has properly analyzed the issues.

A review of the record satisfies this court that mandatory time limits either were met or were extended for good cause and without objection. *See* WIS. STAT. § 48.315(1)(b), (2). Our review also establishes that the petition was in proper form. No issue of arguable merit could arise from either point.

Likewise, no issue of arguable merit could arise from the jury trial waiver. The right to a jury trial in a TPR case is statutory, not constitutional. ***Walworth Cnty. DHHS v. Andrea L.O.***, 2008 WI 46, ¶29, 309 Wis. 2d 161, 749 N.W.2d 168. There is no procedure under WIS. STAT. ch. 48 for withdrawing a jury demand. ***Andrea L.O.***, 309 Wis. 2d 161, ¶30. Although not mandated, the trial court wisely conducted a personal colloquy with Latanza on the record. The record confirms that Latanza was well informed about her right to a jury trial on the grounds for termination of her parental rights and that she made an intelligent and voluntary decision to waive it.

The no-merit report also considered whether any challenge to the sufficiency of the evidence to support the verdict would be without arguable merit. "Grounds for termination must be proven by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). After a bench trial, we review a trial court's factual determinations under the clearly erroneous standard. ***A&A Enters. v. City of Milwaukee***, 2008 WI App 43, ¶17, 308 Wis. 2d 479, 747 N.W.2d 751; WIS. STAT. § 805.17(2).

Here, Latanza stipulated that Soanna had been adjudged in need of protection and services and placed outside the home for six months or longer pursuant to four court orders

containing the required TPR warnings, and that Latanza had failed to meet the conditions established for Soanna's safe return. *See* WIS. STAT. § 48.415(2)(a)1. and 3. Latanza herself testified that her addiction to drugs and alcohol led to incarceration, evictions, and the termination of her parental rights to several other of her children; that the court had suspended her visits with Soanna; that when she had been allowed supervised visits, service providers had concerns about people she allowed around Soanna; that she had not been employed during Soanna's lifetime; that she had never attended a doctor visit with Soanna; and that her son, Rodney, who "acted out sexually" with another family member, often is at her residence.

The court heard service providers testify that Latanza did not complete an in-home parenting program because of her reincarceration; that, while in a substance abuse program, which she did not complete, Latanza did not refrain from drug and alcohol use and maintained a relationship with another recovering addict; that in-home visits with Soanna were halted due to the utilities being cut off and concerns about Rodney's presence and the number of people at the residence; and that Latanza cancelled many visits, spending only forty hours at supervised visits with Soanna in over two years, in part due to probation revocation. The court was entitled to believe that the Department had made reasonable efforts to assist her, but that it was not likely that Latanza would satisfy the court-ordered conditions within nine months. *See* § 48.415(2)(a)2.b. and 3. An argument that there was no credible evidence to support the verdict would lack arguable merit.

The record also demonstrates that a challenge to the court's discretionary determination to terminate Latanza's parental rights would lack arguable merit. At disposition, the primary focus is on the child's best interests, and the decision is the court's to make. *See* ***Sheboygan Cnty. DHHS v. Julie A.B.***, 2002 WI 95, ¶28, 255 Wis. 2d 170, 648 N.W.2d 402; *see also* WIS.

STAT. §§ 48.424(3) and 48.426(1). Here, the court noted the proper standard and thoroughly considered and specifically referenced the factors set out in § 48.426(3).

Latanza's response outlines her progress in the programs and classes she is involved in at the institution where she currently is incarcerated. She does not challenge the trial court's findings or conclusions in any respect. Our independent review likewise revealed no issues of arguable merit. Accordingly, we affirm the order terminating Latanza's parental rights and relieve Attorney John R. Breffeilh of further representation of Latanza 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 R. Breffeilh is relieved of further representation of Latanza C. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals