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May 31, 2013

To:

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

2013AP737-NM	In re the termination of parental rights to Tymiyra Y., a person under the age of 18: State of Wisconsin v. Antoinette B. (L.C. # 2012TP106)
2013AP738-NM	In re the termination of parental rights to Tymira Y., a person under the age of 18: State of Wisconsin v. Antoinette B. (L.C. # 2012TP107)

Before Blanchard, J.

Antoinette B. appeals orders terminating her parental rights to two children. Attorney Paul Bonneson 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), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the circuit court's entry of a default judgment on the grounds phase, its refusal to reopen the default judgment, and its exercise of discretion in the disposition phase. Antoinette was sent a copy of the report, but has not filed a response. Counsel informs us that she has also failed to meet with him or to respond to his attempts at communication. Upon reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

Default Judgment

Antoinette failed to appear at three successive scheduled hearings, after having been ordered to be present. The circuit court has discretion to enter a default judgment on grounds when a parent fails to appear. *See Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768; *see also* WIS. STAT. § 806.02 (default judgment statute). Before making a determination on grounds, however, the court must take evidence as set forth in WIS. STAT. § 48.422(7), even if the petition is not contested. The record shows that the court did so.

In order to establish the termination ground of a child in continuing need of protection or services, the State needed to show: (1) that the child had been adjudged in need of protection or services and placed outside the home for six months or more pursuant to a court order containing statutory notice of TPR proceedings; (2) that the county department of health and human services had made reasonable efforts to provide the services ordered by the court; (3) that the parent

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

failed to meet the conditions established for the safe return of the child; and (4) there was a substantial likelihood that the parent would not meet the conditions within the next twelve months. *See* WIS. STAT. § 48.415(2); WIS JI—CHILDREN 324. The State met its burden on each of these points through the testimony of case manger Megan Pena, as well as the prior CHIPS orders. Specifically, Pena testified that Antoinette failed to stay in touch with Pena; failed to maintain a safe, stable, suitable home; failed to have regular and successful visitation with each child; failed to complete a nurturing program and individual therapy; failed to demonstrate that she understood the children’s needs; and was unlikely to meet the conditions of return in the next nine months.

Motion to Reopen

Relief from a default judgment in a TPR case is available based upon any of the reasons set forth in WIS. STAT. § 806.07(1)(a), (b), (c), (d) or (f). Antoinette claimed that she missed the first court appearance to attend a job interview and the second in order to work, but provided no explanation for the third missed appearance. The court reasonably concluded that there was no justifiable excuse for her default.

Disposition

At the dispositional hearing, the trial court was required to consider such factors as the likelihood of the children’s adoptions, the age and health of the children, the nature of the children’s relationships with the parents or other family members, the wishes of the children and the duration of the children’s separations from the parent, with the prevailing factor being the best interests of the children. WIS. STAT. § 48.426(2) and (3). Again, the record shows that the trial court did so. The court noted that the children had lived with the foster family for two of

their four years; they were happy and their health had improved with the foster family, who planned to adopt them; and the children would not be harmed by the termination of their superficial relationships with their mother, who was unable to meet their needs or form substantial relationships with them. The court's determination that termination was in the children's best interests was well within its discretion.

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 orders are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Paul Bonneson is relieved of any further representation of Antoinette B. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals