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June 26, 2013

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

2013AP1086-NM	In re the termination of parental rights to Emanuel C., a person under the age of 18: State of Wisconsin v. Emmanuel C. (L.C. # 2011TP188)
2013AP1087-NM	In re the termination of parental rights to Ermoney S., a person under the age of 18: State of Wisconsin v. Emmanuel C. (L.C. # 2011TP189)

Before Neubauer, P.J.¹

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

Emmanuel C. appeals from orders terminating his parental rights to his two sons. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. Emmanuel was served with a copy of the report and advised of his right to file a response. No response has been received. Based upon an independent review of the no-merit report and circuit court records, this court concludes that no issue of arguable merit could be raised on appeal and affirms the orders.

Emmanuel's two sons were taken into care by the Bureau of Milwaukee Child Welfare in July 2010,² and orders finding the children to be in need of protection and services were entered in October 2010. Emmanuel did not see his sons after October 2010 because he was avoiding possible incarceration on arrest warrants. The petitions for termination of parental rights were filed June 14, 2011, alleging that Emmanuel had abandoned the children, the children were in continuing need of protection and services, and Emmanuel had failed to assume parental responsibility. *See* WIS. STAT. §§ 48.415(1)(a)2., 48.415(2), 48.415(6). Attempts to serve the petitions on Emmanuel at his last known address were unsuccessful and service was made by publication. Emmanuel did not appear at the initial appearance.³ A default finding was entered against Emmanuel on the grounds for termination and evidence proving up those allegations was put on the record at a January 9, 2012 hearing.

² One son was two years old at the time. The other was eleven months old. Emmanuel's newborn daughter was also taken into care at that time after she was abandoned in the hospital after birth. The termination petition as to that child was discontinued.

³ Emmanuel's mother appeared at the June 29, 2011 initial appearance. She informed the court that she had spoken with Emmanuel on the phone that morning about the hearing but he would likely not appear because of outstanding arrest warrants.

Emmanuel was taken into custody shortly before the March 6, 2012 disposition hearing. Thus, the hearing was continued so Emmanuel could appear in the action and obtain an attorney. Counsel was appointed for Emmanuel. The disposition hearing was conducted on three different dates and Emmanuel was present at each hearing.⁴ The court determined that the termination of Emmanuel's parental rights was in the children's best interests.

After the filing of a petition for termination of parental rights and the completion of preliminary matters, a contested termination proceeding involves a two-step procedure. *Sheboygan Cnty. DHHS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. The first step is a fact-finding hearing which determines whether grounds exist to terminate the parent's rights. *Id.* If grounds for termination are found to exist, the circuit court must find that the parent is unfit. *Id.*, ¶26. The second phase is the dispositional phase. *Id.*, ¶28. The court must determine whether the parent's rights should be terminated. *Id.* The best interest of the child is the prevailing factor considered by the circuit court in making this decision. WIS. STAT. § 48.426(2). In determining the best interests of the children, the circuit court is required to consider the agency report and the factors enumerated in § 48.426(3). *Julie A.B.*, 255 Wis. 2d 170, ¶4. It is also entitled to consider other factors, including factors favorable to the parent. *Id.*

Counsel's no-merit report addresses as potential appellate issues whether the manner of service of the summonses and petitions for termination on Emmanuel was legally sufficient,

⁴ We note that time limits set forth in WIS. STAT. ch. 48 for termination proceedings were not met. However, continuances "upon a showing of good cause in open court" are allowed. WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. Sec. 48.315(3). Each time a hearing was continued or set beyond the statutory time limit, the circuit court found cause to extend the time limit and no objection was made. There is no arguable merit to any claim related to the failure to comply with the statutory time limits.

whether the default finding against Emmanuel on the grounds for termination based on his failure to appear was a proper exercise of the circuit court's discretion,⁵ whether there was sufficient evidence to support the findings that grounds existed to terminate Emmanuel's parental rights, and whether the circuit court properly exercised its discretion in determining that termination was in the children's best interest. Our review of the record confirms counsel's conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion and we need not address them further.

Our review of the records discloses no other potential issues for appeal.⁶ Accordingly, we accept the no-merit report, affirm the orders terminating Emmanuel's parental rights, and discharge appellate counsel of the obligation to represent Emmanuel further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

⁵ Although Emmanuel was given an opportunity at a scheduled hearing to request a motion to reopen the default finding, he failed to appear on the date of the hearing conducted just days after he had been released from custody. No motion to reopen the default finding was ever filed. The record does not provide any suggestion of an excuse to forgive Emmanuel's failure to appear earlier in the actions.

⁶ Some minor objections were made and sustained to questions posed by Emmanuel's attorney during the dispositional hearing. The circuit court properly exercised its discretion in ruling on the objections.

IT IS FURTHER ORDERED that Attorney Andrea Taylor Cornwall is relieved of any further representation of Emmanuel C. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals