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October 14, 2015

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

2015AP1699-NM	In re the termination of parental rights to S.A.E., a person under the age of 18: State of Wisconsin v. C.E. (L.C. #2013TP338)
2015AP1700-NM	In re the termination of parental rights to C.E., Jr., a person under the age of 18: State of Wisconsin v. C.E. (L.C. #2013TP339)

Before Reilly, P.J.[1]

C.E. appeals from orders involuntarily terminating his parental rights to S.E. and C.E., Jr. On appeal, C.E.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32, ***Anders v. California***, 386 U.S. 738 (1967), and ***Brown County v.***

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Edward C.T., 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). C.E. received a copy of the report and was advised of his right to file a response, but he has not done so. Upon consideration of the no-merit report and an independent review of the record, we conclude no issues would have arguable merit for appeal. We summarily affirm the orders terminating C.E.'s parental rights, *see* WIS. STAT. RULE 809.21, accept the no-merit report, and relieve Attorney Gregory Bates of further representation of C.E. in this matter.

In December 2012, S.E. and C.E., Jr. were found to be children in need of protection or services. The Bureau of Milwaukee Child Welfare had removed the children from their mother's care in September 2012 after an incident of felony child abuse against nine-month-old C.E., Jr., which S.E. witnessed. C.E. was incarcerated at the time for domestic violence against the children's mother. The children have remained in continuous placement outside a parental home and have resided with the same foster parents, the adoptive resource, since January 2013.

In November 2013, the State filed a petition alleging as grounds for termination of parental rights (TPR) that C.E. failed to assume parental responsibility. *See* WIS. STAT. § 48.415(6). C.E. waived his right to contest the TPR ground and entered a no-contest plea. The court found that a TPR was in the children's best interests. This no-merit appeal followed.

The no-merit report first considers whether C.E.'s statutory and constitutional rights were protected. No arguable claim could arise from this point. The petitions were in proper form. The court took great care to ensure that mandatory time limits were met or were extended for good cause and without objection. *See* WIS. STAT. § 48.315(1)(b), (2). C.E. was advised of his constitutional rights, his procedural rights, and options available to him, and was given proper

notice of matters along the way. The dispositional order was reduced to writing and included written TPR warnings. *See* WIS. STAT. § 48.415(2)(a)1.

The report also considers whether C.E.'s no-contest plea was taken in compliance with statutory and case law requirements. *See* WIS. STAT. § 48.422(7) and ***Oneida County DSS v. Therese S***., 2008 WI App 159, ¶¶5, 10-11, 16, 314 Wis. 2d 493, 762 N.W.2d 122. The colloquy was thorough and unassailable. No issue of arguable merit could be raised.

Next the report addresses whether the evidence was sufficient to find C.E. to be an unfit parent and to determine that termination of his parental rights was in the children's best interests. "Grounds for termination must be prove[d] by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). This court affirms the fact finder's decision if any credible evidence under any reasonable view supports it, and searches the record for evidence that supports the decision, accepting any reasonable inferences the fact finder could reach. *See* ***State v. Quinsanna D.***, 2002 WI App 318, ¶30, 259 Wis. 2d 429, 655 N.W.2d 752.

The on-going case manager testified that C.E. failed to establish a substantial parental relationship with the children; has not exercised significant responsibility for their daily supervision, education, protection, and care; has a significant and long-standing criminal history, including drug charges and domestic violence against their mother in their presence, resulting in numerous incarcerations; although proved by DNA to be their biological father, C.E. never has sought to be adjudicated and never has paid child support; C.E. has not addressed his mental health needs; while successful when it occurred, visitation was sporadic and never moved beyond a supervised setting; neither child ever asked to see C.E.; C.E., Jr., and S.E. were nine months old and two years old when placed in the current foster home and have lived there for

over two years; the children's relationship with the foster parents was that of parent/child; and if the TPR were not granted, the children would need continued foster home placement. The foster mother testified that she and her husband are committed to adopting the children. We agree with counsel's analysis and conclusion that no issue of arguable merit could be raised.

The no-merit report next examines whether the court properly ordered the TPRs. That ultimate determination is discretionary with the trial court. ***State v. Margaret H.***, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. The best interest of the child is primary. WIS. STAT. § 48.426(2).

Here, the court noted the proper standard and thoroughly considered and specifically referenced the factors set out in WIS. STAT. § 48.426(3). It considered that: (1) the foster family was committed to adopting the siblings; (2) the children's ages pose no barrier to adoption and the potential adoptive family has carefully considered their resources and abilities to address the children's significant special needs; (3) C.E. had sporadic visits with the children, but neither has a substantial relationship with him or other biological family members and the children do not ask about him; (4) S.E. seemed not to understand why she was asked if she wanted to live with her mom and dad, saying she already did live with "mom" and "dad," and C.E., Jr. was too young to make his wishes known; (5) C.E. did not cause C.E., Jr.'s lasting physical effects from his mother's abuse nor S.E.'s "significant mental health needs" from having viewed it but he is responsible to the extent his incarceration for his own violence made him unavailable to protect them; and (6) the foster parents will be able to keep the siblings together in a stable, permanent home with their own biological children. The court found that the State proved the allegations in the petition by clear and convincing evidence. *See* ***Waukesha County Dep't of Soc. Servs. v. C.E.W.***, 124 Wis. 2d 47, 60, 368 N.W.2d 47 (1985). Its well-reasoned decision explaining why

the TPRs were in the children's best interests reflects a proper exercise of discretion. *See* ***Margaret H.***, 234 Wis. 2d 606, ¶32. An appellate challenge would lack arguable merit.

Our independent review revealed no other issues of arguable merit.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of C.E. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals