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February 17, 2016

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

2016AP15-NM State v. B. J. W. (L. C. Nos. 2015TP83, 2015TP84, 2015TP85)
2016AP16-NM
2016AP17-NM

Before Hruz, J.¹

Counsel for B.J.W. has filed a no-merit report concluding there is no arguable basis for challenging orders concerning termination of parental rights to three of her sons, who all share the same initials, J.D.M. B.J.W. was advised of her right to respond and has not responded.

¹ These appeals are 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.

Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the orders terminating B.J.W.'s parental rights are summarily affirmed. *See* WIS. STAT. RULE 809.21.

At the time of these proceedings, B.J.W. was twenty-four years old, and had five children. B.J.W.'s first child, a daughter, was born when B.J.W. was fourteen years old.² Her second child was born when B.J.W. was seventeen years old, and was removed from her supervision shortly after his birth due to her inability and unwillingness to provide necessary care. The child was in foster care and was then adopted after B.J.W.'s parental rights were terminated.

The three boys subject to the present appeal were removed from B.J.W.'s care on June 28, 2013, when they were ages three years, eighteen months, and six weeks, respectively. The children were removed due to concerns about neglect and the children being left alone in the care of a seven-year-old child, namely B.J.W.'s eldest child. A neighbor had contacted police, who found six children unattended in the home. Two of the children, ages nine and thirteen, were neighborhood children assisting in the care of B.J.W.'s children. The thirteen year old told police B.J.W. had left her children home alone in the past. B.J.W.'s seven-year-old child told police that when the school bus dropped her off at home, she knocked on the door and nobody answered. She heard her brother crying and saw the house key in the window of the front door. She unlocked the door and found her three brothers home alone, one of whom was in a baby crib

² The record indicates B.J.W.'s oldest child is also subject to a child in continuing need of protection and services order; there is no indication the child was the subject of a TPR proceeding.

in the front room, and the two others were in their room. All three boys needed their diapers changed.

A petition to terminate B.J.W.'s parental rights was filed alleging the children were in continuing need of protection and services (CHIPS). *See* WIS. STAT. § 48.415(2). The petition also alleged the prior involuntary termination of B.J.W.'s parental rights to her second child. *See* WIS. STAT. § 48.415(10). An adjourned initial appearance occurred on May 12, 2015, in which the father consented to the termination of his parental rights to his three sons.³ Thereafter, a motion for partial summary judgment was filed on the grounds phase. The court granted the motion against B.J.W., who did not appear in court. After a dispositional hearing, which B.J.W. attended, the court found it was in the children's best interests to terminate B.J.W.'s parental rights.

Any challenge to the proceedings based on a failure to comply with statutory time limits would lack arguable merit. All mandatory time limits were complied with or properly extended for good cause without objection. *See State v. Quinsanna D.*, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

Any challenge to the grounds phase of the proceeding would also lack arguable merit. Statutory grounds for involuntary termination of parental rights were proven in accordance with *Steven V. v. Kelley H.*, 2004 WI 47, ¶37, 271 Wis. 2d 1, 678 N.W.2d 856. Undisputed official documentation established B.J.W.'s parental rights to another child had been terminated on October 7, 2010. *See* WIS. STAT. § 48.415(10). The three boys at issue in the present appeal

³ The termination of the father's parental rights is not the subject of this appeal.

were found to be in need of protection or services on August 28, 2013. *See* WIS. STAT. § 48.415(10)(a). These significant events occurred less than three years apart. *See* WIS. STAT. § 48.415(10)(b). Partial summary judgment was appropriate, as there was no genuine issue of material fact in dispute as to the statutory requirements. In fact, the guardian ad litem stated at the hearing that she was “in agreement with the motion[,]” and B.J.W.’s counsel indicated, “I don’t have a defense to [the] motion.”

There is also no arguable merit to any claim that the circuit court erroneously exercised its discretion when it terminated B.J.W.’s parental rights. The court correctly applied the best interests of the children standard and properly considered the factors set forth in WIS. STAT. § 48.426(3). The court considered the children’s respective ages, health, and adoptability, and likelihood of adoption. The court noted the children were young and had been out of the parental home for two years, the entire life of the youngest child, and almost the entire lives of the other two boys. The court acknowledged that the children had a relationship with B.J.W., but concluded it would not be harmful to sever that relationship. In that regard, the court emphasized the boys’ lack of a substantial relationship with their father and discussed the abuse they suffered at his hands. The court stated:

He abused these children pretty much any time he was alone with them

The only confirmed injuries to these boys were caused by their father when they were in mom’s care. ... While I understand [B.J.W.] loves her children ... I believe [B.J.W.] has a record here of placing her own needs ahead of the boys’ needs, primarily her need for companionship, her need to have [the father] around. ... I believe they are still essentially a couple. I would not be surprised if they get together as soon as he is out of custody. That would put these boys in serious danger.

The circuit court also indicated the children were too young to be able to express any wishes, but the termination of parental rights would enable the boys to enter a more stable and permanent family relationship. The court also found it beneficial that all three boys would be placed together. In sum, the court's discretionary decision to terminate B.J.W.'s parental rights applied the correct legal standards and demonstrates a rational process that is justified by the record. *See Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

The no-merit report also addresses whether it was harmless error for the circuit court to incorrectly state at the dispositional hearing that B.J.W. had her parental rights terminated twice previously, rather than once.

In its oral decision at the conclusion of the dispositional hearing, the circuit court stated:

In your testimony when you were asked about parenting, you said you believe at this point you have pretty much got it. That shows to me that you are at a level of denial which is hard even – it's hard for me to understand, and I think it shows a real need for continued therapy. Having had your rights terminated to two children before this and then when we have three more children in TPR court today, for you to believe that you have pretty much got it in terms of parenting, again, I really think you need to think about the decisions you are making and how you can change things going forward after today.

The court incorrectly stated the B.J.W. previously had her parental rights terminated to two children. B.J.W. had her parental rights terminated previously with regard to one child. Another child was subject to a CHIPS order, but there is no evidence she was subject to a TPR proceeding. The record also indicates B.J.W. gave birth to yet another child in January 2015, who was detained from the hospital, but there is also no indication in the record this infant has been involved in TPR proceedings.

However, the circuit court at the dispositional stage was considering whether it would be in the best interests of the three boys for B.J.W.'s parental rights to be terminated. Any error in stating that B.J.W. was subject to two prior involuntary terminations of parental rights was made in the context of explaining issues of denial by B.J.W. about her lack of parenting skills. Under those circumstances, the fact B.J.W.'s parental rights were terminated as to one child and not two is not sufficient to undermine confidence in the circuit court's ultimate decision with regard to the dispositional stage. There is no issue of arguable merit as to whether the court's misstatement would require this court to overturn the dispositional order. See *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶28, 246 Wis. 2d 1, 629 N.W.2d 768.

This court's independent review of the record discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Christine Quinn is relieved of further representing B.J.W. in these matters.

Diane M. Fremgen
Clerk of Court of Appeals