



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/III

June 21, 2016

To:

Hon. Mark A. Sanders
Circuit Court Judge
Children's Court Center
10201 W. Watertown Plank Road
Milwaukee, WI 53226-3532

Josh Steib
Juvenile Clerk
Children's Court Center
10201 W. Watertown Plank Road
Milwaukee, WI 53226

Jane S. Earle
P.O. Box 11846
Shorewood, WI 53211-0846

Jenni Spies-Karas
Assistant District Attorney
10201 W. Watertown Plank Road
Milwaukee, WI 53226-3532

Gregory Bates
Bates Law Offices
P.O. Box 70
Kenosha, WI 53141-0070

Bureau of Milwaukee Child Welfare
Arlene Happach
635 N. 26th St.
Milwaukee, WI 53233-1803

Christie A. Christie
Legal Aid Society of Milwaukee
10201 Watertown Plank Rd.
Milwaukee, WI 53226-3532

N. T.
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2016AP768-NM State v. N. T. (L. C. Nos. 2014TP22, 2014TP23, 2014TP24)
2016AP769-NM
2016AP770-NM

Before Stark, P.J.¹

Counsel for N. T. filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no arguable basis for challenging orders terminating N. T.'s parental rights to his

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

children, S. M., J. T. M. and S. T. M.² N. T. was advised of his right to respond to the report and has not responded. Upon this court's independent review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issue of arguable merit appears. Therefore, the orders terminating N. T.'s parental rights are summarily affirmed. See WIS. STAT. RULE 809.21.

On June 3, 2012, S. T. M. (born 05/11/2012) was admitted to the hospital where she was diagnosed as having sustained nineteen fractures, severe head trauma, retinal hemorrhages and brain injury. Additionally, cocaine was discovered in the child's system at levels indicating ingestion post-birth. At the time of her injuries, S. T. M. resided in a home with her two siblings, her parents, her paternal grandparents and "some aunts." N. T. "admitted to shaking the child and throwing her into her crib." On June 4, 2012, S. T. M. and her siblings, S. M. (born 05/08/2009) and J. T. M. (born 04/09/2011), were placed in protective care. On August 29, 2012, all three children were adjudicated as children in need of protection or services (CHIPS) and have remained outside the parental home since that time. Because of S. T. M.'s significant health issues and special needs, she was placed in a treatment foster care home, separate from the placement of her siblings.

In November 2012, as a result of causing the injuries to S. T. M., N. T. was convicted of two counts of child abuse by recklessly causing great harm, contrary to WIS. STAT. § 948.03(3)(a). N. T. did not appeal his convictions. On February 10, 2014, the State petitioned for termination of N. T.'s parental rights, alleging failure to assume parental responsibility and commission of a serious felony against one of the person's children. N. T. contested the grounds

² The parental rights of the children's mother were also terminated. Those terminations are not a subject of this appeal.

for termination and requested a jury trial. The State subsequently moved for partial summary judgment on the ground of N. T.'s commission of a serious felony. The circuit court granted partial summary judgment on that ground and found N. T. unfit. The State then moved to dismiss the alternate ground alleged.³ After a dispositional hearing, the circuit court terminated N. T.'s parental rights.

Any challenge to the proceedings based on a failure to comply with statutory time limits would lack arguable merit. All of the mandatory time limits were either complied with or properly extended for good cause, without objection, to accommodate the parties' varying schedules. The failure to object to a delay waives any challenge to the court's competency on these grounds. *See* WIS. STAT. § 48.315(3). Moreover, scheduling difficulties constitute good cause for tolling time limits. *See State v. Quinsanna D.*, 2002 WI App 318, ¶39, 259 Wis. 2d 429, 655 N.W.2d 752.

Any claim that the circuit court erred by granting partial summary judgment to the State in the grounds phase would lack arguable merit. Partial summary judgment is available in termination-of-parental-rights proceedings. *See Steven V. v. Kelley H.*, 2004 WI 47, ¶¶5-6, 271 Wis. 2d 1, 678 N.W.2d 856. Summary judgment may be employed "when there is no genuine factual dispute that would preclude finding one or more of the statutory grounds by clear and convincing evidence." *See Oneida Cty. Dep't of Soc. Servs. v. Nicole W.*, 2007 WI 30, ¶14, 299 Wis. 2d 637, 728 N.W.2d 652.

³ Only one ground for termination need be established. *See* WIS. STAT. § 48.415 ("Grounds for termination of parental rights shall be *one* of the following....") (emphasis added).

As noted earlier, one of the two grounds for termination alleged was commission of a serious felony against one of the person's children. *See* WIS. STAT. § 48.415(9m). This ground is established by proving "that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction." WIS. STAT. § 48.415(9m)(a). "Serious felony" includes the commission of child abuse by recklessly causing great harm. *See* WIS. STAT. § 48.415(9m)(b)2.a. Attached to the partial summary judgment motion was a copy of the children's birth certificates establishing N. T. as their father; the criminal complaint outlining the injuries S. M. T. suffered; and N. T.'s judgment of conviction. The circuit court granted partial summary judgment stating there was no dispute N. T. committed a serious felony against his child.

There is no arguable merit to a claim that the circuit court erroneously exercised its discretion when it terminated N. T.'s parental rights. The circuit court correctly applied the best interests of the child standard and considered the factors set out in WIS. STAT. § 48.426(3). The court considered the children's ages, health and adoptability, noting the likelihood of adoption by their respective foster parents. Because N. T. had no contact with the three children since they were detained at ages 3 years old, 1 year old, and 24 days old, the court determined the children did not have a substantial relationship with N. T. The circuit court consequently determined there would be no harm in severing the children's relationship with N. T.

The circuit court acknowledged that the two older children had an "appropriate" relationship with their paternal grandmother and a "relationship that's developed through Skype"

with their maternal grandmother in Puerto Rico. The court noted, however, that because of the youngest child's limitations, it was not clear that she had developed any particular relationship with members of her biological family. The court ultimately concluded that the children's most substantial relationships were with their respective foster parents. Because the foster parents of the older children expressed a willingness to continue contact with members of the children's biological family, the court concluded any harm to the older children in terminating parental rights would be "significantly mitigated" by ongoing contact.⁴ With respect to the youngest child, the court determined that, given her level of functioning, she would not likely feel harm from severing any relationship she had with her biological family. After considering alternate placement options, including with each of the grandmothers, the court determined the children had good and stable placements with their respective foster parents. The court's discretionary decision to terminate N. T.'s parental rights 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).

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

⁴ Although the obligation for continued contact with the children's biological family would no longer exist following the termination of parental rights, under WIS. STAT. § 48.426(3), the circuit court could properly consider the likelihood of a continued relationship in assessing the best interests of the children. *See Darryl T.-H. v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475 (court may consider adoptive parent's promise to continue relationship, but court is not bound to hinge its determination on that legally unenforceable promise).

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

IT IS FURTHER ORDERED that attorney Jane S. Earle is relieved of her obligation to further represent N. T. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals