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DISTRICT II

November 23, 2016

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

2016AP1560-NM

In re the termination of parental rights to Z.R.R., a person under the age of 18: Winnebago County DHS v. R.A.R. (L.C. #2015TP17)

Before Reilly, P.J.¹

R.A.R. appeals from a circuit court order terminating his parental rights to Z.R.R. R.A.R.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.107(5m) (2013-14). R.A.R. received a copy of the report and has not filed a response to it. Upon consideration of the report and an independent review of the record, we summarily affirm the

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 noted.

order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

Winnebago County petitioned to terminate R.A.R.'s parental rights due to continuing denial of periods of physical placement or visitation. WIS. STAT. 48.415(4). The circuit court granted summary judgment on this basis and terminated R.A.R.'s parental rights after a dispositional hearing.

The no-merit report addresses: (1) whether the circuit court properly employed the summary judgment procedure to determine the basis for terminating R.A.R.'s parental rights; (2) whether the November 11, 2013 CHIPs dispositional order was valid for purposes of the termination proceeding; and (3) whether the circuit court properly exercised its discretion in determining that it was in the child's best interests to terminate R.A.R.'s parental rights. The no-merit report contains a correct statement of the law governing these issues and properly applies the law to the facts. We agree with appellate counsel that these issues would not have arguable merit for appeal.

We agree with appellate counsel that the circuit court properly employed the summary judgment procedure to determine the basis for termination: continuing denial of physical placement and visitation for over a year. WIS. STAT. § 48.415(4). The proof consisted of court orders denying visitation. Because there were no genuine issues of material fact, summary judgment was appropriate. *Steven V. v. Kelley H.*, 2004 WI 47, ¶¶37, 39, 271 Wis. 2d 1, 678 N.W.2d 856. Any challenge to the circuit court's use of the summary judgment procedure would lack arguable merit for appeal.

We agree with appellate counsel that a challenge to the validity of the November 11, 2013 CHIPs dispositional order would lack arguable merit for appeal. The issue arises because the original CHIPs dispositional order dated October 5, 2012 neglected to include the circuit court's oral ruling denying R.A.R. visitation with child. The denial of visitation provisions were subsequently incorporated into a CHIPs dispositional order entered on November 11, 2013. The termination of parental rights petition was filed on April 29, 2015, more than one year after the denial of visitation provisions were incorporated into the November 11, 2013 CHIPs order. We see no issue with arguable merit for appeal.

We agree with appellate counsel that an appellate challenge to the circuit court's discretionary decision to terminate R.A.R.'s parental rights would lack arguable merit. *B.L.J. v. Polk County Dep't of Soc. Servs.*, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991). The circuit court had to consider the statutory factors to determine if termination was in the child's best interests. WIS. STAT. § 48.426(3). The record in this case indicates that the court considered the appropriate factors: the likelihood of the child's adoption after termination, the child's age and health, whether the child had substantial family relationships and whether severing those relationships would be harmful, the duration of the parent-child separation, and future stability for the child as a result of the termination. The court's findings in support of termination are not clearly erroneous, WIS. STAT. § 805.17(2), and all the factors weighed in favor of the court's discretionary determination that it was in the child's best interests to terminate R.A.R.'s parental rights. We see no issue with arguable merit for appeal.

We have considered whether there would be any arguable merit to a claim that the court failed to comply with mandatory WIS. STAT. ch. 48 time limits, thereby losing competency to proceed. *State v. April O.*, 2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927.

Continuances are permitted “upon a showing of good cause in open court ... and only for so long as is necessary[.]” 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). The record shows that each time the circuit court had to extend the proceedings, the court found good cause to do so, and R.A.R. did not object. There would be no arguable merit to a challenge to the circuit court’s competency to proceed based on a failure to comply with statutory time limits.

In addition to the issues discussed above, we have independently reviewed the record. Our review of the record did not disclose any issues with arguable merit for appeal. Because we conclude that there is no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the order terminating R.A.R.’s parental rights, and relieve Attorney Christine Quinn of further representation of R.A.R. in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Christine Quinn is relieved of further representation of R.A.R. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals