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December 27, 2018

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

2018AP1975-NM State of Wisconsin v. D. G. (L. C. Nos. 2016TP128, 2016TP129)
2018AP1976-NM

Before Hruz, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16). Except as otherwise noted, all references to the Wisconsin Statutes are to the 2015-16 version.

D.G. appeals from orders terminating her parental rights to her children, K.H. and G.H. Appellate counsel for D.G. has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. D.G. was served with a copy of the report and was advised of her right to file a response. No response has been received. Based upon an independent review of the report and records, this court concludes that no issue of arguable merit could be raised on appeal and affirms the orders.

The children were removed from D.G.'s care in November 2014. The children were then six and five years old. They were continuously placed outside her home under a protection and services order (CHIPS) after that time. The termination petitions were filed on April 20, 2016, and alleged as grounds for termination that the children were continuously placed outside the home under CHIPS orders and that D.G. failed to assume parental responsibility. *See* WIS. STAT. § 48.415(2) and (6). The issue of whether grounds to terminate D.G.'s parental rights existed was tried to a jury over seven days. A jury found that both grounds existed, and the circuit court made the statutorily required finding that D.G. was an unfit parent. The circuit court heard testimony relevant to disposition over three days. It determined that termination of D.G.'s parental rights was in the children's best interests.

The no-merit report addresses whether there were any procedural defects in the proceedings, whether evidentiary rulings were an erroneous exercise of discretion, whether the evidence was sufficient to support the jury's verdict that grounds existed for the termination of parental rights, and whether the circuit court properly exercised its discretion in determining that termination of parental rights was in the children's best interests. Our review of the record

confirms counsel's conclusion that these potential issues lack arguable merit.² 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.

The no-merit report fails to discuss jury selection, the propriety of opening and closing arguments, whether the jury instructions were proper, and the handling of questions from the jury.³ We observe that jury selection involved one instance where D.G.'s motion to strike a juror for cause was denied. The circuit court properly exercised its discretion in denying the motion. Also, no improper argument was made, the jury instructions properly stated the law, and questions from the jury were handled properly. No issues of arguable merit exist from these aspects of the jury trial.

Because this court's independent review of the records confirms that counsel has correctly analyzed the issues surrounding these terminations, and because this court's review discloses no other potential issues of arguable merit, the orders terminating D.G.'s parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

² After concluding that no error occurred, the no-merit report defaults to a position that even if error occurred in the admission of evidence, it was harmless error. We remind appellate counsel for D.G. that rarely can a harmless error analysis be used to conclude that a potential issue lacks arguable merit or is wholly frivolous. It is the State's burden to prove an error was harmless. *State v. Sherman*, 2008 WI App 57, ¶8, 310 Wis. 2d 248, 750 N.W.2d 500. A defendant may be entitled to advocacy of counsel with respect to the State's burden to prove harmless error.

³ Potential issues regarding jury selection, opening and closing argument, and jury instructions arise in most jury trial cases. Counsel is reminded to address related potential issues in future jury trial cases.

Upon the foregoing reasons,

IT IS ORDERED that the orders terminating D.G.'s parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Leonard D. Kachinsky is relieved of any further representation of D.G. in these matters. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals