



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 II

July 22, 2020

To:

Hon. Jodi L. Meier
Circuit Court Judge
Kenosha County Courthouse
912 56th St
Kenosha, WI 53140

Karen Lueschow
Attorney at Law
1222 E. Washington Ave., #332
Madison, WI 53703

Rebecca Matoska-Mentink
Juvenile Clerk
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Lisa R. Bouterse
5316 31st Ave.
Kenosha, WI 53144-2807

K.M.H.

Mary M. Hart
Asst. District Attorney
Molinaro Bldg
912 56th Street
Kenosha, WI 53140

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

2020AP735-NM	Kenosha County DHS v. K.M.H. (L.C. #18TP36)
2020AP736-NM	Kenosha County DHS v. K.M.H. (L.C. #18TP37)

Before Davis, 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 This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

In these consolidated cases, K.M.H. appeals from orders terminating her parental rights to two children: M.L.H., born in 2010; and J.L.H., born in 2012. 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 Cty. v. Edward C.T.*, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App. 1998) (per curiam). K.M.H. received a copy of the report and did not respond. Upon consideration of the no-merit report and an independent review of the record, we summarily affirm the orders because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In 2014, M.L.H. and J.L.H. were placed outside the home pursuant to dispositional orders finding that they were children in need of protection or services (CHIPS). They remained in out-of-home placements and, in June 2018, Kenosha County petitioned to involuntarily terminate K.M.H.'s parental rights to both children on the grounds of continuing CHIPS under WIS. STAT. § 48.415(2)(a). On the date scheduled for a jury trial, K.M.H., represented by counsel, filed a TPR-specific "Plea Questionnaire/Waiver of Rights" form and entered a no-contest plea to the continuing CHIPS ground as to both children. After a substantial plea colloquy with K.M.H., and upon the case worker's testimony establishing the elements of continuing CHIPS under § 48.415(2)(a), the court found K.M.H. unfit and set the matter over for disposition. After a

contested dispositional hearing, the court entered orders terminating K.M.H.'s parental rights to both children. This no-merit appeal follows.²

The no-merit report addresses whether K.M.H.'s no-contest pleas were knowingly, voluntarily, and intelligently entered, and had a factual basis. Before accepting a plea or admission, the circuit court is required to engage the parent in a personal colloquy in accordance with WIS. STAT. § 48.422(7). Additionally, the record must establish that the parent understands the constitutional rights given up by the plea. *Kenosha Cty. DHS v. Jodie W.*, 2006 WI 93, ¶25, 293 Wis. 2d 530, 716 N.W.2d 845. The parent must also understand that acceptance of the plea will result in a finding of unfitness. *Oneida Cty. DSS v. Therese S.*, 2008 WI App 159, ¶¶10-11, 314 Wis. 2d 493, 762 N.W.2d 122. Here, the court's colloquy satisfied these requirements. The court also correctly determined that a factual basis existed based upon the evidence presented by the County.³

² The County also filed petitions to terminate the father's parental rights to both children. Like K.M.H., the father was found unfit upon his no-contest pleas, and his parental rights were terminated following disposition. Unlike K.M.H., the father pursued an appeal on the merits. We affirmed the circuit court's TPR orders. *Kenosha Cty. DHS v. M.M.B.*, Nos. 2019AP1776/1777, unpublished slip op. (WI App Jan. 22, 2020).

³ Unfitness under WIS. STAT. § 48.415(2)(a), requires the County to prove that: (1) the subject child was adjudged CHIPS and placed outside the home for six months or longer pursuant to one or more court orders containing the statutory TPR notice; (2) the County made reasonable efforts to provide the services ordered by the court; and (3) K.M.H. failed to meet the conditions established for the safe return of the child. A prior version of the statute would have required the County to prove that there was a substantial likelihood K.M.H. would not meet the conditions of return within nine months. *See* § 48.415(2)(a)3. (2015-16). Effective April 2018, this element was eliminated if the subject child was placed outside the home for at least fifteen of the most recent twenty-two months. 2017 Wis. Act 256, § 1; *see also Dane Cty. DHS v. J.R.*, 2020 WI App 5, ¶¶2-3, 19-21, 390 Wis. 2d 326, 938 N.W.2d 614 (2019) (the amended version of the statute properly applied to a TPR petition filed after its effective date). Here, the petitions were filed after the amended statute's effective date and it is undisputed that the children were placed outside the home for the requisite fifteen-month period.

Next, the no-merit report discusses whether the circuit court properly exercised its discretion at the dispositional hearing. *State v. Margaret H.*, 2000 WI 42, ¶¶27, 234 Wis. 2d 606, 610 N.W.2d 475. Under WIS. STAT. § 48.426(2), the “best interests of the child” is the prevailing standard, and the court is required to consider the factors delineated in § 48.426(3) in making this determination. *Margaret H.*, 234 Wis. 2d 606, ¶¶34-35. Here, the court expressly considered the statutory factors in light of the appropriate legal standard and the facts of record. In pertinent part, the court acknowledged that K.M.H. loved her children and had a relationship with each of them, but determined that on balance, the potential harm in severing those relationships was “far outweigh[ed]” by the benefits of the children’s likely adoption by their long-term foster parents. Termination would enable the children to enter into a more permanent and stable family relationship. The court’s discretionary decision to terminate K.M.H’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).

Our independent review of the record does not disclose any other potentially meritorious issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Karen Leuschow is relieved from further representing K.M.H. in this appeal. 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