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DISTRICT II/III

July 6, 2016

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

2016AP872-NM Kenosha County Department of Human Services v. M.B. (L. C. No. 2015TP50)

Before Seidl, J.[1]

Counsel for M.B. has filed a no-merit report concluding there is no basis to challenge an order concerning termination of his parental rights. M.B. was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by ***Anders v.***

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

California, 386 U.S. 738 (1967), no issues of arguable merit appear. Therefore, the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The child was born on January 21, 2012, in Waukegan, Illinois. On October 23, 2013, the Kenosha County Circuit Court found the child to be in need of protection and services (CHIPS), pursuant to WIS. STAT. § 48.13(10). On November 21, 2013, the court entered a provisional order placing the child outside the home, and included certain conditions for return. The child has continuously remained outside the home of the parents pursuant to the CHIPS order since November 21, 2013.[2]

On May 20, 2014, the circuit court conducted a revision of the dispositional order hearing and considered the issue of M.B.'s visitation with the child. At the conclusion of the hearing, the court revised the dispositional order and suspended visitation by M.B. until certain conditions were met. In addition, the court ordered that a court hearing be held prior to the reinstatement of visitation by M.B. Subsequent permanency plan review hearings occurred on September 22, 2014, March 15, 2015, and August 24, 2015. At the conclusion of these hearings, the court continued all prior orders including the conditions for return and visitation.

On July 22, 2015, a petition for termination of parental rights was filed, alleging CHIPS and the continued denial of periods of physical placement or visitation as grounds for termination of M.B.'s parental rights. A motion for partial summary judgment was filed on the ground of "Continuing Denial of Periods of Physical Placement or Visitation," and a hearing was held on

[2] The child's mother was the subject of a voluntary consent to the termination of parental rights, and we do not address that matter.

November 20, 2015. The circuit court granted partial summary judgment on the grounds phase, and at the dispositional hearing the court found termination of parental rights to be in the child's best interest.

Any challenge to the proceedings based upon a failure to comply with statutory time limits would lack arguable merit. All of the mandatory time limits were either complied with, properly extended for good cause, or otherwise acquiesced to by M.B. The failure to object to a period of delay or continuance 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 challenge to the circuit court granting partial summary judgment during the grounds phase would also lack arguable merit. Summary judgment may be permissible during the grounds phase of the proceedings. *See* ***Steven V. v. Kelley H.***, 2004 WI 47, ¶37, 271 Wis. 2d 1, 678 N.W.2d 856. In this case, there was no dispute regarding the applicable statutory ground for unfitness: denial of physical placement or visitation by court order for more than one year, pursuant to WIS. STAT. § 48.415(4). M.B. had visitation suspended on May 20, 2014, until he met the conditions established by court order, and the court never changed its order relating to the restrictions on child visitation. There was no factual dispute regarding the court's orders, and M.B.'s trial attorney conceded, "He agrees that he has not had his visitation reinstated …." *See also* WIS. STAT. § 48.415(4). Moreover, the court advised M.B. that his explanations for having failed to comply with the court-ordered conditions for reestablishing visitation, while highly relevant at the dispositional phase, were not relevant at the grounds phase. *See* ***Steven V.***, 271 Wis. 2d 1, ¶48 & n.8.

There is also no arguable merit to any claim that the circuit court erroneously exercised its discretion when it terminated M.B.'s parental rights. The court correctly applied the best interests of the child standard and considered the proper statutory factors set out in WIS. STAT. § 48.426(3). The court noted the guardian ad litem believed termination of parental rights would be in the child's best interest. There was testimony concerning the statutory factors from the case manager with the Kenosha County Division of Children and Family Services. The case manager also submitted a comprehensive report supporting termination of parental rights.

The circuit court ultimately concluded it was in the child's best interest to terminate M.B.'s parental rights after considering the child's age, health, and adoptability; the lack of relationship with M.B.; the duration of the separation; and the need for a permanent and stable family relationship. The court noted the four-year-old child had been out of a parental home for over half her life and "[s]he doesn't know her siblings." The court also noted the lack of any substantial relationship with M.B. Both parents had led a lifestyle of instability throughout the court's involvement, and each had been incarcerated on and off since the CHIPS finding. It was reported that M.B. was currently incarcerated for drug trafficking, and the court specifically noted at the dispositional hearing that M.B. would be serving six years in prison. The court also emphasized the foster parents, who had the child in their home for two years, were willing to adopt, and the court found that termination of parental rights would provide a higher degree of stability for the child. The court's discretionary decision to terminate M.B.'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 record discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Christine Quinn is relieved of further representing M.B. in this matter.

Diane M. Fremgen
Clerk of Court of Appeals