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DISTRICT III

December 20, 2016

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

2016AP2088-CRNM N.L.D. v. M.D.P. (L. C. No. 2016TP4)

Before Stark, P.J.¹

Counsel for M.D.P. has filed a no-merit report concluding there is no arguable basis for appealing an order concerning termination of parental rights (voluntary). M.D.P. responded. Upon our independent review of the record, we conclude no issue of arguable merit appears, and the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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.

The petition alleged the ground of failure to assume parental responsibility pursuant to WIS. STAT. § 48.415(6). N.L.D. (the mother) had approved an adoption plan, and the child was taken home from the hospital by the prospective adoptive parents. During the termination proceedings, M.D.P. (the father) was incarcerated. On June 29, 2016, both parties appeared in court and voluntarily terminated their parental rights to the child. The case proceeded to the disposition phase, and the circuit court found it was in the child's best interest to terminate parental rights.

When a parent elects to voluntarily consent to the termination of parental rights, WIS. STAT. § 48.41(2) directs that the court may accept the consent to termination "only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary." *See also T.M.F. v. Children's Serv. Soc. of Wis.*, 112 Wis. 2d 180, 186, 332 N.W.2d 293 (1983).

M.D.P.'s response to the no-merit report insists he "wanted to go to trial." However, prior to the hearing, M.D.P. signed a Consent To Terminate Parental Rights and an Affidavit In Support of Consent To Terminate Parental Rights. The circuit court asked M.D.P. if prior to signing the documents he read through them, understood them, and had asked his attorney about them. M.D.P. answered affirmatively. The court asked M.D.P. if he fully understood what he was signing and agreed with everything in the documents. Again, M.D.P. answered, "Yes."

The Consent To Terminate Parental Rights and the affidavit in support included the proper information the court must ascertain to determine whether the parent's consent is voluntary and informed: M.D.P.'s education and comprehension; his understanding of the nature

of the proceedings; the rights he was giving up; the finality of the termination; his right to counsel; acknowledgement that he discussed the case with his attorney; that no promises or threats induced him to consent; and that he understood the possible alternatives to termination. *See id.* at 189-95.

M.D.P. was asked to state in his own words why he thought a termination was in the child's best interest, and M.D.P. stated in open court and under oath:

Because basically I'm locked up and can't do nothing for her, and then when I get out, I may not still be able to do nothing for her, and I think it's best for her to be with somebody that can do for her because I'm in the predicament that I can't. I want her to have the best life she can.

When the circuit court asked M.D.P. about his other children, M.D.P. stated he had three other children with three different mothers in Mississippi but "I don't know where they at." M.D.P. had no contact with any of the children in "about 15 years or more" and could not recall their birth dates. Our review of the record confirms the consent to terminate parental rights was voluntary and any challenge to the consent to terminate would lack arguable merit.

The record also supports the circuit court's finding that termination of parental rights was in the best interest of the child. Once statutory grounds for termination have been found to exist, the issue of whether termination should be ordered is one that lies within the circuit court's discretion. *See B.L.J. v. Polk Cty. Dept. of Soc. Servs.*, 163 Wis. 2d 90, 104, 470 N.W.2d 914 (1991). Here, the circuit court considered the proper factors set forth in WIS. STAT. § 48.426(3). The court's decision was based upon

my review of the file, all of the submissions, the recommendation from the guardian ad litem and then the testimony and documentation that was turned in today, I've listened to the

testimony of the biological mother [N.L.D.] and the biological father [M.D.P.]. Both of you testified under oath that you think it's in the best interest of the child for each of you to voluntarily terminate your parental rights.

An adoptive social worker from Adoption Services, Inc., testified that she was involved in this adoption process since before the child was born. She worked with the mother and foster parents. The child was healthy, and the foster parents were taking her to scheduled doctor appointments. The social worker further conducted at least five home visits and determined the child was "doing very well" and the foster parents were "meeting all her needs."

In making its findings that it was in the best interest of the child to terminate parental rights, the circuit court noted the child's age and that she was placed with the foster parents "shortly after birth." The court also addressed the likelihood of adoption: "I find the Adoption Services, Inc. has a permanency plan of adoption and that that seems to be in the child's best interest." The court further took into consideration that the child "has not had a substantial relationship with either [biological parent] or any of [the biological parents'] family members." The court also found

it's very likely that [the child] will enter into a stable and permanent family relationship that will provide her not only economically but psychologically and emotionally and the other ways in a way that maybe neither [biological parent is] capable or able to do at this time or likely into the future.

Any challenge to the court's decision would lack arguable merit.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the order concerning termination of parental rights (voluntary) is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Susan Alesia is relieved of further representing M.D.P. in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*