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May 17, 2017

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

2017AP214-NM In re the termination of parental rights to L.A.M., a person under the age of 18: K.J.M. v. M.W. (L.C. #2015TP271)

Before Reilly, P.J.[1]

M.W. appeals from an order granting an involuntary termination of his parental rights (TPR) to his biological child, L.A.M. M.W.'s 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 County v. Edward C.T.***, 218 Wis. 2d 160, 161, 579 N.W.2d 293 (Ct. App.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

1998) (per curiam). Per this court's order dated March 13, 2017, counsel filed a supplemental report. M.W. received a copy of both reports and was afforded an additional thirty days after the filing of the supplemental report within which to file a response. He has not done so. We have considered the no-merit reports and independently reviewed the record. As we conclude there are no issues with arguable merit for appeal, we summarily affirm the order. *See* WIS. STAT. RULE 809.21.

In December 2014, K.M. informed M.W., her only sexual partner at the time, that she was pregnant. M.W. suggested K.M. have an abortion because it was "not a good time" for him to have another child, as he had a two-year-old child and had just been fired from his job. Twenty-one-year-old K.M. already had three children of her own, was pursuing a college education, and did not believe in abortion. After M.W. brought up abortion a few more times, K.M. blocked his phone number and Facebook account.

In May 2015, K.M. contacted an adoption agency and selected "Kim," a potential adoptive resource from Arizona. L.A.M. was born in September 2015; he has lived with Kim since he was two days old. DNA proved M.W.'s paternity. K.M. filed a petition to terminate M.W.'s parental rights on the ground of failure to assume parental responsibility for L.A.M. and indicated her consent to a termination of her rights to the child. In May 2016, after a three-day trial, the jury returned a unanimous verdict finding M.W. unfit. The circuit court terminated M.W.'s parental rights after a multi-day dispositional hearing. The court also accepted K.M.'s voluntary consent to a TPR, a matter not at issue in this appeal.

The no-merit report first examines whether the evidence was sufficient for the jury to find that grounds existed to terminate M.W.'s parental rights. To establish that M.W. failed to

assume parental responsibility for L.A.M., K.M. had to show that M.W. knew or had reason to believe he was L.A.M.'s father and that he had not had a "substantial parental relationship" with the child. *See* ***State v. Bobby G.,*** 2007 WI 77, ¶¶5, 82-83, 301 Wis. 2d 531, 734 N.W.2d 81; *see also* WIS JI—CHILDREN 346A. "[S]ubstantial parental relationship" means

> the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

WISCONSIN STAT. § 48.415(6)(b). "Grounds for termination must be prove[d] by clear and convincing evidence." ***Ann M.M. v. Rob S.***, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993). This court gives significant deference to the jury's verdict and may not overturn it if any credible evidence supports what the jury has found. ***Deannia D. v. Lamont D.***, 2005 WI App 264, ¶9, 288 Wis. 2d 485, 709 N.W.2d 879.

The evidence showed that M.W. believed he was the father of L.A.M. when K.M. told him she was pregnant in December 2014 and, through DNA testing, he learned in November 2015 that his belief was fact. The evidence also showed that M.W. provided no financial or other support to K.M. throughout her pregnancy or to Kim since L.A.M.'s birth, sent L.A.M. no pictures, cards, letters, or gifts, and has not visited.[2] M.W. has "seen" L.A.M. only

[2] M.W. was on probation. He did not seek permission from his probation officer to travel out of state.

during a single FaceTime conversation with Kim as she held the baby, although M.W.'s social worker offered to set up additional calls. He sent Kim a few text messages but said he then lost her phone number. There is no arguably meritorious challenge to the jury's unfitness finding.

The second issue addressed in the no-merit report is whether the circuit court properly exercised its discretion in deciding that it was in L.A.M.'s best interests to terminate M.W.'s rights. The ultimate decision whether to terminate parental rights is discretionary. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The best interests of the child is the prevailing factor. WIS. STAT. § 48.426(2). In evaluating the child's best interests, the court shall consider but not be limited to the following:

> (a) The likelihood of the child's adoption after termination.
>
> (b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
>
> (c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
>
> (d) The wishes of the child.
>
> (e) The duration of the separation of the parent from the child.
>
> (f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

Section 48.426(3).

The circuit court found that: adoption of L.A.M. by Kim was "extremely likely"; L.A.M. was about ten months old, was in robust health, and had lived with Kim virtually since birth; L.A.M. does not have substantial relationships with either biological parent or any of their family members and thus there are no relationships to sever; although L.A.M. was too young to

verbalize his wishes, the child psychologist, the adoption social worker, Kim, and K.M., who has maintained contact with Kim and L.A.M., persuasively testified that Kim and L.A.M. share a strong bond; M.W. has never seen L.A.M. in person and viewed him only once on FaceTime; and L.A.M.'s sole placement since birth is "safe," "stable," and "secure."

The court paused to consider what M.W. proposed for L.A.M. should it deny the TPR. M.W. "presented absolutely no indication to the Court about what his plan for [L.A.M.] would be." Still unemployed, M.W. lived with his pregnant girlfriend and there was no evidence she would be willing or able, financially or otherwise, to take in or care for another woman's very young child. As difficult a decision as it was, K.M. never wavered in her choice to have her rights terminated, so the court could not force her to even co-parent. The circuit court thoroughly considered each factor and appropriately exercised its discretion in deciding to terminate M.W.'s parental rights. No issue of arguable merit could arise from this point.

The supplemental no-merit report examines whether an arguable challenge could be made in regard to the following or tolling of statutory time limits, the admission of expert testimony at the dispositional hearing regarding bonding, and the effectiveness of M.W.'s trial counsel's assistance. We agree with appellate counsel's analysis and conclusions that no issues of arguable merit exist.

Our independent review of the record further satisfies us that no meritorious issues could arise in regard to voir dire, motions in limine, rulings on evidentiary objections, or closing arguments. We see no other potential issues for appeal. This court therefore accepts the no-merit report, affirms the order terminating M.W.'s parental rights, and discharges appellate counsel of the obligation to represent M.W. further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court terminating M.W.'s parental rights to L.A.M. is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christine M. Quinn is relieved of any further representation of M.W. in these matters. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals