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May 23, 2017

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

2017AP498-NM

State v. J. W. (L. C. No. 2015TP135)

Before Stark, P.J.¹

Counsel for J.W. has filed a no-merit report concluding there is no arguable basis for appealing an order terminating J.W.'s parental rights to his child, J.K.P. J.W. was advised of his right to respond and has not responded. Upon this court's independent review of the record, no

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.

issue of arguable merit appears, and the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The petition alleged failure to assume parental responsibility. An amended petition included an additional ground of abandonment. During a status conference, J.W. requested a court trial and waived his right to a jury trial. The court admonished J.W. that if he failed to show up for the court trial he would be in default and lose his right to contest the petition. On the date the court trial was to commence, J.W. did not show up and the court held him in contempt. The court proceeded to hear testimony regarding grounds and ultimately found that the grounds were proven and J.W. was unfit. A dispositional hearing was held, and J.W. did not appear despite maintaining contact with his attorney and being aware of the court date. After testimony was provided by the family case manager, the court found termination was in the child's best interests and entered an order terminating J.W.'s parental rights.

There is no arguable issue regarding the court's compliance with mandatory time limits, which were met or properly extended for good cause, without objection, to accommodate the parties' schedules. The failure to object to a delay waives any challenge to the court's competency on those 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.

There is also no arguable merit to a claim regarding the default at the grounds phase. The decision to enter a default against a party who fails to comply with a court order is within the discretion of the circuit court. *See Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶¶17-18, 246 Wis. 2d 1, 629 N.W.2d 768. Here, the default was based on J.W.'s failure to appear in court despite

admonishment concerning the requirement to appear. J.W.'s counsel indicated she had been in "good" contact with J.W. and expected him to be present. The court recessed for approximately twenty-five minutes, but J.W. failed to appear or contact the court. The court found his conduct egregious, declared him in default, and proceeded to hear testimony regarding the grounds alleged. The court properly found that the grounds were proven and J.W. was unfit.

There is also no arguable merit to any claim that the circuit court erroneously exercised its discretion when it terminated J.W.'s parental rights. At the dispositional stage, the court properly applied the best interests of the child standard and considered the statutory factors, pursuant to WIS. STAT. § 48.426(3). See *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 153-54, 551 N.W.2d 855 (Ct. App. 1996). The court reasonably concluded termination of parental rights was in the child's best interests after considering the child's adoptability, age and health. The court also considered the child's non-existent relationship with J.W., the duration of the separation, and the child's need for a stable, safe, and permanent family relationship. The court specifically noted J.W. was incarcerated most of the child's life, and the child never had face-to-face contact with J.W. The court also noted the lack of any substantial relationship with any other extended family members such as grandparents, aunts or uncles, and determined severance of any relationship would therefore not be harmful. The biological mother had voluntarily terminated her parental rights, and the child had become attached to the foster parents, who intended to adopt the child and were "almost the only parents he's ever known." The court's discretionary decision to terminate J.W.'s parental rights demonstrated a rational process that is justified by the record. See *id.* at 152.

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 Eileen T. Evans is relieved of further representing J.W. in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals