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DISTRICT II

September 11, 2019

To:

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

2019AP1308-NM

In re the termination of parental rights to L.M.T., a person under the age of 18: Racine County HSD v. J.R.S. (L.C. #2018TP21)

Before Gundrum, 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).

J.R.S. appeals from the circuit court order terminating her parental rights to L.M.T. Attorney Ellen J. Krahn, appointed counsel for J.R.S., has filed a no-merit report pursuant to

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. We cite the current version of the statutes for ease of reference. During the times relevant here, there have been no pertinent changes to the cited statutes.

WIS. STAT. RULE 809.107(5m). J.R.S. was sent a copy of the report and has not filed a response. Upon consideration of the report, and our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the circuit court's order. *See* WIS. STAT. RULE 809.21.

The Racine County Human Services Department filed the petition to terminate J.R.S.'s parental rights to L.M.T. One of the alleged unfitness grounds was abandonment under WIS. STAT. § 48.415(1)(a)2. That ground's elements include: “[1] the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by [WIS. STAT. §§] 48.356(2) or 938.356(2) and [2] the parent has failed to visit or communicate with the child for a period of 3 months or longer.” *See* § 48.415(1)(a)2. The Department moved for partial summary judgment on this ground, and the circuit court granted the motion. The court then held a dispositional hearing and determined that the termination of J.R.S.'s parental rights was in L.M.T.'s best interest.

The no-merit report first addresses whether there is arguable merit to challenging the circuit court's grant of partial summary judgment. We agree with counsel that there is no arguable merit to this issue.

Our supreme court in *Steven V. v. Kelley H.*, 2004 WI 47, ¶5, 271 Wis. 2d 1, 678 N.W.2d 856, concluded that “[a]n order granting partial summary judgment on the issue of parental unfitness where there are no facts in dispute and the applicable legal standards have been satisfied” is permissible. Here, J.R.S. did not dispute that L.M.T. had been placed outside J.R.S.'s home by one or more court orders containing the required notice. Further, J.R.S.'s own

submissions confirmed the evidence submitted by the Department showing that J.R.S. failed to visit or communicate with L.M.T. for a period of three months or longer.

J.R.S. argued in her summary judgment submissions that there were factual issues as to whether she had good cause for failing to visit or communicate with L.M.T. under WIS. STAT. § 48.415(1)(c). As pertinent here, § 48.415(1)(c) provides:

(c) Abandonment is not established under par. (a)2. or 3. if the parent proves all of the following by a preponderance of the evidence:

1. That the parent had good cause for having failed to visit with the child

2. That the parent had good cause for having failed to communicate with the child

3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:

a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified ... or ... with the agency responsible for the care of the child during the time period specified

b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified

In her summary judgment submissions, J.R.S. asserted that she was prohibited from having visits with L.M.T., and that it was meaningless to communicate with L.M.T. by phone because of L.M.T.'s young age. However, even assuming these assertions were true, there was no genuine issue of material fact as to good cause because J.R.S provided no evidence that she communicated with the Department or L.M.T.'s foster parents about L.M.T. during the relevant time period. On the contrary, J.R.S.'s summary judgment submissions confirmed that she made

no contact with the Department or foster parents during a period of more than five months lasting from mid-June 2017 to late November 2017.

The no-merit report next addresses whether there is arguable merit to challenging the circuit court's decision at the dispositional phase of proceedings. We agree with counsel that there is no arguable merit to this issue.

“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 circuit court must consider the factors set forth in WIS. STAT. § 48.426, giving paramount consideration to the best interest of the child. *See Gerald O.*, 203 Wis. 2d at 153-54.

Here, the record shows that the circuit court expressly considered each of these factors in light of the relevant evidence, made a number of factual findings based on that evidence, and reached a reasonable decision. We do not summarize all of the evidence but note that it included that L.M.T. was removed from J.R.S.'s care shortly after birth in November 2014; that L.M.T. had been placed in a foster home since January 2015; that J.R.S. had not seen L.M.T. since April 2016; and that there was a high likelihood of adoption by L.M.T.'s foster parents, who had provided a stable and consistent environment for L.M.T. Based on this and other evidence, the circuit court found that L.M.T. did not have a substantial relationship with J.R.S., that severing L.M.T.'s bond with her foster parents would be harmful to L.M.T., and that these and other factors supported the court's ultimate determination that the termination of J.R.S.'s parental rights was in L.M.T.'s best interest.

Our review of the record discloses no other arguably meritorious issues for appeal.

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Ellen J. Krahn is relieved of any further representation of J.R.S. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals