



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

July 7, 2021

To:

Hon. Marshall B. Murray
Circuit Court Judge
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Children's Court Center
Electronic Notice

Pamela Moorshead
Assistant State Public Defender
Electronic Notice

Lara Parker
Milwaukee County District Attorney's
Office
Electronic Notice

Charmian Klyve
Division of Milwaukee Child Protective
Services
635 North 26th Street
Milwaukee, WI 53233-1803

Linnea J. Matthiesen
Legal Aid Society of Milwaukee, Inc.
Guardian ad Litem Division
10201 Watertown Plank Rd
Milwaukee, WI 53226

A. J. T.
Sent via U.S. Mail

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

2021AP785-NM

State of Wisconsin v. A. J. T. (L. C. # 2020TP92)

Before Dugan, 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).

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 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.

A.J.T. appeals the circuit court order terminating her parental rights to M.C. Attorney Pamela Moorshead, appointed counsel for A.J.T., has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. A.J.T. was informed of her right to respond to the report, but has not filed a response. Upon consideration of the report, and our independent review of the record as required by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, this court summarily affirms the circuit court's order. *See* WIS. STAT. RULE 809.21.

The State filed the petition to terminate A.J.T.'s parental rights to M.C. One of the alleged unfitness grounds was a prior involuntary termination of parental rights under WIS. STAT. § 48.415(10). That ground's elements, as relevant here, include:

(a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13(2), (3) or (10); [and]

(b) That, within 3 years prior to the date the court adjudged the child to be in need of protection or services as specified in par. (a) ..., a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

Sec. 48.415(10). The State moved for partial summary judgment on this ground, and the circuit court granted the motion. Other alleged grounds were dismissed. The court held a dispositional hearing and determined that the termination of A.J.T.'s parental rights was in M.C.'s best interest.

The no-merit report first addresses whether the circuit court complied with the statutory deadlines that govern termination of parental rights proceedings. This court agrees with counsel

that there is no arguable merit to this issue. In each instance, the court either complied with the applicable deadlines or found good cause for extending the deadlines.

The no-merit report next addresses whether the contents of the State's petition satisfied the requirements in WIS. STAT. § 48.42(1). This court agrees with counsel that there is no arguable merit to this issue. This court sees no arguable basis upon which A.J.T. might seek reversal based on the contents of the petition.

The no-merit report next addresses whether the circuit court properly granted partial summary judgment. This court agrees with counsel that there is no arguable merit to this issue. In *Steven V. v. Kelley H.*, 2004 WI 47, ¶5, 271 Wis. 2d 1, 678 N.W.2d 856, our supreme court 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, the State submitted certified copies of prior orders that established both elements of the ground of prior involuntary termination of parental rights. A.J.T. did not submit opposing proof or dispute that the ground was proven by the State's submissions.

Finally, the no-merit report addresses whether the circuit court erroneously exercised its discretion during the dispositional phase of proceedings. For the reasons that follow, this court agrees 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. The factors enumerated in § 48.426 include: (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; and (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.

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 to terminate A.J.T.'s parental rights to M.C. We need not summarize all of the evidence, but note that it included that M.C. was likely to be adopted by his foster parents if A.J.T.'s parental rights were terminated; that M.C. had been removed from A.J.T.'s care shortly after birth and had not lived with A.J.T. since that time; that A.J.T. had a history of drug abuse; and that A.J.T. had been unable to provide suitable housing for M.C. The circuit court found that A.J.T. had a substantial relationship with M.C., but the court also found that M.C. had a substantial relationship with his foster parents. The court concluded that, on balance, it was in M.C.'s best interest to terminate A.J.T.'s parental rights to M.C. so that M.C. could be permanently placed in a stable home with his foster parents. A.J.T. could not reasonably argue that the circuit court erroneously exercised its discretion.

This court's 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 Pamela Moorshead is relieved of any further representation of A.J.T. in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals