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DISTRICT III

June 22, 2022

To:

Hon. Beau Liegeois
Circuit Court Judge
Electronic Notice

Cheryl Young
Register in Probate
Brown County Courthouse
Electronic Notice

Susan E. Alesia
Electronic Notice

Kelsey Jarecki Morin Loshaw
Electronic Notice

Samantha Shaw Mabry Wagner
Electronic Notice

L. H., Sr. 223452
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

Devin C. Shanley
Electronic Notice

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

2022AP530-NM

Brown County Health and Human Services v. L. H., Sr.
(L. C. No. 2020TP27)

Before Stark, P.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).

Counsel for L.H., Sr., filed a no-merit report pursuant to WIS. STAT. RULE 809.32 concluding there is no arguable basis for challenging the order terminating L.H.'s parental rights

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

The Honorable Beau G. Liegeois granted the motion for partial summary judgment. The Honorable Tammy Jo Hock presided over the dispositional hearing and entered the order terminating L.H.'s parental rights.

to his son, Leon.² L.H. has filed a response challenging the circuit court’s decision to grant summary judgment on the ground for termination. Upon this court’s independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no issue of arguable merit. Therefore, the order terminating L.H.’s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Leon was born in January 2010, and was removed from L.H.’s home in August 2014. On May 27, 2020, the Brown County Department of Health and Human Services (the Department) petitioned to terminate L.H.’s parental rights, alleging as grounds the continuing need for protection and services (CHIPS) pursuant to WIS. STAT. § 48.415(2)(a).³ On September 17, 2020, the Department filed an amended petition adding an allegation of the continuing denial to L.H. of periods of physical placement or visitation with Leon pursuant to § 48.415(4) as grounds. L.H. contested both the petition and the amended petition.

The Department moved for partial summary judgment as to the continuing denial of periods of physical placement or visitation.⁴ This ground for termination of parental rights is established by proving all of the following:

- (a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by s. 48.356(2) or 938.356(2).

² For ease of reading, we refer to L.F.H., Jr., using the pseudonym Leon, rather than his initials.

³ Leon’s biological mother is deceased.

⁴ Only one ground for termination need be established. *See* WIS. STAT. § 48.415 (“Grounds for termination of parental rights shall be *one* of the following” (emphasis added)).

(b) That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the court has not subsequently modified its order so as to permit periods of physical placement or visitation.

WIS. STAT. § 48.415(4). Here, the motion asserted that L.H. had been denied visitation with Leon by order of the circuit court on September 16, 2019⁵; that the order included conditions for the reinstatement of visitation; that L.H. was given written notice of the grounds for termination; that as of the date of the amended petition for termination of parental rights, the order had not been revised to allow for visitation; and that more than one year had passed since entry of that order.

After the parties briefed the issue, the circuit court granted the motion for partial summary judgment, concluding that this was a “paper grounds” case under WIS. STAT. § 48.415(4). The court found that the validity of the order suspending visitation was not in question, noting that the order included conditions that L.H. could satisfy while incarcerated to reinstate visitation, and that L.H. was notified of the possible grounds for termination of his parental rights in compliance with WIS. STAT. § 48.356(2). Finding that a year had passed since the order was entered, the court determined there was no genuine dispute of material fact for a jury to decide. In granting the motion, the court addressed L.H.’s purported issues of material fact, explaining why they did not preclude summary judgment. The court also thoroughly examined L.H.’s constitutional rights and the fundamental fairness of the proceedings,

⁵ This was an amended order following the reversal of an order terminating L.H.’s parental rights to Leon in an earlier case, Brown County case No. 2017TP12. On appeal in that case, this court reversed the termination order, and we remanded the matter to the circuit court because the Department had failed to prove a court order had been entered against L.H. that satisfied the requirements of WIS. STAT. § 48.415(4). See *Brown Cnty. Dep’t of Health & Hum. Servs. v. L.F.H.*, No. 2019AP145, unpublished slip op. (WI App Apr. 23, 2019).

acknowledging that despite L.H.’s incarceration, the Department was required to make resources available to L.H. in prison. The court then detailed the efforts the Department had made to provide resources that would have allowed L.H. to meet the conditions for regaining the right to visitation.

At the dispositional hearing, the circuit court considered proper factors and found that termination of L.H.’s parental rights was in Leon’s best interest. The no-merit report addresses whether the court erred by granting the Department’s motion for partial summary judgment and whether the court properly exercised its discretion when concluding that termination of L.H.’s parental rights was in the child’s best interest.

Citing *Walworth County Department of Human Services v. Elizabeth W.*, 189 Wis. 2d 432, 436, 525 N.W.2d 384 (Ct. App. 1994), L.H. argues that summary judgment at the “grounds” or “unfitness phase” of a termination of parent rights (TPR) case is inappropriate where a parent contests the termination. *Elizabeth W.*, however, was overruled by our supreme court in *Steven V. v. Kelley H.*, 2004 WI 47, ¶31, 271 Wis. 2d 1, 678 N.W.2d 856, wherein the court held that “[n]either due process nor the TPR statutes require an absolute prohibition on summary judgment in the grounds or unfitness phase of a TPR proceeding.” The *Steven V.* court added: “That a parent has contested the termination of his or her parental rights does not automatically mean there are material facts in dispute regarding the grounds for unfitness.” *Id.* Therefore, L.H.’s challenge to the grant of summary judgment at the grounds for termination phase lacks arguable merit.

We agree with counsel’s analysis and conclusion that any challenge to the circuit court’s decision to grant partial summary judgment as to grounds or the court’s exercise of discretion at

disposition would lack arguable merit. The no-merit report sets forth an adequate discussion of these potential issues so as to support the no-merit conclusion, and this court need not address them further. An independent review of the record discloses no other potential issues for appeal.

Therefore, upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorneys Kelsey Jarecki Morin Loshaw and Susan E. Alesia are relieved of their obligations to further represent L.H., Sr., in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals