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DISTRICT I

July 26, 2022

To:

Hon. Marshall B. Murray
Circuit Court Judge
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

Carl W. Chesshir
Electronic Notice

Danielle E. Chojnacki
Electronic Notice

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

T.K.

Deanna M. Weiss
Electronic Notice

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

2022AP897-NM In re the termination of parental rights to D.T. II, a person under the age of 18: State of Wisconsin v. T.K. (L.C. # 2020TP113)

Before Brash, C.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).

T.K. appeals a trial court order terminating her parental rights to her child, D.T., II ("D.T.").[2] T.K.'s appointed attorney, Carl W. Chesshir, has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. T.K. was served with a copy of the report and

[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.

[2] The parental rights of D.T.'s father were also terminated and are not at issue in this appeal.

advised of her right to file a response. She has not filed a response. Based on our review of the no-merit report and our independent review of the circuit court record as required by ***Anders v. California***, 386 U.S. 738 (1967), this court concludes that no issue of arguable merit could be raised on appeal. Therefore, we summarily affirm the order.

D.T. was born on May 15, 2018, with marijuana in his system. He was detained directly from the hospital. D.T. was placed in a foster home and has continuously remained in this placement outside the parental home.

In June of 2020, the State petitioned to terminate T.K.'s rights to D.T. based on WIS. STAT. § 48.415(2) (continuing CHIPS) and § 48.415(6) (failure to assume parental responsibility). T.K. contested the allegations in the petition; however, due to her eventual non-appearance at court hearings, the trial court found her in default. Following a prove-up hearing, the trial court concluded that both grounds for termination had been adequately shown and found T.K. unfit. The matter proceeded to disposition, after which the trial court terminated T.K.'s parental rights to D.T.

The no-merit report addresses three issues: (1) whether the trial court erred by finding T.K. in default and striking her contest posture for the grounds phase of the proceedings; (2) whether the trial court properly exercised its discretion when it found that terminating T.K.'s parental rights was in D.T.'s best interests; and (3) whether T.K.'s trial counsel was ineffective at the dispositional hearing. We agree with appellate counsel that there would be no merit to further proceedings or an appeal based on those issues, as we will briefly detail below.

The no-merit report analyzes whether the trial court erred when it found T.K. in default, subject to prove-up. The trial court deemed T.K.'s non-appearance at a hearing on February 26,

2021 to be "not excusable" and found her in default. T.K. additionally failed to appear at the next hearing on March 24, 2021, and the trial court reiterated that T.K. was defaulted subject to prove-up. With the assistance of a newly appointed attorney, T.K. subsequently sought to have the default vacated. The trial court took the motion under advisement and set the matter over to see if T.K. would cooperate with her attorney and discovery. At the hearing that followed, T.K. failed to appear, which the trial court deemed "egregious." The trial court subsequently upheld its prior default finding.

Any challenge to the default finding entered against T.K. would lack arguable merit. In a termination of parental rights case, it is within the trial court's discretion to find a party in default. *See* ***Evelyn C. R. v. Tykila S.***, 2001 WI 110, ¶18, 246 Wis. 2d 1, 629 N.W.2d 768. Whether to vacate a default judgment is likewise discretionary. *See* ***Ness v. Digital Dial Commc'ns, Inc.***, 227 Wis. 2d 592, 599, 596 N.W.2d 365 (1999). We affirm a discretionary decision if the circuit court applied the correct legal standard and there is a reasonable basis in the record to support the decision. *See* ***Dane Cnty. DHS v. Mable K.***, 2013 WI 28, ¶39, 346 Wis. 2d 396, 828 N.W.2d 198.

"To grant default judgment, the [trial] court must find that the non-complying party's conduct is without a clear and justifiable excuse and conclude that the noncompliance was either egregious or in bad faith." ***Brandon Apparel Grp., Inc. v. Pearson Props., Ltd.***, 2001 WI App 205, ¶11, 247 Wis. 2d 521, 634 N.W.2d 544. Based on the record in this matter, we conclude that the trial court did not err in determining that T.K.'s non-appearance was inexcusable and egregious. After T.K. failed to appear at consecutive hearings, the trial court nevertheless took her motion to vacate that default judgment under advisement, and she failed to appear yet again. Based on these facts and the legal standard for default, we conclude that the trial court properly

exercised its discretion in this case. *See* ***Evelyn***, 246 Wis. 2d 1, ¶18; *see also* WIS. STAT. § 48.23(2)(b)3. ("Failure by a parent 18 years of age or over to appear in person at consecutive hearings as ordered is presumed to be conduct that is egregious and without clear and justifiable excuse.").

We turn to the issue of whether there would be any merit to challenging the trial court's decision to terminate T.K.'s parental rights to D.T. The decision to terminate a parent's rights is discretionary and the best interest of the child is the prevailing standard. ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152-53, 551 N.W.2d 855 (Ct. App. 1996). The trial court considers multiple factors, including, but not limited to those delineated in WIS. STAT. § 48.426(3).

Here, there would be no merit to challenging the trial court's exercise of discretion. The trial court heard testimony from the case manager, T.K., D.T.'s paternal uncle, and D.T.'s father. The trial court made findings that contemplated the statutory factors when it decided that it was in D.T.'s best interest to terminate T.K.'s parental rights. An appellate challenge to the trial court's exercise of discretion would lack arguable merit.

Lastly, we consider whether trial counsel was ineffective at the dispositional hearing. Appellate counsel contends that T.K. raised this issue with him and it was based on trial counsel's failure to cross-examine the case manager at the dispositional hearing or call any witnesses other than T.K. Appellate counsel explains that he contacted trial counsel and discussed these issues with her. Based on the record before us and the representations made by appellate counsel in his no-merit report, an appellate challenge on this basis would lack arguable merit.

This court's independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing,

IT IS ORDERED that the order terminating T.K.'s parental rights to D.T., II, is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of any further representation of T.K. on appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals