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DISTRICT I

November 15, 2022

To:

Hon. Marshall B. Murray
Circuit Court Judge
Electronic Notice

Andrew William Boden
Legal Aid Society of Milwaukee
Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

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

Pamela Moorshead
Electronic Notice

C.N.

Brighton M. Troha
Electronic Notice

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

2022AP1405-NM

In re the termination of parental rights to C.N., a person under the age of 18: State of Wisconsin v. C.N. (L.C. # 2021TP153)

Before Donald, 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).

Cathy appeals from an order terminating her parental rights to her son, Carl.² Counsel for Cathy filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no

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 For ease of reading, we use pseudonyms rather than initials when referring to C.N. and her son, C.N., in this confidential matter. See WIS. STAT. RULE 809.81(8).

arguable basis for challenging the termination order.³ Cathy was advised of her right to respond to the report and she has not responded. Based upon an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court concludes that an appeal would lack arguable merit. Therefore, the order terminating Cathy’s parental rights is summarily affirmed.⁴ See WIS. STAT. RULE 809.21.

On January 29, 2020, Carl—then nearly four years old—was found to be a child in need of protection or services (CHIPS) and placed outside his parental home. Carl’s initial removal from his mother’s care followed a claim that Cathy abandoned Carl and his siblings after leaving them with an unknown individual that was alleged to have been doing “inappropriate sexual things” with the children. Cathy failed to meet the conditions necessary to have Carl returned to her care. On June 28, 2021, the State of Wisconsin petitioned for termination of Cathy’s parental rights, alleging the continuing need for protection or services and a failure to assume parental responsibility.

At the first hearing on the petition, Cathy, by appointed counsel, contested the grounds for termination and reserved the right to request a jury trial. The circuit court advised Cathy that she “must appear at all subsequent court dates or hearings” and Cathy confirmed her understanding that the failure to appear could result in default and the forfeiture of her right to a jury trial. Cathy failed to appear at the next hearing and, over defense counsel’s objections, the court granted the State’s request to find Cathy in default.

³ The no-merit report was filed by Attorney Sarah Joseph, who has been replaced by Attorney Pamela Moorshead as C.N.’s appellate counsel.

⁴ The order also terminated the parental rights of the child’s putative father. Termination of the father’s parental rights is not the subject of this appeal.

Cathy appeared at the next scheduled proceeding and explained that a severe storm impacted her ability to appear at the previous hearing and she was without phone service due to nonpayment of her bill. The circuit court consequently vacated the default finding. At the same proceeding, Cathy waived her right to a jury trial and elected to proceed with a court trial. Cathy again confirmed her understanding that the failure to appear at any subsequent court dates could result in a default finding and waiver of her right to contest the petition.

At the final pretrial conference, Cathy again failed to appear. Over defense counsel's objections, the circuit court granted the State's request to find Cathy in default. The court informed defense counsel that any motion to vacate the default should be filed before the date scheduled for prove up as to the grounds for termination.

At the scheduled prove-up hearing, Cathy appeared and informed the circuit court that she missed the last hearing because she overslept after taking pain medication. Defense counsel noted that he did not file a motion to vacate before the hearing, as directed by the court, because Cathy had not provided him with documentation of her medication for the affidavit. The court denied Cathy's motion to vacate the default finding, concluding that her nonappearance was "egregious and without excuse," in part because she failed to provide any documentation to the court regarding her medication. The matter proceeded to a hearing on prove-up and disposition.

Following testimony from Carl's case manager and foster parent, and considering the recommendation of the guardian ad litem, the court found "by clear and convincing evidence" that the grounds alleged in the petition had been proven. *See Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶24, 246 Wis. 2d 1, 629 N.W.2d 768 (holding that the circuit court may not enter a default judgment as to grounds without holding an evidentiary hearing and finding the alleged grounds

for termination by clear and convincing evidence). The court also made the statutorily required finding that Cathy was an unfit parent. WIS. STAT. § 48.424(4). After a dispositional hearing, the court concluded it was in the child's best interest to terminate Cathy's parental rights.

The no-merit report addresses whether the circuit court complied with statutory time limits; whether the petition satisfied statutory content requirements; whether the court properly exercised its discretion when it entered a default judgment as to the grounds for termination; and whether the court properly exercised its discretion when concluding that termination of Cathy's parental rights was in the child's best interest. Upon reviewing the record, this court agrees with counsel's description, analysis, and conclusion that this case presents no arguably meritorious issues for appeal. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

An independent review of the record reveals no other potential issues of arguable merit.

Therefore, upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of her obligation to further represent C.N. 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