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DISTRICT I

August 8, 2023

To:

Hon. Joseph R. Wall
Electronic Notice

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Electronic Notice

Tammy Kruczynski
Juvenile Clerk
Milwaukee County Courthouse
Electronic Notice

R.T.P.

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

Jenni Spies-Karas
Electronic Notice

Steven Zaleski
Electronic Notice

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

2023AP875-NM In re the termination of parental rights to R. P., a person under the age of 18: State of Wisconsin v. R.T.P. (L.C. # 2022TP101)

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).

R.T.P. appeals from an order terminating his parental rights to his son, R.P. Appellate counsel, Attorney Steven Zaleski, filed a no-merit report. *See* ***Anders v. California***, 386 U.S. 738 (1967); WIS. STAT. RULES 809.107(5m), 809.32. R.T.P. did not file a response. Based upon consideration of the no-merit report and an independent review of the record as mandated by

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Anders, this court concludes that there are no arguably meritorious issues that could be pursued on appeal. Therefore, we summarily affirm the order terminating R.T.P.'s parental rights.

R.P. was born in September 2020, while his mother, S.S.A., was incarcerated. He was suffering from several medical conditions at birth, including two hernias and a cleft palate. S.S.A. identified R.T.P. as the child's father, and R.T.P. brought the child home. In early March 2021, the Division of Milwaukee Child Protective Services received a report that R.P. was living with R.T.P.'s former wife, F.T., and that R.T.P. was living elsewhere, in a "known drug house." A social worker from the Division located R.P. at F.T.'s home and took the child into protective custody.

The State petitioned the circuit court for a determination that R.P. was a child in need of protection or services (CHIPS). The State alleged that R.P. could not be placed with R.T.P. because paternity had not been established and because R.T.P. was reportedly actively using heroin. The State further alleged that it could not place the child with S.S.A. because, although she was no longer incarcerated, she was hospitalized, restrained, and incoherent. Following a hearing on March 11, 2021, the circuit court entered an order placing R.P. in foster care with M.M. and her husband, M.L.M. R.P. has remained in that placement since that date.

During the pendency of the CHIPS proceeding, genetic testing established that R.T.P. was the biological father of R.P.[2] On November 12, 2021, the circuit court entered a dispositional order in the CHIPS proceeding, finding R.P. a child in need of protection or services. The dispositional order included conditions that R.T.P. was required to fulfill before R.P. could be returned to R.T.P.'s care, and the order also included a notice warning R.T.P. about potentially applicable grounds for the termination of his parental rights.

In June 2022, the State filed a petition seeking termination of R.T.P.'s parental rights to R.P.[3] As grounds, the State alleged both that R.P. was a child in continuing need of protection or services and that R.T.P. had failed to assume parental responsibility for R.P. *See* WIS. STAT. § 48.415(2), (6). In October 2022, R.T.P. entered a no-contest plea to the allegation that R.P. was in continuing need of protection or services, and the circuit court dismissed the second ground for termination. The circuit court found that R.T.P. was an unfit parent and, following a dispositional hearing in January 2023, terminated his parental rights.

Appellate counsel first discusses whether R.T.P. could pursue an arguably meritorious claim that the circuit court failed to comply with mandatory time limits, thereby losing competency to proceed. *See* WIS. STAT. §§ 48.422(1)-(2), 48.424(4); *see also* ***State v. April O.***,

[2] The CHIPS docket entries, which are in the appellate record here, reflect a circuit court finding that R.T.P. is the biological father of R.P., but the docket does not reflect entry of a judgment adjudicating paternity. *See* WIS. STAT. § 767.89. The guardian *ad litem* explained at a hearing early in the termination-of-parental-rights litigation that R.T.P.'s status was that of "biological but not adjudicated" parent. Such a status permits the State to pursue termination of the biological parent's parental rights. *See* ***State v. James P.***, 2005 WI 80, ¶49, 281 Wis. 2d 685, 698 N.W.2d 95. Accordingly, no arguably meritorious basis exists for R.T.P. to claim that his status constitutes grounds for challenging the order terminating his parental rights. *See* ***id.***

[3] The petition also initiated proceedings to terminate S.S.A.'s parental rights. The order terminating S.S.A.'s parental rights is not before us.

2000 WI App 70, ¶5, 233 Wis. 2d 663, 607 N.W.2d 927. We agree with appellate counsel that R.T.P. could not do so.

After a termination-of-parental-rights petition is filed, the circuit court has thirty days to conduct an initial hearing and determine whether any party wishes to contest the petition. *See* WIS. STAT. § 48.422(1). If a party contests the petition, the circuit court must set a date for a fact-finding hearing, which must begin within forty-five days of the initial hearing. *See* § 48.422(2). If the petitioner establishes grounds for termination, the circuit court may delay the dispositional hearing until "no later than 45 days after the fact-finding hearing[.]" *See* WIS. STAT. § 48.424(4).

When the statutory time limits cannot be met, continuances may be granted "only upon a showing of good cause in open court … and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases." WIS. STAT. § 48.315(2). Failure to object to a continuance, however, "waives any challenge to the court's competency to act during the period of delay or continuance." *See* § 48.315(3). Here, the circuit court extended the statutory deadlines on several occasions, but it did so only upon a finding of good cause, and R.T.P. did not object to the continuances. Accordingly, a challenge to the order terminating R.T.P.'s parental rights based on failure to comply with statutory time limits would be frivolous.

Appellate counsel also examines whether R.T.P. could pursue an arguably meritorious challenge to the order terminating his parental rights on the ground that the circuit court did not order preparation of a court report under WIS. STAT. § 48.425(1). We agree with appellate counsel that R.T.P. could not pursue such a challenge. Pursuant to WIS. STAT. § 48.422(8), "[i]f

the petition for termination of parental rights is filed by an agency enumerated in [WIS. STAT. §] 48.069 (1) or (2), the court shall order the agency to file a report with the court as provided in [§] 48.425(1)."[4] The petition in this case was filed by the State of Wisconsin, not by an agency listed in § 48.069(1)-(2). Accordingly, the circuit court was not required to order preparation of a court report. *See* § 48.422(8). We therefore agree with appellate counsel that a challenge to the proceedings based on the circuit court's failure to order a court report would lack arguable merit.

Appellate counsel next considers whether an arguably meritorious basis exists to challenge R.T.P.'s no-contest plea to the allegation that R.P. was a child in continuing need of protection or services. Before accepting a no-contest plea in the grounds phase of a proceeding to terminate parental rights, the circuit court must conduct a colloquy with the parent in accordance with WIS. STAT. § 48.422(7), to ensure that the plea is knowing, intelligent, and voluntary. *See* ***Brown Cnty. DHS v. Brenda B.***, 2011 WI 6, ¶¶34-35, 331 Wis. 2d 310, 795 N.W.2d 730. The statute requires the circuit court to: (1) address the parent and determine that the plea is made voluntarily and understandingly; (2) establish whether any promises or threats were made to elicit the plea; (3) establish whether a proposed adoptive parent for the child has been identified; (4) establish whether any person has coerced a parent to refrain from exercising parental rights; and (5) make such inquiries as satisfactorily establish a factual basis for the plea. *See* § 48.422(7).

[4] An exception to WIS. STAT. § 48.422(8) applies when the child is an Indian child. *See* ***id.*** The record shows that R.P. is not an Indian child.

When conducting a plea colloquy in a termination of parental rights proceeding, "[t]he questions to be asked depend upon the circumstances of the case," and the circuit court is not required to follow "a specific checklist." *See* ***Brenda B.***, 331 Wis. 2d 310, ¶57. The circuit court must, however, ensure the parent's understanding that acceptance of the plea will result in a finding of parental unfitness. *See* ***id.***, ¶43. The circuit court must also ensure the parent's understanding that at the later dispositional phase, the circuit court may dismiss the petition or terminate parental rights, *see* ***id.***, ¶66, and "the parent must be informed that ... [o]nce the parent is found to be unfit, it is the court's determination about what is best for the child rather than any concern about protecting the parent's rights that drives the outcome" of the dispositional hearing. *See* ***id.***, ¶44. Finally, when a petition to terminate parental rights is uncontested, the circuit court shall hear testimony in support of the allegations in the petition. *See* ***Waukesha Cnty. v. Steven H.***, 2000 WI 28, ¶¶53, 56, 233 Wis. 2d 344, 607 N.W.2d 607.

We agree with appellate counsel that any challenge to R.T.P.'s no-contest plea would lack arguable merit. The circuit court explained the elements that the State must prove to establish that a child is in continuing need of protection of services under § 48.415(2)(a), and R.T.P. said that he understood those elements. He acknowledged that by pleading no contest, he was giving up a variety of constitutional rights, including the rights to contest the allegations, to call and cross-examine witnesses, and to have a jury trial on the grounds phase of the proceedings. The circuit court explained that, as a consequence of R.T.P.'s no-contest plea, he would be found to be an unfit parent but that termination of his parental rights was not the only possible disposition. R.T.P. said he understood, and he assured the circuit court that he had not been threatened or promised anything to induce his no-contest plea.

We have considered whether R.T.P. could pursue an arguably meritorious challenge to the sufficiency of the plea colloquy on the ground that the circuit court did not establish the existence of a proposed adoptive resource for R.P. We conclude that R.T.P. could not do so, because the State presented testimony about a proposed adoptive resource at the dispositional hearing. In that proceeding, M.M. testified that she and her husband had served as the foster parents for R.P. since March 2021, that they had been approved for adoption, and that they were committed to adopting him. Under these circumstances, the circuit court's failure during the plea colloquy to address the identity of a proposed adoptive resource does not provide an arguably meritorious basis for postdisposition litigation. *See* ***Steven H.***, 233 Wis. 2d 344, ¶¶53, 58 (providing that information necessary to support a no-contest plea may be presented through testimony at proceedings other than the plea hearing); *see also* ***State v. Jodie A.***, Nos. 2015AP46 and 2015AP47, unpublished slip op. ¶¶11, 13 (WI App July 7, 2015) (holding that a circuit court's failure to identify a potential adoptive resource during the plea colloquy was harmless error where other portions of the record identified an adoptive resource).

We also conclude that the State offered sufficient evidence to support the allegations in the petition for termination of R.T.P.'s parental rights. The State submitted certified copies of documents filed in the CHIPS proceeding, and the State presented testimony from Kristina Hinnawi, the case manager for R.P. and his family. Hinnawi discussed the various conditions that R.T.P. was required to meet before R.P. could be returned to R.T.P.'s care, the steps that she took to assist R.T.P. in meeting those conditions, and the numerous ways that R.T.P. had failed to satisfy the conditions. The circuit court found that the testimony and other evidence established the four elements necessary to prove that R.P. was a child in continuing need of protection or services, specifically: (1) R.P. had been placed outside R.T.P.'s home for more

than six months pursuant to an order, entered on November 12, 2021, containing warnings about possible termination of parental rights; (2) the Division had made reasonable efforts to provide the services that the circuit court ordered in the CHIPS proceedings; (3) R.T.P. had failed to meet the conditions established for the safe return of the child to R.T.P.'s home; and (4) a substantial likelihood existed that R.T.P. would not meet the conditions by the time that R.P. had been placed outside the parental home for fifteen of the twenty-two months following entry of the CHIPS order. *See* WIS. STAT. § 48.415(2)(a).

The record shows that no arguably meritorious grounds exist for R.T.P. to challenge his no-contest plea. Further proceedings to challenge the plea would be frivolous.

Last, we agree with appellate counsel that R.T.P. could not mount an arguably meritorious challenge to the decision terminating his parental rights. The decision to terminate parental rights lies within the circuit court's discretion. *See* ***Gerald O. v. Cindy R.***, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996). The prevailing factor is the child's best interests. *See* WIS. STAT. § 48.426(2). In determining the best interests of the child, a circuit court must consider: (1) the likelihood of adoption after termination; (2) the child's age and health; (3) "[w]hether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever those relationships"; (4) the child's wishes; (5) "[t]he duration of the separation of the parent from the child"; and (6) "[w]hether 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." WIS. STAT. § 48.426(3).

At the dispositional hearing, the State presented testimony from M.M. and Hinnawi. R.T.P. testified on his own behalf. At the conclusion of the testimony, the circuit court considered each of the statutory factors in light of the evidence presented.

The circuit court found that R.P. was two-and-one-half years old and in good health after overcoming the physical challenges he faced at birth and the malnutrition that was impeding his development at the time that he was placed in foster care. The circuit court found that R.P. was likely to be adopted by M.M. and her husband, who wanted to adopt him and were licensed to do so. The circuit court found that R.P. did not have a relationship with any of his biological family members except for R.T.P., and that the relationship between R.T.P. and R.P. was insubstantial and "artificial" because it was based merely on sporadic interaction during supervised visitation. The circuit court therefore found that R.P. would not be harmed by severing the relationship with his biological family.

The circuit court acknowledged that R.P. was too young to express his wishes but found that he was "happy, healthy, and [that he] enjoys his routine where he is." The circuit court further found that R.P. had "stability and parental figures" in M.M.'s home, where he had spent most of his life. Finally, the circuit court found that terminating R.T.P.'s parental rights would permit R.P. to enter into a more stable and permanent family relationship. In this regard, the circuit court found that R.P.'s placement with M.M. and M.L.M. afforded R.P. certainty and continuity in a home with the people that R.P. knew as his "mommy" and "daddy." The circuit court therefore concluded that terminating R.T.P.'s parental rights was in R.P.'s best interests.

The record shows that the circuit court properly exercised its discretion. The circuit court examined the relevant facts, applied the proper standard of law, and used a rational process to

come to a reasonable conclusion. *See* ***Gerald O.***, 203 Wis. 2d at 152. An appellate challenge to the circuit court's decision to terminate R.T.P.'s parental rights would lack arguable merit.

Our independent review of the record reveals no other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32. Therefore,

IT IS ORDERED that the order terminating R.T.P.'s parental rights is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of further representation of R.T.P. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals